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House of Lords

Tuesday, 12 January 2010.

2.30 pm

Prayers—read by the Lord Bishop of Chichester.

Questions for Written Answer

Question

2.36 pm

Asked By ***Lord Lucas:***

To ask the Leader of the House whether she will make proposals for allowing appeals against refusals to answer written Questions to be made to the Information Commissioner.

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My Lords, Ministers are, of course, responsible for the Answers to Written Questions. The principal role of the Information Commissioner is to enforce and oversee the statutory Data Protection Act and Freedom of Information Act regimes. As paragraph 5.15 of the *Companion* makes clear, Written Questions are not,

"a 'request for information' under the Freedom of Information Act".

It is right that these processes remain distinct. Accordingly, I will not be making any such proposals.

Lord Lucas: My Lords, it strikes me that, wonderful though Written Questions usually are, there can be occasions when one comes across a department that is reluctant to provide the information requested, and one finds oneself in a situation where we have given to the citizen powers that we have not given to ourselves. Does not the Leader think that it would be good to find a way in which we can encourage departments to provide information—if not by the mechanism that I have suggested—and perhaps even have adjudication on their refusal to do so, so that we can take to ourselves the powers that we have given to everybody else in this land?

Baroness Royall of Blaisdon: My Lords, there are three or four issues here. First, it is very important that the distinction between the two regimes should remain. Secondly, it is of course open to any Member of Parliament to request information under the Freedom of Information Act; and should they so wish, noble Lords should avail themselves of that process. As for departmental Questions, if Members are not satisfied with the Answers to Questions, they can ask further Questions. They can ask Oral Questions if the first Question was a Written Question; they can see the departmental Minister concerned; and they can come and see me. So a range of various options is available to Members of this House.

Lord Campbell-Savours: My Lords, is it not perfectly reasonable to suggest that each House of Parliament should publish an Order Paper that shows which Questions have been asked under freedom of information legislation by individual Members of Parliament? Why should that not be made available to the public?

Baroness Royall of Blaisdon: My Lords, I have not encountered that suggestion before. I will read carefully what the noble Lord has said and reflect on it.

Lord Maclennan of Rogart: My Lords, will the Leader of the House seek to strengthen Parliament's own capability in this sphere, particularly to enable it to respond fully and quickly in public debate? Yesterday, in current business, there were 81 Questions unanswered within the 14 days that the *Companion* sets out as the expectation, and 15 of those were tabled as long ago as 18 November. That does not seem to me to help Parliament to be responsive in the way that I think we all would wish.

Baroness Royall of Blaisdon: My Lords, I am acutely aware of the responsibility of Ministers to answer Parliamentary Questions. If the noble Lord were to look at the statistics over the past few months, he would see that things have improved exponentially. That is not to say that it is not entirely wrong that there should be 82 unanswered Questions, and that 15 of those date from November. I must say in mitigation that in this House we are quite properly expected to answer Questions within a 14-day deadline, and that includes the Christmas period. There are a couple of Questions for which I am responsible which were tabled on 16 December, and the deadline was 30 December. Noble Lords will understand why we missed that deadline, and I can only apologise to the House.

Lord Grenfell: My Lords, there seems to be here a dog that has not barked in the night, so to speak. Does the noble Baroness agree that at the root of this is the question of how often it happens? I have not yet heard anybody say how frequently a departmental Minister or officials refuse to answer a Question. Surely that is relevant to this debate.

Baroness Royall of Blaisdon: My Lords, I think that it is very infrequent and that where there is reluctance to provide certain information, it is on the basis of the Data Protection Act or similar considerations. It is not a reluctance to provide the information as such but is in order to protect certain individuals.

Lord Inglewood: Given that my noble friend Lord Lucas is clearly going to be dissatisfied with the reply of the noble Baroness the Leader of the House, what does she advise him to do next?

Baroness Royall of Blaisdon: My Lords, I will continue to reflect on this issue. I believe that the noble Lord's Question stems from a problem that he has had, but we have had discussions, there have been discussions

[Baroness Royall of Blaisdon]
with the department, and, as I understand it, the specific issues have now been resolved or are in the process of being resolved.

Lord Foulkes of Cumnock: Will my noble friend also reflect on the paradox that I get much more detailed information through FOI requests than I get through Parliamentary Answers? Civil servants still have a tendency to draft for Ministers Parliamentary Answers that—save for the presence of the most reverend Primate the Archbishop—remind me of the definition of a bikini: what it reveals is less interesting than what it conceals. I ask my noble friend to think carefully about ensuring that civil servants get instructions to take account of FOI legislation and to be far more forthcoming in drafting Answers for Ministers.

Baroness Royall of Blaisdon: My Lords, I hear what the noble Lord says and I have some sympathy with that point of view. The principle is that one should not get less information from a Parliamentary Answer than one receives under FOI. The thing is that under FOI one receives raw information, whereas under a Parliamentary Answer it is—

A noble Lord: Spun.

Baroness Royall of Blaisdon: No, my Lords, not spun—absolutely not spun. It is made into a Parliamentary Answer. I heed the noble Lord's words, however, and I will certainly take them back to all departments.

Lord Elton: My Lords, I am sure that we are all most grateful to the Leader of the House for the pressure that she exercises pretty regularly on our behalf to get good Answers quickly. However, in view of the difficulty she has, it would be very interesting to know whether she applies the pressure to Permanent Secretaries or to Secretaries of State.

Baroness Royall of Blaisdon: My Lords, I usually write to Permanent Secretaries. If that does not have the required effect, I take it up with my colleagues in the Cabinet.

Prisons
Question

2.43 pm

Asked By ***The Lord Bishop of Liverpool***

To ask Her Majesty's Government whether they plan to build an environmentally sustainable prison.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My Lords, we aim for increasingly sustainable prisons within budgetary constraints, focusing on energy, emissions, water, waste and recycling. Energy consumption per prisoner place is down 29 per cent from 1999 levels, with 23 per cent of electricity now obtained from renewable sources. Prisons are now recycling 46 per cent of waste generated. NOMS is working with constructors to move towards the Government's goal of constructing new public sector buildings which emit zero carbon by 2018.

The Lord Bishop of Liverpool: My Lords, I thank the Minister for that encouraging Answer and congratulate the National Offender Management Service on some of the initiatives that have been taken in sustainable living. Does the Minister recognise not only the economic benefit in creating sustainable prisons but the restorative potential in engaging prisoners in sustainable living?

Lord Bach: My Lords, the House well knows that the right reverend Prelate is the Bishop for prisons and shows a great interest not only in that topic but, of course, in the environment generally. I strongly agree with him that the restorative element of the sustainable work that is going on in prisons is very important. For example, in Wetherby young offender institution, next to the waste unit where many of its young offenders are working, there are classrooms for the provision of education and training. It is clear already that work in waste management in prisons can lead to those who are let out of prison finding employment in that area. As prisons become more sustainable there is no question that that will, I hope, prevent reoffending.

Baroness Trumpington: My Lords, does a sustainable prison include the growing of vegetables and flowers, farming, the rearing of pigs, which provide bacon and pork to prisoners, and the provision of future careers for prisoners on leaving prison? I deeply regret that these facilities have, thus far, been removed.

Lord Bach: My Lords, the answer is yes. The biodiversity action plan for the prison estate, which is the second largest built and non-built government estate, is being taken forward with various partners which are very active indeed in this field. NOMS was the first government service to implement the biodiversity action reporting system, which monitors all the actions and targets on species and habitats. The noble Baroness is asking particularly about prisoners making their own food and training for prisoners. I do not know the specific answers, or whether such provision has declined or advanced in recent years, but it is certainly worth considering.

Lord Judd: While strongly endorsing the concerns of the right reverend Prelate, does my noble friend agree that in the context of the excellent lead given by the Government on environmental matters, all government buildings, whatever and wherever they are, should be environmentally sustainable?

Lord Bach: Of course I agree with that, and we are working to achieve a carbon-neutral government estate by 2030. That is a long way off, but there is a great deal still to be done. The Ministry of Justice's sustainable development action plan focuses on commissioning energy-efficient new-builds and operating existing buildings—noble Lords will know that the prison estate was not necessarily built with environmental considerations in mind—in a sustainable manner, whereby the ministry's carbon footprint will be reduced.

Lord Elystan-Morgan: My Lords, perhaps I may ask a question which is not a thousand miles from the original Question of the right reverend Prelate. What estimate have the Government made of the first available date upon which it is expected that the first prisoner will enter the first of the sub-Titan prisons to be built?

Lord Bach: My Lords, I am sorry that I do not have the answer to that question immediately to hand. This Question is about prisons and sustainability, but of course I will write to the noble Lord with the latest estimate.

Lord Lawson of Blaby: My Lords, I am sure that the whole House is tremendously excited by the biodiversity action plan in Her Majesty's prisons. How much does it cost, how many people are employed in it, and what has been its greatest achievement so far?

Lord Bach: I am delighted to excite the noble Lord by what I have said. I cannot give him specific figures on costs of employment, but I gently remind him that the question of employment in prisons is not very difficult.

Lord Acton: On sustainability, I have asked endless questions—all of them hostile—of this and the predecessor Government about prisons, and for the first time ever I shall ask a sycophantic question. Is my noble friend aware of how delighted I am at his replies to everybody, except the noble Lord, Lord Elystan-Morgan, who I am afraid is looking a little sad?

Lord Bach: I am even more worried that I usually am when the noble Lord is being hostile.

The Earl of Listowel: In principle, does the Minister agree that in terms of sustainability, rather than imprisoning more and more offenders, it would be better to consider the demonstrably cheaper and more effective approach of not using prison? There is the Northern Ireland approach of restorative justice, where victims have 80 per cent rates of satisfaction and reoffending has decreased to below 30 per cent. Is that not a more sensible and sustainable approach?

Lord Bach: There is undoubtedly a place for restorative justice, and for non-custodial sentences in appropriate cases. However, I am afraid that as long as people behave as badly as some do, there will always have to be prisons.

Michael Savage

Question

2.52 pm

Asked By ***Lord Pearson of Rannoch***

To ask Her Majesty's Government whether they will reconsider their decision to ban the United States radio talk-show host Dr Michael Savage from entering the United Kingdom.

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): My Lords, the former Home Secretary made it clear that Michael Savage was excluded for engaging in unacceptable behaviour by making comments that might provoke others to serious criminal acts and fostering hatred that might lead to intercommunity violence. In the absence of clear, convincing and public evidence that Mr Savage has repudiated his previous statements, the current Home Secretary is not prepared to review the exclusion decision.

Lord Pearson of Rannoch: My Lords, I am grateful to the noble Lord, who will of course be aware that Dr Savage has won the prestigious award in the United States for freedom of speech from *Talkers Magazine*. Will the noble Lord undertake to place in the Library any statements made by Dr Savage that the Government judge to be inflammatory, together with their context? Also, are the Government aware that Dr Savage has given a rare botanical collection to Kew Gardens? Should he not be allowed to visit it and to exercise his freedom of speech in response to any questions he may receive while he is here?

Lord West of Spithead: My Lords, may I take those questions in reverse order? On the second, I was made aware of the collection of plants only when the noble Lord kindly let me see a letter that had been written about that, for which I thank him. On the reasons for Mr Savage's exclusion, he has made a number of radio broadcasts when he has spoken about killing 100 million Muslims, and spoken in violent and unpleasant terms about homosexuals. I do not want to quote those statements on the Floor of the House because some of them are deeply offensive, but I am happy to write to the noble Lord with them, as he has asked, and to put a copy of that in the Library.

Lord Peston: My Lords, I was under the impression that this was part of the Government's policy of protecting British jobs for British workers—we produce enough nutcases in this country without needing to import any from the United States.

Lord West of Spithead: My Lords, I would not want to comment on how many nutcases there might be in this country. We have a good process for identifying when we think someone should be put on the list, which includes inputs from diplomatic posts overseas and community groups. The information is then taken together, looked at by a group in the Home Office and a decision is made on whether people should be above or below that cut-off.

Lord Tebbit: Would the Minister consider taking the policy a bit further and deporting some of the foreign nationals who make unacceptable statements which are likely to cause strife in this country?

Lord West of Spithead: My Lords, the noble Lord makes a good point. These things are extremely difficult to do but I share his view. It is quite extraordinary how people who say appalling things about our nation

[LORD WEST OF SPITHEAD]
hang on like limpets and definitely do not want to go anywhere else in the world. This has struck me again and again with some amazement.

Baroness Hamwee: My Lords, will the Minister draw the existence of *Talkers Magazine* to the makers of "Have I Got News for You"? They might find some material in that. More seriously, does he agree that blacklisting people without knowing why and when they want to enter the country risks making martyrs of them? We know what a good recruiting officer martyrdom can be.

Lord West of Spithead: My Lords, I congratulate the noble Baroness on her 21st birthday today; I am sure that the House joins in with that. One has to be aware of not making martyrs of people who say abhorrent things. That is always a risk. Perhaps Mr Savage had been trying to say it in an amusing way; I do not think it is very amusing. We do not give people prior warning or notice that they are going to be excluded, but if they feel that it is wrong they can challenge it and then go through a judicial review process. We tend normally to expect an individual to repudiate some of the statements they have made if they are particularly repugnant. If they do that, we review it and there is then the opportunity to come in but that has not happened in this case.

Lord Pannick: Does the Minister accept the principle stated by the Asylum and Immigration Tribunal last October in allowing the appeal of Mr Geert Wilders, the Dutch politician, against his exclusion from this country by reason of the views he had expressed? The principle was that, because of the importance of free political debate in this country, it is vital that people are excluded from this country by reason of their views only if the strongest evidence exists of a real danger to the interests of this country, not least because if people do come here and say things that are unacceptable the police have ample powers to arrest them.

Lord West of Spithead: My Lords, the noble Lord makes a very good point. The two cases are somewhat different because there is a difference between European nationals such as Mr Wilders and a non-EEA national such as Mr Savage. In the European case, we can only refuse admission if the presence is considered a threat to public policy, public security or public health and the personal conduct of that person represents a genuine, present and sufficiently serious threat affecting one of those fundamental interests. It was considered that that was not the case in the specific case of Mr Wilders. By contrast, Mr Savage is not a EEA national and he was excluded on the basis that his presence was not considered conducive to public good. The two are therefore somewhat different.

Lord Pearson of Rannoch: Is the noble Lord aware of the context in which Dr Savage said that large numbers of Muslims should be killed? Was that not in response to the question of what happens if a rogue Muslim organisation gets hold of a nuclear weapon and uses it?

Lord West of Spithead: My Lords, I was only aware of this when I was given a letter from the noble Lord and I thank him for that. All I say is that I will provide a list of the things Dr Savage has said, some of which are fairly objectionable and unpleasant. If all those things have been said in a context that makes them okay, we will think about looking at them again, but I would be extremely surprised if some of those statements could be put in any context that would make them anything other than abhorrent.

Crime: CCTV

Question

2.59 pm

Asked By ***Lord Craig of Radley***

To ask Her Majesty's Government what assessment they have made of the value of closed circuit television in fighting crime and securing convictions of offenders.

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): My Lords, there is some published research on the value of CCTV but we are working with the police to strengthen the evidence base. However, we know from actual cases the value of CCTV in the detection and conviction of offenders, involving terrorism, murder, volume crime and anti-social behaviour. The Government encourage local partners to consider the contribution which CCTV can make in fighting crime as part of their crime reduction strategies.

Lord Craig of Radley: My Lords, I thank the Minister for that Answer. Does he not accept that the claimed value of CCTV is not borne out by recent official information, which shows that the number of crimes solved by using CCTV in London, for example, has fallen from one in two in 2003-04 to only one in seven in 2008-09? Does the remit of the new national CCTV oversight body have any regard to the cost-effectiveness and value for money of the considerable number of CCTV systems installed at great expense by Her Majesty's Government?

Lord West of Spithead: My Lords, the noble and gallant Lord has asked a number of questions. I would refute some of the claims made about the percentage of crimes solved by CCTV, which are based on inputs by individual police officers and accumulated in a certain way. No judgment has been made of their accuracy and general statistics cannot be given. It is worth knowing, however, that from April 2007 to March 2008, CCTV was used in 86 out of 90 investigations of murder and helped to solve 65 of them. The camera footage captured crime taking place or was used to track movements of suspects. In a third of those cases, witnesses were able to identify the murderer from it. CCTV plays a huge role with regard to serious crime and is very valuable. I have mentioned previously in the House that the regulator needs to obtain accurate, empirical evidence, but I have no doubt that CCTV is extremely important in stopping serious crime and in detecting terrorist offences.

Lord Hughes of Woodside: My Lords, is there not a flaw in the argument of people who say that CCTV is not so effective and that its use should therefore be reduced and then draw the conclusion that, because the police solve fewer crimes than perhaps they did six months ago, we should abolish the police?

Lord West of Spithead: My Lords, my noble friend points out that the arguments against CCTV can become somewhat circular. There is talk about how many cameras there are. The way in which the huge total is reached is by someone walking down Putney high street, counting the number of cameras and multiplying that by the number of streets in the UK. That is not a very accurate way of arriving at the final figure. There are a lot of cameras because individuals feel safe having cameras on their property and put them there. There is a camera in every cash machine; there is a camera in buses for looking down the bus lane. Those are all co-ordinated with the city-centre sited cameras which the Government helped local communities put up. When footage from them is pulled together in the case of a serious crime, such as the attack on Tiger Tiger, amazingly conclusive evidence is built up that lets us track people down and capture them.

Baroness Neville-Jones: My Lords, in connection with the points that the Minister makes about value for money, will he say something about the quality of the pictures? In a number of cases there have been pictures but not of sufficient quality to provide evidence, in particular evidence admissible in court. What measures are the Government taking to ensure that the pictures are of a standard sufficient to provide admissible evidence in court?

Lord West of Spithead: My Lords, the noble Baroness has raised a very good point. Very often, the pictures are not of sufficient quality. The CCTV regulator has just come into post and will embark on a programme of work to obtain empirical evidence to achieve that. He will come to us with that programme of work in the next couple of months and then move forward to look into some of these areas. Some cameras are not controlled by the Government, but they do give a certain security. Last summer, I travelled quite a lot on the Tube. Announcements were being made that there were cameras on stations and in trains. I thought that I would do my own survey and so I asked people travelling on the Tube what they thought. After the shock of someone talking to them and looking as though they were about to be mugged, they generally agreed that the cameras made them feel more secure. The cameras have a real value.

Baroness Finlay of Llandaff: What has been the impact of CCTV cameras on unmanned stations? Have they decreased the crime rate and increased the number of prosecutions when crimes have occurred on unmanned station platforms?

Lord West of Spithead: My Lords, I do not know the details on that specific point so perhaps I may come back to the noble Baroness on it. However, what I do know, because we do have statistics, is that cameras have made a considerable difference in car parks in terms of attacks on cars or attacks on people within those car parks. I have no doubt that CCTV adds value. We also have a lot of hearsay evidence, which is why the regulator must go into it, of rather unpleasant people and yobs saying, "Look out, there's a camera". I do believe that it has an impact, but we need definitive and accurate analysis of it.

Baroness Masham of Ilton: My Lords, does the Minister agree that there is frustration when there is no film in the cameras? Some people get away with crimes when the evidence is not there because the film has been left out.

Lord West of Spithead: My Lords, I absolutely agree. I know that sometimes with people's private CCTV it is not in there and they then pay the price. However, it would be quite unacceptable if this was happening with cameras run by councils and the Government. They would deserve to be keelhauled. It should not happen.

Baroness Hamwee: My Lords, the Minister will share my view that the public have high expectations of CCTV. Will the research he mentioned look at the greater or lesser effectiveness of it in different places? He mentioned car parks. Knowing where CCTV works best would allay a lot of the fears of those concerned for civil liberties as against the effectiveness of the measure.

Lord West of Spithead: My Lords, the noble Baroness makes a good point. As I say, we are waiting for the programme of work to come from the regulator. That is certainly something I will make sure is looked at. Clearly there is always a concern about the surveillance society. As I said, I looked at that last summer and talked to people. They were not concerned at all about the fact that there were cameras there because they felt so much safer. We have to get this into balance and not go mad about the surveillance society. Generally people are not tracked from here to here to here. Governments tend to be far more incompetent—not this specific one, but generally—at doing something like that, so the fear does not necessarily have to be taken into extreme account, but we have to take it into account.

Digital Economy Bill [HL]

Committee (2nd Day)

3.06 pm

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

Amendment 20

Moved by ***Lord Clement-Jones***

20: Clause 2, page 3, line 23, leave out "geographic coverage of the different UK networks" and insert "use of electromagnetic spectrum for wireless telegraphy in the United Kingdom"

Lord Clement-Jones: It is always useful to have a few general words to say at the beginning of any amendment when the Chamber is clearing. I shall try to do a "David Coleman" for a certain period of time until I know that the Minister is able to hear what I have to say.

The purpose of Amendment 20 is to ensure that the same approach is adopted under new Section 134B, inserted by Clause 2, for all relevant communications networks, both fixed and mobile. The current text appears to draw a distinction between the reporting of fixed networks and mobile networks. In an era of ever-closer integration and convergence of services over the respective networks, such a distinction seems inappropriate and misleading as it perpetuates the idea that there are completely separate and distinct markets which do not impact on each other. This is increasingly no longer the case. In the last meeting of the Committee, we discussed the whole essence of convergence and the fact that we are now in a post-convergence age. The services conveyed are similar regardless of the plumbing. This new Section 134B should reflect that. I beg to move.

Lord Young of Norwood Green: This amendment might be based on some confusion about the meaning of subsections (1) and (2) in new Section 134B. I wholeheartedly concur with the analysis of the noble Lord. The intention is that the issues covered in subsection (1) are all those relating to networks, whether fixed, mobile or satellite networks, or networks based on other technologies. The issues covered in subsection (2) relate to services provided in relation to or over those networks. We are not making a distinction and recognise the point that the noble Lord, Lord Clement-Jones, drew to our attention.

Turning specifically to the wording of the amendment, we consider the inclusion of geographic coverage of the different UK networks to be an important part of the report because geographical coverage matters from an economic and social perspective. That being so, I believe it should remain within the scope of the report. The other day, we debated the importance of universal coverage. Spectrum is used for a variety of services that fall within the definition of electronic communication services, mobile services and broadcast TV/radio being the most obvious. Spectrum is also used for some point-to-point communication links, in which form they can be an important wholesale input to other services. For example, point-to-point microwave links are sometimes used to provide connection to radio base stations, especially when they are geographically remote. The use of electromagnetic spectrum is included separately in new Section 134(b)(2) as services matters. Spectrum itself is not a physical network, which is why it is included under services so that the report will include the type of services provided when using the electronic communications network.

I trust that, in the light of that explanation, the noble Lord will consider withdrawing his amendment.

Lord Clement-Jones: I thank the Minister for that helpful clarification. I suspect that this will be one of the easier amendments that he has to deal with today. We will consider his reply carefully. In the mean time, I beg leave to withdraw the amendment.

Amendment 20 withdrawn.

Amendments 21 and 22 not moved.

Amendment 23

Moved by ***Lord Lucas***

23: Clause 2, page 3, line 41, at end insert—

"( ) the resilience of the networks to disruption by physical damage or loss of power supply,

( ) the ability of the networks to allow citizens to communicate with each other, and authorities to communicate with citizens, during an emergency"

Lord Lucas: I shall speak also to Amendment 26. These amendments amplify the scope of the report that is the subject of this clause. My reasons for adding these three items are that some key aspects of the network do not seem to be included in the rest of the, admittedly quite extensive, wording in this clause.

First, Ofcom should have regard to the resilience of the network. In the past year or two, we have been through a period when the resilience of the economy and our banking protection system was tested. It is a good idea to look at these matters before we hit a crisis. I do not think we need to specify what kind of crisis might hit a network. It could be anything from power difficulties to difficulties relating to other kinds of incidents: anything that could impact on the performance of the network. We are going through a period when the resilience of the network is being systematically decreased.

During the big boom in building mobile services, we were putting in base stations with one or two weeks' reserve power capacity so that the mobile network could stand quite a long period of difficulty, such as being unable to get to base stations because of the snow. It gave you a week to get there. Now, we are putting in base stations that have only 24 hours', sometimes even less, reserve power capacity. If we continue on that pattern, which Ofcom appears to be allowing solely on an economic basis, we will end up with a network that is quite fragile. That sort of thing ought to be part of Ofcom's remit when it comes to this report.

Secondly, going back to my original complaints about Ofcom's lack of attention to citizens, when we had the bombings on 7 July, the first thing that happened was that people's mobile communications services were cut, which was fine, under those circumstances. When nothing too devastating or terrible in a geographic sense has happened, people can be relied upon to act sensibly, and we walked home. You could not tell anyone where you were, but eventually you turned up and things were all right. But if something happened which was more frightening, to leave the population in a position where their preferred means of communication was disabled is an invitation to panic and irrationality.

I know there were reasons why communications were disabled in those particular circumstances, but when we are doing a report on the communications system, we really ought to understand how much a key part of people's lives we have allowed mobile communications to become. It is important that we

should seek to preserve that, in circumstances when the Government want to have an effect on how people behave. If, for some reason, they want to restrict people's movements, for example to prevent the spread of a disease, they could not do that without communicating properly with people. If you have a communications system—particularly a mobile system—which falls over in an emergency, you are going to be unable to do what you need to do.

3.15 pm

Amendment 26 picks up an additional circumstance to which Ofcom should have regard. It is not only physical criteria and physical disruption of the service which matter. There can be circumstances, going back to 7 July, where something that does not of itself damage the communications infrastructure places such a load on it that it is disabled. In the context of this report, that is something that Ofcom ought to have regard to. I beg to move.

Earl Attlee: My Lords, it may be for the convenience of the Committee if I speak to Amendment 30 at this point. My amendment is properly grouped with my noble friend's, but it raises a slightly different though highly relevant point.

GPS satellite navigation systems are by now fairly ubiquitous, but there is much misunderstanding about how they work and the robustness or otherwise of the system. I intend to give the Committee a brief introduction to GPS, but it will be a gross simplification of an ingenious system.

A constellation of satellites has been launched by the US Government which operates the system as a free good for the world, although the primary motivation was obviously military. GPS provides highly accurate positioning and timing. Ground stations operated by the US Government track, communicate with and control the satellites. The ground stations predict and provide high-accuracy orbit and clock information for each satellite. These data are transmitted to each satellite. Each satellite transmits its high-accuracy orbit and clock information as well as coarse orbit and clock information for all the other satellites to the receiver—that is, your GPS hand-held unit or your sat-nav in your car.

The clever bit is as follows. The satellites continuously transmit their time-stamped signals. These travel at the speed of light—it is not instantaneous—at about 300 kilometres per millisecond. This means that the distance from the satellite to the receiver can be calculated accurately. The receiver uses signals from several satellites. By performing something akin to simultaneous equations, the receiver can determine position and height above sea level. Also, and most importantly, the time can be calculated to within around 40 nanoseconds, which is not very long since a nanosecond is a billionth of a second.

So far, so good; but there is a problem. The GPS satellite emits its signal at a power of about 100 watts, which is roughly equivalent to a light bulb, from 20,000 kilometres away. Therefore the signal received on earth is vanishingly weak and can be swamped by, for example, natural atmospheric conditions during high solar activity. It is also easily swamped by locally generated signals. This has already occurred accidentally in San Diego and elsewhere due to the malfunction of legitimate equipment. But it can also be done with malign intent using a GPS jammer, which needs only about one watt of power to be effective. Details of the necessary technology and sources of supply are inevitably available on the internet. They are often bought to overcome a vehicle's security system or to bypass a rental vehicle's charging system. GPS jamming can cause obvious difficulties for navigation and positioning systems, but the loss of the timing signal could be extremely inconvenient for certain specialised operations.

GPS is a space-based system, but there is also a terrestrial system called e-Loran, which should not be confused with the older Loran systems. E-Loran is nearly as accurate as GPS and provides a good timing capability. The system of operation is basically the same as for GPS, but the transmitters are land-based and have outputs in the multi-kilowatt range. However, the principle of measuring the time of flight of the radio signal remains the same, and because much higher powers can be used with a terrestrial system, it is much harder to jam than GPS. Further, since the e-Loran system operates on a different frequency range, it is unlikely to fail at the same time as GPS.

The same cannot be said for the EU Galileo system. I can well recall being told by Ministers at the Dispatch Box that Galileo can be used for safety-critical applications, and I believed them. But the problem is that Galileo operates using more or less the same system and on the same frequency as the US-operated GPS system. I have also now found out that it can be interfered with very easily, and I do not believe that the science and technology has changed significantly over recent years. So my first question for the Minister is this: in the light of the ready availability of GPS jammers and the associated technology, is he of the opinion that Galileo can still be used for safety-critical applications or those that affect critical national infrastructure? If he is not of that opinion, why have we expended huge amounts of effort and money on Galileo? What can Galileo do that a combination of the US GPS and e-Loran systems cannot?

Opposition amendments are sometimes thought to be unworkable, unnecessary or wrecking. My amendment could fall into the unnecessary category, as I know that the Government are already on to the case and that the noble Lord, Lord West, has been heavily involved, particularly with e-Loran.

Last November, I attended a series of GPS jamming trials off Tynemouth in the north-east which had been organised by Trinity House. At one point, my own hand-held GPS suggested that I was in Romania. More disturbing was that the GPS on the "Galatea", Trinity House's own vessel, was inaccurate, by only a few kilometres, but it was nevertheless believable. The dangers are obvious. Of course, I am not naive. I expect that Trinity House would like to run the UK part of the e-Loran system, and it already has a trial transmitter in Cumbria. However, it does not seem to me that e-Loran is a particularly expensive system in comparison with a space-based one, especially as there

[Earl Attlee]
is already a legacy Loran infrastructure in place with 72 per cent of the world's 50 busiest ports covered by Loran.

To sum up my point, why have we invested, and continue to invest, in Galileo as a second celestial system when e-Loran is much simpler, cheaper and does not have the same vulnerabilities? I hope that the Minister can tell us how he proposes to meet the challenges I have identified.

Lord Howard of Rising: My Lords, I thank my noble friend for raising these important points. I hope the Minister will be able to confirm that the concerns raised by my noble friend in Amendment 23 are covered under new Section 134B(1)(h), which states that Ofcom's reports under this section of the Bill must include,

"the preparations made by providers of UK networks for responding to an emergency, including preparations for restoring normal operation of UK networks disrupted by the emergency".

It seems sensible that matters such as the resilience of networks to physical damage and loss of power are considered under this section, and that emergency situations should include the ability of the state to communicate with its citizens. If these issues are not dealt with under this section, I would urge the Minister to listen to my noble friend and ensure that they indeed are properly taken care of.

On Amendment 26, I feel that the most important issue is whether, when counting an exceptional load on a network as an emergency, Ofcom would be able to differentiate between busy periods, such as immediately after a football match or at rush hour, and other more significant emergencies, such as a terrorist attack. Both, arguably, could account for an exceptional load. Can the Minister clarify whether such a differentiation would be possible?

On Amendment 30, I thank my noble friend Lord Attlee for giving such an erudite explanation of the GPS and other systems. I would simply—I am not sure that that is the right word to use after listening to my noble friend—ask the Minister whether the Government believe that Ofcom has the necessary expertise to carry out this important task, or whether another body or combination of bodies, or perhaps even the Government themselves, should compile such a report.

Lord Young of Norwood Green: My Lords, I thank the noble Lord, Lord Lucas, for drawing our attention, as usual, to some key issues.

I believe that the first amendment tabled by the noble Lord, Lord Lucas, is an attempt to clarify what is meant by resilience in terms of communication infrastructures, and what the principal objective of maintaining resilience should be. I understand his intention in proposing that such detail be drafted into the clause, but in my view this will narrow its meaning and limit its applicability and therefore its value.

We set out the requirement to report on resilience issues in new Section 134B(1)(h) and (2)(f). Subsection (3) goes on to specify important elements of the preparedness that we are looking for. The effect of the first part of the amendment would be to narrow the field of risk on which Ofcom would be required to report. Physical damage to networks, as we saw in Cumbria last year, has a significant impact, and the impact of a loss of power is well understood. However, the effect of this amendment would be to rule out or demote the risk to resilience posed by other important issues, such as industrial action, staff shortages through pandemic flu, or cyber or other types of attack.

The second part of the amendment attempts to define the point of resilience. In new Section 134B(1)(h) we require Ofcom to report on the preparedness for an emergency and the ability to respond to and recover from one. I well understand the point that the noble Lord, Lord Lucas, was making in relation to the terrorist attack of 7/7 when he said that mobile phones were cut off. I am not sure whether they were cut off, or it was just that the load on the network meant that it could not cope with the volume of calls. In relation to that, the noble Lord, Lord Howard, asked whether you could differentiate between the two. Although my knowledge is not as extensive or up to date as it should be in view of my telecom background, I doubt that you could. I shall write to him on that because obviously it is an important point.

In planning any network there is a limit to what you can do economically. Costs would spiral out of proportion if you tried to meet the maximum load that could occur in any eventuality. That would mean that, for much of the time, a lot of equipment would be doing nothing. The point I am trying to make is that there is a balance to be struck.

3.30 pm

The second part of the amendment attempts to define the point of resilience. We require Ofcom to report on the preparedness for an emergency and the ability to respond to and recover from one. Requiring Ofcom to comment on citizens' ability to communicate with each other during an emergency would therefore not add anything of significance to the existing text. We accept the principle of what is being said about the importance of a resilient network and its ability to recover but we do not think that this is the right wording. In any event, I can assure the noble Lord that the issue is covered in the current wording.

As for communication with the authorities, there is already an obligation on companies which provide links to the 999 service to prioritise those services above all others. Ofcom is already involved in these arrangements through its implementation of the universal service obligation which is laid down by European law. We see no need to include a report on such arrangements in the requirements which we seek to impose as the companies already have that duty.

As for the broader question of how authorities communicate with citizens during an emergency through techniques such as cell broadcasting, the policy is still under consideration and any legislation that is required to achieve better communication would need to be considered separately. It would therefore not be appropriate to require Ofcom to report on such developments. However, this important issue is being considered, and I am prepared to give further details on it if necessary.

I thank the noble Earl, Lord Attlee, for his erudite explanation of Amendment 30. I learned quite a bit about GPS from his contribution. I am sorry, I have skipped ahead. I want to deal first with Amendment 26.

Amendment 26 seeks to expand the definition of "emergency" in relation to the requirement on Ofcom to report on network and service matters. I am sympathetic to the intention of the amendment insofar as the possibility of networks failing through being overloaded has to be taken seriously, but the term "disruption" already includes the possibility of exceptional loads being placed on networks and thereby causing disruption. I understand that the objective of most attacks on on-line services now is to swamp the underlying technology and thereby cause it to stop working. This is called a denial-of-service attack. This risk is now so well known that it serves no purpose to add it into the definition of emergency. Disruption as a concept must be understood to include the stress on networks arising from overloading and it would be unhelpful to give such emphasis to one of many ways in which networks can be disrupted. We understand the importance of what the noble Lord, Lord Lucas, is saying but we believe that the issue is better addressed in the legislation currently proposed.

I turn to Amendment 30. The noble Earl, Lord Attlee, is right to draw our attention to the increasing use and importance of satellite navigation systems to support a wide range of important activities in providing both accurate positioning and precise timing. I cannot give the noble Earl the assurance he seeks that either the GPS or the forthcoming Galileo system cannot be jammed. The same is true for all other GNSS services provided by the Russians and the Chinese, among others. Unlike GPS, which was built for the US military, Galileo will be a civilian enterprise. Apart from the free service which will be available to all, and which will be complementary to the GPS service, there will be four other signals for commercial and public use. One of these will be encrypted and will provide protection from spoofing signals that can be the basis of a denial-of-service attack.

These channels will be used in many applications, including those that are safety critical. The protection of the critical national infrastructure is a key aspect of our national security policy. The Government have tasked the Centre for the Protection of National Infrastructure to engage with the management of such infrastructure to improve its security and resilience. This activity is not defined in statute and it would be wrong for the discretion of the authorities to define what is critical to be unduly fettered in that way. Nevertheless, I can assure the noble Earl that the use of global navigation systems in the critical infrastructure is a matter of interest to CPNI and the relevant government departments. CPNI working with industry is the right way to manage any risk in this area.

I note that the noble Earl believes that a combination of GPS and the Loran land-based system would give us diversity and resilience. It is now a matter of public knowledge that the US authorities intend to remove funding from a large part of the Loran network that they support. The implications of such a decision for the future of the Loran network or future enhancements have yet to be assessed. We should not rely solely on the Loran system to provide diversity. The Galileo system is on track. The Government believe that it will provide value for money and diversity of supply and will benefit those who increasingly use location and timing services. Against that background, I believe that it is unhelpful to give Ofcom a separate and narrowly focused duty to report on a service that does not fall within its existing remit.

In the light of the points I have made, I hope that the noble Lord and the noble Earl will consider not pressing this group of amendments.

Earl Attlee: My Lords, I am grateful for the Minister's response, but I have a couple of supplementary questions that I am sure he will enjoy answering. First, he mentioned spoofing. I understand his points and I am confident that he is absolutely right on that. I am not sure that I got the correct term. My concern is the GPS signal being smothered so that there is no signal at all—so the GPS and timing systems will not work. Secondly, I also asked about Galileo. I asked what Galileo can do that GPS cannot, especially when it is in combination with e-Loran. That is the key question. What can Galileo do? What does it give us that we did not have with GPS?

Lord Young of Norwood Green: GPS jamming incidents are monitored by the US Coast Guard and dealt with on a case-by-case basis. I have no information on the security of the Russian system, GLONASS, or the Chinese Compass system. Galileo is not yet built, but there will be a Galileo security monitoring centre. The European Commission is considering a number of possibilities including a signal monitoring facility. A series of procedures will be put in place by the European Council to take effect should the system itself be attacked. The security monitoring centre will be responsible for implementing these.

What can Galileo give us? It can give us some diversity of supply and extra resilience, a competitive network, and a wholly dedicated civilian network. This is perhaps not the right time to do a detailed comparative analysis, but if there is further information that I can supply, I would be happy to write additionally to the noble Earl on a cost-benefit analysis of Galileo. As for the other points raised by the noble Lord, Lord Lucas, I have addressed those previously. In the light of the explanations and assurances given, I ask that the noble Lord and the noble Earl not press the amendments.

Earl Attlee: I am grateful for the Minister's response to my amendment and will not be pursuing it further today, but I will need to give him another chance to explain further the advantages of Galileo.

Lord Lucas: My Lords, I shall take comfort from the replies that the Minister has given, and he can take comfort from the fact that, should what he has said prove to be wrong and Ofcom's report not cover the things that I care about, it may well be my noble friend Lord Howard of Rising who has to deal with my ire. I beg leave to withdraw the amendment.

Amendment 23 withdrawn.

Amendment 24

Moved by ***Lord Lucas***

24: Clause 2, page 3, line 41, at end insert—

"( ) the services on offer over each platform, including details of wholesale arrangements and service competition,

( ) the impediments, barriers and constraints on citizens, consumers and businesses in accessing electronic communications services and information society services"

Lord Lucas: My Lords, Amendment 24 deals with the same part of the Bill and seeks to insert in there the consideration of competition and of the services provided to customers. It is important in looking at the structure, the companies and the services involved that we do not forget that we are dealing here with some pretty large commercial forces that naturally tend towards monopoly and towards preserving their own position, in a market that ought to be fast-changing and evolving. It ought to be part of Ofcom's job to ensure that competition is unfettered and that consumers are receiving the services that they ought to be. That seems to be central to the job that Ofcom should be doing. I beg to move.

Baroness Howe of Idlicote: My Lords, I support the amendment. There are many admirable aspects to the Bill, but it focuses heavily on infrastructure issues and has perhaps insufficient emphasis on ensuring that consumers and citizens can access useful services over that infrastructure.

Having next-generation fibre or a suitable radio spectrum for mobile networks is of value, of course, but it is of little value unless it actually achieves affordable, accessible services for consumers and citizens. They do not care if infrastructure is near them, but they certainly care if they can access affordable services with as few limitations as possible. The amendment would be beneficial in ensuring transparency of those not-spots. There is a certain amount of disbelief that my own particular not-spot, whether for radio or for digital, will be readily disposed of once the digital switchover happens. After the Bill becomes law, there will continue to be a number of areas where we need to keep a check on what is happening. The amendment would certainly help to identify the places, consumers and citizens who had yet to gain the wide choice of affordable, competitive services. It would be helpful if the Government, in considering how to address this whole area when thinking about Report, might do so through reporting requirements.

Lord Howard of Rising: My Lords, we on these Benches agree that the two areas identified in the amendment are crucial to the success of the UK's digital economy. Access to, and competition in, services offered over communications networks are important elements in this sector, so it is disappointing that the Bill does not deal with those issues. Clause 2, though, is about Ofcom reports on infrastructure. The categories in new Section 134B are very focused on the pipes rather than the poetry. Does the Minister think it appropriate for services to be included in this section? If not, will he give the House some assurances that Ofcom or the Government will look at these areas at another time?

3.45 pm

Lord Young of Norwood Green: My Lords, the reports that we are asking Ofcom to compile under new Sections 134A and 134B of the Communications Act are intended to present a health check on the nation's communications infrastructure and services. As such, we have thought hard about the matters to be covered in the report and about what it needs to include to enable a good picture to emerge of the state of the nation's communications infrastructure and services. We have covered the ground thoroughly. Wholesale arrangements, for example, are covered in new subsection (1)(f). I am not sure exactly what is meant in this amendment by "service competition" but new subsection (2)(b) requires the report to cover the different types of services provided in the UK.

I turn to the issues around accessing digital services. The ability of all in society to engage with and benefit from digital services is of great importance. The *Digital Britain* report gave Ofcom a specific role, leading to the Digital Participation Consortium, which brings together the Government, the private sector and the third sector to work to reduce the barriers that people face in getting online. That addresses the concerns that the noble Baroness, Lady Howe, expressed. Barriers relating to infrastructure will already be covered by the report. A report on infrastructure is not the right place for other issues, such as skills, confidence or affordability, to be considered. We expect that the Digital Participation Consortium will shortly publish a national plan for digital participation. Issues around access to digital services will be more properly covered in reports on progress on the national plan.

If one looks at the digital, broadband or even the mobile market, one could hardly say that these are not highly competitive environments with a wide range of providers. I am not by any means preaching complacency, otherwise we would not have embarked on a *Digital Britain* report. We know that we still have work to do to ensure that we do not create what is described as the digital divide. I share and understand the concerns expressed by the noble Lord, Lord Lucas, and the noble Baroness, Lady Howe. We believe that we have the balance right in the current legislation. We also referred the Committee to the Digital Participation Consortium, which will shortly publish a national plan, as I have said.

While I do not in any way disagree with the noble Lord about the importance of these issues, I do not agree that they should be a part of the infrastructure report. Therefore, in the light of the reassurance and explanation that I have given, I invite him to withdraw the amendment.

Baroness Byford: My Lords, before my noble friend withdraws his amendment or comes back to comment on it, can the Minister tell us a little more about the national plan? When will it come into being? Will it come into being after this Bill passes? Will we get a chance to look at it in the light of the recommendations? What is the review situation?

I apologise to the Committee for not being able to be here last week. A family funeral kept me away. I continue to be concerned about rural access to digital opportunities, which I have raised in this House on many occasions, and which I suspect the noble Lord, Lord Whitty, covered earlier in his amendments. My noble friend Lord Lucas's amendment gives me a chance to raise this again. I would have raised it last week but I could not be here. Surely it would be beneficial if we had some response to, or wider knowledge, of how the national plan would apply to the Bill.

Lord Young of Norwood Green: I thank the noble Baroness for her contribution. We share her concern about rural access. The aim of the *Digital Britain* report is to ensure that we have a universal service offered on broadband. I have not got with me information on when the national plan will be published, unfortunately. Ah! I have some inspiration from the Box. Ofcom and the consortium are working on this and they hope to publish this spring. Of course it will be made available, and I agree that we should have an opportunity to discuss the content. Obviously it will make a valuable contribution to the points that have been made by the noble Lord, Lord Lucas, and the noble Baronesses, Lady Byford and Lady Howe.

Lord Wade of Chorlton: The Minister mentioned the national plan. I remind your Lordships that in 2002 we launched an inquiry, which I chaired for the Select Committee on Science and Technology, into the microprocessing industry. We produced a report called *Chips for Everything*, in which we looked very closely at the impact that producing a smaller and smaller microchip would have on future technology and on the development of all the things that we are talking about now.

As part of that process, we also looked very closely at what was happening in California—that part of America in which these things were developing at such a rate. Our report identified and very much emphasised that no one knows the impact of producing smaller and smaller microchips. We could not foresee the things that have happened in the past five years, and we have no idea what will happen in the next five years. The people who will make full use of this opportunity will be the technicians, and there will be demand from the public. For God's sake, let us not produce a national plan that restricts the development of the wonderful opportunities that will still come from these ever growing technologies.

Lord Young of Norwood Green: I thank the noble Lord for reminding us of what I think is referred to as Moore's law, by which the number of transistors on a chip is expected to double every 18 months. I think Moore predicted that some time in the mid-1970s, and it has been proved to be true. The noble Lord is right to remind us that it is difficult to predict the effect. We have gained some experience over the past decade or so from the huge expansion of services and facilities, but his point is valid.

Lord Lucas: My Lords, I am less content with the Minister's response on this. It is as though we are setting out to produce a report on Britain's road network without considering the traffic or the people who use the roads. The new section does not mention sources of demand or whether the customers are satisfied with the infrastructure. The Minister talked about the mobile network communication system being competitive. Yes, but the competition is restricted; only a limited number of companies are allowed to compete, and new companies will find it extremely difficult to come in under the arrangements which the Government are proposing. In those circumstances, it is sensible to ensure that Ofcom, in considering the infrastructure, looks at the use to which it is being put. However, I see that I am not getting support from my own Front Bench on this, so I had better leave the matter there. I beg leave to withdraw the amendment.

Amendment 24 withdrawn.

Amendments 25 to 27 not moved.

Amendment 27A (in substitution for Amendment 27)

Moved by ***The Earl of Erroll***

27A: Clause 2, page 4, leave out lines 25 to 32

The Earl of Erroll: First, I declare not a financial interest but an interest as a member of Nominet UK's policy advisory body for several years, so I am fairly well acquainted with some of the affairs of that company, which runs the .uk domain space on which we rely. In principle, I see exactly why the Government would like to have reserve powers over Nominet. Nominet was originally owned by the people who got people to sign up for domain names, so perhaps the current governance structure is not the most suitable one for something that is really a .uk plc asset and we need extra powers and/or to reorganise the governance of the company. Moves are being made in that direction at the moment.

I have tabled these two amendments because Nominet was concerned about a mistake in Amendment 27—I spotted it just in time, although I know that it was also spotted by the Bill team—which sought to take out two lines too many; the lines actually refer to another new section on preparing reports. I have asked to delete all the stuff to do with asking Ofcom to report on Nominet. Why is Ofcom involved in this? Nominet is not a regulated industry; Ofcom is a regulator, so why should the Government want Ofcom to report on Nominet and the domain name space? I can see that it comes under telecommunications and looks as if it is in the same ambit, but some of its stuff does not touch on the Ofcom area and is not Ofcom's responsibility. Therefore, there may be circumstances in which Ofcom is not the most suitable body to report, should we require such a report, and if we feel there is a challenge in this area. Surely the Secretary of State could ask anyone to prepare a report, as Secretaries of State do when they see that things are going wrong in other areas. We have had many notable reports recently on other IT matters, such as losses of data and other such significant matters. I repeat, why should Ofcom report on Nominet? Is there, therefore, an intention to start regulating Nominet? What is the challenge? Why is Ofcom involved? That is what these amendments seek to find out.

The Lord Speaker: I have to tell the Committee that if this amendment is agreed to, I cannot call Amendments 28 or 29 by reason of pre-emption.

Lord Lucas: My Lords, I wish to speak to Amendment 29. It seems to me that most of us are mystified about why the Government should wish to nationalise Nominet. I agree that it is necessary to have some reserve powers to be able to deal with circumstances that arise which threaten the national interest; for example, if someone started carpetbagging Nominet or something else untoward was to happen. However, I want to be sure that, should the Secretary of State trigger this clause, he makes it absolutely clear what it is that concerns him, and that he gives sufficient time for consultation.

The Explanatory Memorandums that go with the Bill are not very clear on this provision and include some descriptions of untoward activities which do not seem to me to correspond to reality. I will not go into great detail about it now, but certainly the description of drop-catching is completely wide of the mark and bears little relation to the actual activity. I am puzzled that the Government should feel so twitchy about this. I should like to be sure that, should they act, they are totally clear, open and consultative about the way that they do it.

The Earl of Erroll: I see the strong point of the amendment of the noble Lord, Lord Lucas. If the Government were minded to keep this provision with regard to Ofcom, it would be a very sensible amendment to adopt in order to modify it. The amendment is not a bad idea at all.

4 pm

Lord Young of Norwood Green: I am grateful to the noble Earl, Lord Erroll, for tabling Amendments 27A and 30A. The effect of these two amendments would be to remove from the Bill both the Secretary of State's power to request Ofcom to report on internet domain names and Ofcom's power to gather the necessary information. From what I understand, the noble Earl has concerns—he has expressed them today—about the involvement of Ofcom in compiling reports on domain names and about the costs to the industry.

Given the importance of a smooth running domain name system to the internet economy—I do not think that anybody in the Committee would dispute that—this provision will allow the Government, if they feel it is necessary or if they wish, to be better appraised of domain name issues if there are developments that they feel warrant a formal report. I stress that it would be a case of the Government feeling that there were developments; this is not a fishing trip. There ought to be circumstances that are capable of being justified. The Government do not expect to use this provision for routine matters. I should also state that this provision is meant to stand alone and is not linked specifically to the other clauses in the Bill on domain names. However, it is possible that the Secretary of State might wish to request a formal report from Ofcom to assist him in deciding whether or not to exercise the powers in those clauses. But I agree with the noble Lord, Lord Lucas, that the Secretary of State ought to be capable of validating the need to involve Ofcom.

Given Ofcom's existing experience of communication markets, albeit not specifically on domain names, we believe it probably is the most suitable body to carry out this reporting task for Government. However, I assure noble Lords that it will be up to the Secretary of State to specify both the timing and the subject matter of any report. This provision does not empower Ofcom to gather information of its own volition on domain names. Furthermore, there is no power for Ofcom to regulate internet domain names. Again, let me stress that this is not the slippery slope for Ofcom to have that power, nor is there any intention to give such a power. As long as Nominet continues to function in a way that benefits UK plc, it seems to be a fair system of allocating domain names. If it ain't broke, why fix it? Some concerns have been expressed recently, but we are looking to the organisation to resolve those problems itself. I understand that there might be concerns about cost to industry in responding to requests for information from Ofcom. Let me offer reassurance that Ofcom is prevented by existing statute from making disproportionate demands on industry while gathering the information required to compile a report.

In relation to Amendment 29, I am conscious of the importance of proper consultation where appropriate. I am grateful, therefore, to the noble Lord, Lord Lucas, for tabling his amendment. The commissioning of a report is a neutral government activity which does not require prior consultation. However, in the interests of transparency, which I recognise is at the heart of the noble Lord's amendment, the Government would certainly aim to make the request to Ofcom public. I hope that, in the light of those reassurances, the noble Earl will feel able to withdraw the amendment.

The Earl of Erroll: I thank the Minister for that illuminating reply as people were looking for a certain amount of reassurance in this area. I have to admit I still do not understand why the Secretary of State is tying his hands to Ofcom. There may be a more suitable body in the future. We do not know what other bodies there might be even in the next three to five years, so this is not exactly future proofing.

The Minister made an interesting point which I failed to make. He quite correctly spotted that there may be some inappropriateness in domain names. I know Companies House and Nominet are now talking, but they need to align their rules on business names and domain names so you cannot be clever about what you register at Companies House and then use that in order to misrepresent who you are in the domain names system. Closer co-operation in future in that area would be very useful. I know co-operation has started and I hope it will be given a fair wind.

I was also interested by the Minister's comment that this is not linked to the proposals later in the Bill, where I have tabled some amendments, for reserve powers for Nominet to deal with possible problems which might occur in the future with the domain names system. I am glad to hear that they are not linked as I thought that the report might be a precursor to something coming up.

Finally, I hope we are going to be clear about who we are going to be reporting on. Registries can be set up for companies which happen to be in the UK but

have nothing to do with UK business. For instance, .tel operates from the UK but is to do with mobile telephony worldwide. It is not a UK business. We have to be very careful that we do not inadvertently do anything inappropriate against companies that do not really have a UK interest. I beg leave to withdraw the amendment.

Amendment 27A withdrawn.

Amendments 28 to 30A not moved.

Clause 2 agreed.

Clause 3 : OFCOM reports on media content

Amendment 31 not moved.

Clause 3 agreed.

Amendment 32

Moved by ***Lord Lucas***

32: After Clause 3, insert the following new Clause—

"OFCOM report on retransmission fees and delayed transmission fees

OFCOM must produce a study on retransmission and delayed transmission fees within one year of the day on which this Act is passed."

Lord Lucas: This is, in effect, a Motion of Regret. These subjects were present in *Digital Britain*, but there is nothing in the Bill about them. When looking at a system of getting money for copyright holders which is under attack and which I believe will not prove to be totally defensible, we should, at the same time as trying to preserve that system, look at alternative means of getting money for copyright holders. There are well established methods on the continent and elsewhere of doing this. One is retransmission fees, whereby, for example, if the BBC's free-to-air broadcasts were retransmitted by Virgin or Sky a fee would be payable. Another method is fees for reuse or late use. On the continent these are in general collected by a levy on machinery, but we in this country have a licence fee, and we could look at collecting an annual levy in that way.

I do not have any particular conclusions to draw on these methods, but it is a pity that that element of *Digital Britain* is being neglected and that we are not, at the same time as experimenting with telling the tide not to rise—which Clause 4 and onwards are concerned with—building a boat, which *Digital Britain* recommended. I beg to move.

Lord Maxton: I have some difficulty with this, particularly in relation to the BBC and the licence fee, because if I pay a licence fee, at the end of the day I am paying the BBC to make programmes, not to view just on the one occasion that they are broadcast, but at any time in the future—as is the case now. That may not have always been the case—you had to watch a BBC programme once only. I know that the Government's argument against the proposal in the amendment is that, while this is done abroad, there is no licence fee there. The public are already paying a large amount towards the production of programmes which they should be entitled to watch for as long as that programme is available to them. That will now be done not just through Virgin or Sky, but on the internet or BBCi. As regards one part of the amendment, ITV already allows a month in which to watch programmes on the internet, whereas the BBC allows only a week—longer if the programmes are part of a series. I do not know how exactly the noble Lord's proposals will work in terms of each customer. Does it apply to individual customers, as stated in Amendment 288, or will the transmitting company pay?

Lord Howard of Rising: My Lords, the issue of retransmission fees was looked at in depth by the *Digital Britain* report, which much of this Bill emanates from. The final report examined the possibility of removing Section 73 of the Copyright, Designs and Patents Act. This would remove the exemption that cable operators currently enjoy from paying a fee for the retransmission of certain wireless broadcasts within a limited geographical area. This is designed to ensure that public service content is spread across as much of the country as possible.

The report concluded that because removing this exemption would generate,

"no additional revenues for the UK television industry",

the Government,

"remains unconvinced that the removal of section 73 will generate the necessary future revenues to fund content creation in the UK".

We do not believe that it is necessary to include a specific power to examine this issue so soon after the Government have done so. We also believe that it should be government who examines the issues, not Ofcom. As part of this party's wider policy-formulation process, we will keep the issue under review, but we do not see the need to legislate so to do.

Lord Young of Norwood Green: The two amendments deal with the funding of content production through a system of regulated payments for retransmission of free-to-air material. I thank the noble Lord, Lord Lucas, as I confess that I tended to confuse retransmission with repeats, in relation to iPlayer and other such things, so we need to be careful that we are talking about retransmission and not repeats.

The first amendment will require Ofcom to produce a study of retransmission and delayed transmission fees. The second amendment will require Ofcom to set fees for the retransmission of free-to-air broadcast material at the time of the original by, for example, cable television, satellite services or streaming web services. It also tasks Ofcom to set similar fees for delayed retransmission of the same material by catch-up TV services, on-demand viewing services or potentially web TV services.

Retransmission or delayed transmission of broadcast material by means of these services, except cable, should already be subject to copyright licensing and payment through commercial negotiation. These payments are what the noble Lord, Lord Lucas, refers to as retransmission and delayed transmission fees. Cable

[Lord Young of Norwood Green]
operators, as the noble Lord, Lord Howard, reminded us, are exempt from paying retransmission fees under Section 73 of the Copyright, Designs and Patents Act 1988. Some have called for this exemption to be repealed, arguing that it would generate incremental money for content creation. The noble Lord, Lord Howard, reminded us that the Government considered that in *Digital Britain: Final Report*. Following a robust analysis of the available evidence, we remained unconvinced that in practice repealing Section 73 would generate incremental revenues to fund content creation in the UK.

No such exemption exists for satellite, and what is paid by platform operators and ultimately by broadcasters in return to rights owners is largely a matter for commercial negotiation. The current arrangements on satellite transfer no additional value to PSBs because the retransmission fees are offset by the carriage fee. There is no evidence that a similar situation to the one observed on satellite would not arise on cable if the Section 73 exemption were repealed, and therefore such a move would be unlikely to generate additional revenue for the UK content industry. We also believe that, given that there is only one national cable operator in the UK—Virgin Media—the majority of the uses of material covered by Amendment 288 are already subject to commercial negotiations. It does not appear that there is a pressing reason for the heavy hand of government to start setting prices for such licences—or perhaps I should say the potential heavy hand of government.

There is another angle from which to look at this issue. If the concern is not to ensure that copyright owners are paid for their work, as I have just discussed, but rather a concern that the material may not be currently available for licence at a reasonable fee, other considerations must be borne in mind. Enshrined in international treaties is a principle of copyright law that we must consider in debating these amendments. Amendment 288 appears to introduce compulsory licensing. Compulsory licensing where a copyright owner is told that they must license their property to a third party should be avoided unless there are very compelling reasons to consider it. In any event, it may be implemented only if it does not unfairly prejudice the rights of the copyright owner. I am not aware of evidence that there is a failure in the market such that this content is not available on fair terms to those who require it. In the absence of such evidence it would not be right to take away the control that copyright owners rightly enjoy over their property.

The Government are more than aware of the funding challenges faced by high-quality, original UK content. Indeed, we propose alternative measures in this Bill to modernise our public service media content ecology and to deal with the challenges of content creation. Outside the Bill, with the digital test-bed initiative, we are also contributing to the development and the testing of new funding models for content creation, particularly micropayments. We will, of course, keep the question of retransmission fees under review, but we consider that the case has not been made for intervention of the kind proposed by the noble Lord, Lord Lucas, for the reasons I have just mentioned. Furthermore, I do not agree that requiring Ofcom to conduct a one-off study, as proposed by Amendment 32, is a matter that should be enshrined in statute. In the light of that explanation, I hope that the noble Lord will feel able to withdraw the amendment.

Lord Lucas: I beg leave to withdraw the amendment.

Amendment 32 withdrawn.

4.15 pm

Amendment 33

Moved by ***Lord Razzall***

33: Before Clause 4, insert the following new Clause—

"Obligations on copyright holders

Copyright holders seeking to take action against subscribers for online copyright infringement must use the process set out in sections 124A to 124E of the Communications Act 2003 except in cases of actual or likely extreme prejudice."

Lord Razzall: My Lords, we now come to one of the most controversial parts of this Bill, notwithstanding the length of time that has been taken on Clauses 1 to 3. I am moving Amendment 33 and, looking at the Marshalled List, we get to Amendment 214 before we emerge from the question of what we do about so-called illegal file-sharing.

I am glad this amendment has been taken first, because it focuses on the most serious issue here: how do we balance the interests of the copyright owners who feel that downloading without payment is in reality theft of their asset, against the understandable belief by many users of the internet that all information on the internet is free? That is the balance that your Lordships will try to find over the next 188 amendments and through Clauses 4 to 17.

The particular problem this amendment attempts to deal with is the current position with regard to what is happening on behalf of copyright holders and their firms of solicitors in relation to reports of illegal file-sharing. We have all had letters from people who have been subject to this. One of the letters that many of your Lordships will have received contains the sentence that encapsulates the problem: "nobody should have to endure what we have endured—no warnings, our homes searched and an endless involvement with the court system".

What appears to be happening at the moment is that many firms of solicitors, when they have an allegation of illegal file-sharing, demand large payments from people with the allegation that they will take them to court unless they pay up. People are put in the invidious position of either having to incur huge legal costs to defend their position or to pay the compensation that the firm of solicitors is asking for. There is a technical procedure which is now referred to as the Norwich pharmacal order, under which information can be obtained by the copyright holders with names and addresses of customers who allegedly have been engaging in illegal file-sharing. That has increased the opportunity for firms of solicitors to indulge in the practice that they are understandably using in order to protect the rights of the copyright owners.

This is a very straightforward amendment, which requires anyone who is going to take action under the new regime against subscribers for online copyright infringement to use the process set out in the relevant sections of the Communications Act, except in cases of actual or likely extreme prejudice. This is a graduated response, rather than as now being able to use solicitors as a first step to deal with alleged file-sharing. I beg to move.

The Earl of Erroll: My Lords, I am not sure if I should be raising this on this amendment or the next one—Amendment 34. Whatever we do in this Bill must be compliant with EU directives. The new framework directive has just come out as a result of the action by the European Parliament, and amendment 138 became Article 1(3a) of the new framework directive. To take little bits out of it,

"Any of these measures regarding end-users' access to, or use of, services and applications through electronic communications networks liable to restrict those fundamental rights or freedoms may only be imposed if they are appropriate".

I know that that is the next stage of the technical measures, but the principle that everything must be as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms is very important. We may be in danger of passing something into law here that could be struck down at the European Court of Justice in the near future if we did not get it right. The directive goes on to state that measures must comply,

"with general principles of Community law, including effective judicial protection and due process".

Lord Clement-Jones: I point out with the greatest respect to the noble Earl that I think that he is speaking to the next amendment.

The Earl of Erroll: I thank the noble Lord for clearing that up, in which case, I shall not have to repeat it for the next amendment. I just wanted to make sure that the current amendment was not part of the same issue. I shall finish my remarks and hope that noble Lords remember them for the next amendment, because it is all about due process: about the Government doing it properly and not hitting the citizen when they should not.

Lord Howard of Rising: My Lords, although we on these Benches cannot agree with the amendment, we not should look to prevent a private person or company pursuing an action through the civil courts if they wish. The noble Lord, Lord Razzall, raises an interesting point about the impact that the provisions might—and, I hope, will—have on the number and form of actions that rights holders take against copyright infringers.

The difficulty of successfully suing someone through the judicial process for these copyright breaches is well established. The large number of people involved in file-sharing, the enormous number of files being shared and the low value of each individual copyright breach all point to our hope that the provisions lead to a significant reduction in illegal sharing without the courts being used.

I therefore share the noble Lord's hope that the number of court cases against individuals, especially the number of threatened court cases that he mentioned, will be significantly reduced. However, the reduction should be a natural consequence of the successful implementation of this part, not a result of our having imposed a legislative block on rights holders.

Viscount Bridgeman: My Lords, I must declare an interest, as my wife has a photographic archive and manages a collecting society. This is of more relevance to later stages of the Bill, but I declare it now for the record.

I agree with my noble friend Lord Howard that we cannot agree with the amendment of the noble Lord, Lord Razzall, although we support his sentiments. The amendment, which proposes a system of two warnings and then a throttle, is in danger of assuming that the rights owner is a corporation with deep pockets. It must not prevent individual creators taking action against unauthorised online use of their work.

Lord Mitchell: My Lords, like the noble Earl, Lord Erroll, I may be in danger of saying something that applies to other amendments as well, but since this is the very beginning of the debate on file-sharing, perhaps I may make my points now and return to them later.

One of the things that I do is go round schools and talk to young children about general business ethics. We talk about all sorts of things that people should and should not do in the business workplace. When we come to summing-up time, I always ask how many of them steal—I do not ask them to raise their hands; I just ask them to talk on the subject of stealing. Of course, they all say that they do not steal. We then come on to illegal file-sharing and downloading of music, movies and so on, which, of course, every single child in this country is doing—you would be hard pressed to find any person under the age of 25 who is not illegally downloading. We should face up to that issue. We will talk today about legislation that will preclude this, and fines and all sorts of people becoming involved. There is a huge danger here. A huge group of our people are doing something that they do not think is wrong or a crime. It is dangerous for us to be putting into effect legislation that puts a whole lot of people in a criminal situation when they do not think that they are committing a crime.

One interesting thing: this is the time when people are voting on the movies that are going to win BAFTA awards and the Oscars in America. I know for a fact that some of the films on which voting has occurred have already been uploaded to the internet and are being downloaded. There is no question that this is a tremendous problem. To young people, the big film and music companies are often seen as the enemy, as bodies which have charged exorbitant prices for their products over time, so there is no sense of guilt about downloading. This is something we should think about in our deliberations this evening.

Lord Lucas: I agree with what the noble Lord, Lord Mitchell, has just said. We have to be careful about setting out to criminalise, as he says, a large proportion of our population, particularly when it involves putting them not in the hands of the criminal law with all the safeguards, care and rationality that involves, but in the hands of firms of solicitors who are out to make a

[Lord Lucas]
buck from the process. None of these people are nice to deal with. Even where the majors have been involved in prosecutions—there are not many cases of that—they are relentless. It is not at all nice to be on the receiving end of one of their prosecutions. They can take a long time, cost a great deal of money and go on, with unspecified consequences, for a period of years. It is not like a parking fine or some simple, reasonable but reasonably painful financial consequence of wrong-doing. This is putting people into the civil justice system with civil levels of proof. We should be careful about doing that and the circumstances in which we do it.

ACS Law, one of the firms involved in this, has been kind enough to write to me. Its technique is to send out letters saying that it has evidence that a breach of copyright has been committed and demanding a few hundred pounds in recompense. The difficulty is that the evidence has usually been provided by a company abroad that does not disclose the methods by which it has been obtained. It may well have been obtained against data protection rules—that is certainly the conclusion that the Swiss and French authorities seem to have reached. It is anyway totally impenetrable. You receive one of these things saying that you have done wrong and owe money. How on earth do you disprove it? Without spending a great deal of time and money, you have no means of showing this company that you do not owe them what they say. I think most of their income comes from people who just pay. I am not aware that there have been many court cases at the end of this because of the element of bluff.

This seems a disreputable thing to wish upon our citizens. We should be careful in this Bill that we are not going to multiply what is going on at the moment. If we can, we ought to seek to avoid that. We ought to produce something civilised, aimed—as is much of the first bit of Clauses 4 to 17—at education and persuasion, and where at the end of the day there is due process and reasonableness in the consequences for our citizens.

I have a great deal of sympathy for this amendment. However, it perhaps should not be the right to prosecute that we try to remove, but the right to obtain information about who has been doing wrong; in other words, the right to users' names and addresses. Since that process is so wound up in what the Government are proposing, perhaps we ought to make that exclusive so that in order to obtain it, copyright owners have to go through the processes in the Bill.

It will be difficult to get this balancing act right, and I do not pretend that I have an instant answer to this but, returning to what the noble Lord, Lord Mitchell, said, we should be very careful about what we are doing to our citizens, because these are not nice people to fall foul of. The methods that they use to extract money are not nice, and I do not mean just the fringe operators. That applies to dealing with a difficult-to-refute allegation in the civil justice system. What the noble Lord, Lord Razzall, proposes in the amendment seems to have a pretty good basis.

4.30 pm

Baroness Miller of Chilthorne Domer: I support what the noble Lord, Lord Lucas, said, and my noble friend's amendment. I am glad that we are having this debate. What would help me in considering whether we are likely to be able to strike any sort of balance between the rights of the citizen to know exactly how the evidence was obtained and what they are facing is if the Minister could say a little more about how copyright holders will obtain that evidence. What technical methods will they use to get the evidence that people have been file-sharing? I appreciate that it is a fairly technical question but—in order that people can understand whether there is any evidence against them and whether their name is on the list erroneously, and so on—it is reasonable to lay out, at least before this Committee, how copyright holders will get that evidence. What technical method will they use? If the Minister can explain that in layman's terms, it would be very helpful.

Lord Triesman: Perhaps I may start with an apology. I was unable to attend Second Reading, and I know that it is unconventional for those who have not done so then to speak in Committee. However, I spoke to the House authorities and explained that I was at the draw for the World Cup in South Africa—an event which I celebrate. It was a duty imposed on me.

Lord Lucas: May I offer the noble Lord my congratulations on the result of that draw?

Lord Triesman: I thank the noble Lord. If I had any influence on the draw, I would readily accept those congratulations. However, it is true to say that it was a happy draw.

I declare an interest as chairman of the FA, because football rights holders are among the rights holders that are affected. However, this is an opportunity to reflect on the period of approximately eight months when I was Minister with responsibility for intellectual property in the short-lived DIUS, when I was routinely confronted by the debate between those who believed that everything should in a sense be free because technology had made that possible, and those who were unable to generate the economic activity that many of our new and most innovative industries are capable of generating. As was said in the Second Reading debate, which I read, they are a significant and growing part of our economy. That was of great significance when I had that responsibility because it is clear that, broadly speaking, as a nation, we will not make our living digging things out of the ground or beating on metal to any extent. We will make it out of our innovation, our inventiveness and our being at the front edge of what we are capable of achieving. That is why I want to reflect on the comments made by the noble Lords, Lord Mitchell and Lord Lucas.

Many will say that vast numbers of people break this law—I was presented with copious evidence of it—and ask whether it is practical to intervene without unwanted consequences, or say that there will be those in the legal profession and elsewhere who will exploit this law. The temptation when you hear such arguments, with the greatest respect, is to put it all in the box which says "too difficult". There is a cultural propensity to say that these are all big corporations which have made a fortune over the years, so there is something vaguely picaresque about stealing from them now. But

the truth is that if we really value the innovative structure that is a great capability of this country's economy, then there need to be proportionate means of trying to deal with this.

First, not everybody who steals a file on their computer is a 16 year-old who wants one song. We found huge evidence that many people not only download material; you can find in car boot sales and market stalls vast quantities of material that has been stolen and downloaded, frequently associated with illegal immigrants taking part in the marketing of it. I say this not to paint a lurid picture but because the coming together of these different kinds of criminal activities should be of significance to us, and also because it is a very significant criminal activity. One of the reasons why trading standards officers and others have been invited to try to make London fake-free by the time the Olympics take place in 2012 is that those who are pursuing this activity with considerable success are not just youngsters but people with a much more serious criminal intent.

In the case of football, people do not always regard the output as intellectual property. None the less, it is a very serious product in a very serious industry which is sold with huge success worldwide, and its economic model is dependent on doing that. I sincerely applaud, for example, the FA Premier League for making one of the great world export products which is one of the huge successes of this country. In the case of my own organisation, the FA, we are a not-for-profit organisation. The money that we make by selling those properties is the money that goes into grass-roots football in every park and small stadium and into the opportunities that we can offer to youngsters to get them into a sport and off the couch and away from the television—and occasionally, one hopes, away from their computers and stealing files.

All of this suggests that the response needs to be genuinely robust. I think that the response in the Bill is genuinely robust and strikes a helpful balance. However, in the final analysis, it would be wholly inappropriate to deny people the opportunity to seek by legal means to prevent people stealing their property. Difficult as it may be for some youngsters to see it as theft, it is interesting—I do not know whether the noble Lord on the Front Bench has had this experience since taking up ministerial responsibility—that when you went to schools and discussed it with rather younger children, they understood it instantly. They understood that if they really wanted to hear that kind of music in the future—music of the indie bands and others who were being driven out of doing what they do in the creative industries in this country—they needed to change what they did. It needs a long-stop, and that long-stop is vital to music, to film, to sport and to very many other sectors. Those are the sectors that are the future of our economy.

Lord Birt: My Lords, in following the noble Lord, Lord Triesman, perhaps I may remind your Lordships of the interests I declared during the Second Reading debate. I well recognise, as will everyone here, the perception so eloquently outlined by the noble Lords, Lord Razzall, Lord Mitchell, and others, but perhaps I may say respectfully that while this House may understand it, it should not condone for a moment that perception. Because much of the content on the internet is free, it does not follow that all the content should be free. The theft of an electronic good has an exact moral equivalence with the theft of a physical good. No one in the House would condone the theft of a CD, a DVD or a newspaper from a stall. We simply have to end a perception that is at the heart of the difficulties increasingly faced by the creative industries. This is not a threat of the future, but one of the present and the recent past. There is no major creative industry, either in this country or in other places, that has not been massively and adversely affected by the scale of this theft.

I remind your Lordships that the best evidence we have shows that something like half of all internet activity is tied up with copyright theft. We are not talking about some minor problem, but a massive threat not just to any industry, but to one that is a critical part of our national cultural life and, although people always find it hard to believe, one of massive economic importance. In this city alone the creative industries taken as a whole are bigger than the financial services industry. So copyright theft has enormous economic and cultural implications, and let us not dodge the issue that it matters that large numbers of young people think that such theft is okay. They should not think that, and this legislation offers a proportionate framework for dealing with it.

Questions have been asked about the technology. It is not all that complicated. The only person who is going to be captured by this legislation is someone who freely offers on the internet at an identified moment in time—we know exactly where they are coming from, so to speak—material that it is unlawful to provide. They are not sent to jail the next day, but go through a long, complex and well-considered process, at the end of which the main sanction is that they are cut off from the internet. That is a proportionate response to a massive problem.

The Earl of Erroll: Perhaps I may challenge one of the statistics used by the noble Lord. He said that 50 per cent of internet content is made up of unlawful file-sharing. I, too, saw that statistic, which was put out by one of the consumer groups. We are also told that 80 per cent of internet traffic is spam, where people try to sell all sorts of medication to boost your life in older age, phishing and various other things. I find that none of these statistics adds up, so we should be very wary of quoting any of them.

Lord Birt: I hope that the phrase I used was "best evidence". The best evidence comes from Sweden. On the day that the internet-using community in Sweden first faced the prospect of similar legislation, if my memory serves me correctly, internet traffic dropped by 50 per cent. The figure is supported by other work, but that is the main piece of evidence of which I am personally aware.

Lord Maxton: My Lords, perhaps I may say briefly that this is a problem and I accept, even as a Scotsman, that the noble Lord, Lord Triesman, has a point about sports rights. However, looking into the future, you wonder how accurate it will be. I wonder whether

[LORD MAXTON]
Manchester United, with a fan base right around the world, is going to put up with being limited just to the rights sold by the Premier League when it could probably sell its own product for a higher price or get more money from it. But that is another matter.

The fact is that the music industry and the audio side have attempted to deal with the problem in ways that are not legally prescriptive. It has tried to do it by micro payment, which means that you pay only a small sum for the piece of music you want, not for a whole CD, while performers are now beginning to sell their product straight on to the internet to be purchased by youngsters. That may encourage them to go out and buy the CD. Further, I gather that increasingly in the pop music area of the music industry—I am not a great pop fan myself—performers now make their money not from selling records of any sort, but by going out and performing live to the public. So the music industry has realised that the solicitors' letters sent to some people have not been a major deterrent.

It may be that the video industry now has to look at this in the same way and see whether there are other ways in which it can tackle this issue. We can accept that this is a problem and that we may have to look at ways in which we stop it, but surely the industries themselves have got see how they can deal with it.

4.45 pm

Lord Whitty: My Lords, I was not going to intervene on this amendment, but in the light of the contributions from my noble friend Lord Triesman and the noble Lord, Lord Birt, I have to put a contrary case.

Those of us who are against much of what is in this part of the Bill are not saying that nothing should be done or that rights holders, whoever they are, do not have rights. What we are saying is that there are better ways of getting people to move on to legal forms of file-sharing than criminalising it up front, at the first end of the process, as—I nearly called him my noble friend—the noble Lord, Lord Lucas, and my noble friend Lord Mitchell were expounding. This is a very difficult and complex problem—even though the actual technology is relatively simple—and it is not sensible to approach it by effectively alienating large chunks of the population when there is an alternative. The alternative may take longer, but it is clear that, both in the present system of going to the courts and in the potential of the system proposed in the Bill, proportionality will go out of the window. I refer to the courts and the behaviour of solicitors. The example referred to by the noble Lord, Lord Lucas, was not at the behest of a starving musician in a garret or even the FA, but on behalf of pornographers, who form the largest element in solicitors' letters in this country and Germany so far.

We accept that there is clearly an issue here. We accept the basis on which the Government are approaching this problem. We accept that we have to resolve it. However, we should not do so by taking a bludgeon first and not giving a legal way out. In the long run, a move across to legal forms of file-sharing will be much more beneficial to those genuine rights holders whose interests my noble friend Lord Triesman and the noble Lord, Lord Birt, are upholding.

I am sorry I have entered into a Second Reading debate. Whereas I spoke at Second Reading, my noble friend Lord Triesman did not, so he has an excuse and I do not, but I thought the contrary point of view on this issue ought really to be expanded on at this point.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): My Lords, if the debate on this amendment is not quite a Second Reading debate it comes very close to one, given the range of issues involved, the depth and significance of them and the differing views that have been expressed about the issue with which the Government are confronted and seek to deal with in this Bill.

I will deal with one or two extraneous matters first, and then perhaps I will get on to the main issues. I have not the slightest doubt that the noble Lord, Lord Razzall, is more than satisfied with the debate that he has provoked with his amendment and therefore will not have the slightest hesitation in withdrawing it in due course. So I am not going to address him in terms of the necessity for the amendment to be withdrawn. I am sure he knew when he tabled it that, as has been reflected in this debate, at present we are merely in the foothills of this Bill and the issues we have to address, and Clause 17 rises before us as the Everest which we will need to surmount in due course. We will have had extensive discussions well before that. As has been indicated to the Committee during this debate there are close to a couple of hundred amendments between us and Clause 17. So it is not as though these issues will not receive extensive discussion. The amendment has helped to identify difficulties, challenges and problems and, in asking the noble Lord to withdraw his amendment, I hope to show that the Government, in their wisdom and after full consultation and endless representation, have got the balance right in the Bill.

On most sides there is recognition of the serious problems and of the great difficulties involved in solving them. I shall deal first with the extraneous ones. If the noble Earl, Lord Erroll, will forgive me, I shall address his point at the proper location, which is the next amendment. I have got almost word for word what he said and he will receive my reply when we get to the next amendment, which is where it should be properly addressed.

In introducing the amendment, the noble Lord, Lord Razzall, identified an issue which, in an obvious way, was countermanded almost immediately by the noble Lord, Lord Howard of Rising, who indicated that he took an entirely contrary view. He said that the problem at the present time was that those who needed to get on with the business of suing successfully were having great difficulties; it was essential that they should have the path cleared for them and nothing in the Bill ought to inhibit that. I hear what the noble Lord says; he speaks from the Opposition Front Bench and therefore makes an important point.

However, he will have heard from all sides of the Committee, not least from his own Benches—this was graphically expressed by the noble Lord, Lord Lucas—of the problems faced by ordinary citizens through the depredations of lawyers, acting often on behalf of significant interests, who are conducting themselves in

ways which are exploitative of our fellow citizens. We need to erect defences because, as the noble Lord, Lord Lucas, indicated, the issue is not one of a gentle warning note or anything like that; nor is it one in which the lawyers operating in this way expect the issue to go to court action; it is one which is exploitative of people's fears. The demands go out and people respond because they are under a great deal of pressure from those demands; they feel that a court case will put them in great difficulty and therefore concede.

This is not the way in which we want the law to work in circumstances where right holders have interests to be defended. This was identified by my noble friend Lord Triesman. We fully understand why he was not here at Second Reading—he was in a much less interesting location, of course, because the debate on Second Reading here was quite fascinating—but we are glad that he is back today to give us the benefit of his perspective on one significant element of right holders.

I emphasise that the Government are cognisant of all the issues that have been raised. I wish to deal with one other extraneous factor. I do not call it a red herring but my noble friend Lord Mitchell is right when he says that a lot of downloading activity goes on among young people who, if not acting in full innocence, are certainly not setting out to be law breakers and we would not want to criminalise them. As a fair percentage of the people in the age bracket he identified are voters, I am sure that we do not want to be in the business of criminalising them in this year of Grace 2010.

Let me emphasise the fact that the Bill is not about criminalising people. That is not the issue that we are involved in. Peer-to-peer file-sharing is already unlawful. With the Bill, we are simply seeking to enforce an existing civil law more effectively. The behaviour we are tackling is a civil infringement, not a criminal one. I want to dispense with the canard that we are about the criminal law against people, who in many cases identified today, may be acting with some degree of innocence.

The Earl of Erroll: I have a quick technical point. I get fed up with hearing that peer-to-peer file-sharing is unlawful. It is file-sharing that is unlawful by whatever technical means. Peer-to-peer just happens to be one of the common technologies used for it. I do not like the fact that in *Digital Britain* and other places they put "unlawful peer-to-peer file-sharing". It should be peer-to-peer unlawful file-sharing. I think it is a point we should remember because at several points in this Bill we muddle up the two things. Peer-to-peer technology is very useful for various purposes.

Lord Davies of Oldham: I and the House are grateful to the noble Earl, Lord Erroll, for making that point at this stage. The more substantial point I am seeking to deal with is whether we are about criminalisation—we are not. What are we seeking to deal with which causes the noble Earl, Lord Razzall—sorry, the noble Lord, Lord Razzall—concern in the amendment? As he expressed in his opening remarks, consumers and consumer organisations are greatly concerned about the issue of actions by certain law firms, graphically expressed by the noble Lord, Lord Lucas. These firms have acted on behalf of rights holders and obtained, on the basis of evidence of infringement, thousands of names and addresses via court orders. They then sent letters to those identified telling them that they could pay something like £500 for the case to be dropped or face court action. Of course, there was the possibility that the court action might involve much greater amounts indeed. I am aware that several people have claimed that the allegations have no foundation but are nevertheless reluctant to risk defending the action in court. We can all see why people would react in this way.

The idea, as I understand it behind the amendment, is to require rights holders to use the provisions we are making available to them through this legislation rather than resort to measures adopted in the examples we all find have been the subject of abuse. I have already sought to indicate that I have great sympathy with that proposition.

It is not the Government's intention through this legislation to weaken the ability of rights holders to protect their copyright material. I want to reassure the noble Lord, Lord Howard, on that point. This includes their ability to use the existing law to defend themselves against online infringement. We all recognise that there has to be effective action available. The noble Lord, Lord Triesman, identified the issue of rights holders. To give one illustration, James Cameron's film "Avatar" had one of the most successful launches of any film in the history of the cinema, but it has been calculated that there were 300,000 downloads on the day it was released. Both James Cameron and the backers of "Avatar", who are not without resources, may be well able to stand that degree of activity; after all, the film is due to gross several times its production costs, which run into hundreds of millions. But it is indicative of what can go on, and others may be in a position where the whole of their potential profit would be lost in these circumstances. The issue then arises, again expressed by my noble friend Lord Triesman and supported by the noble Lord, Lord Birt, of where our creative industries and creative minds are going to be if they are stripped of the rewards of their enterprise, activity and creativity. That is a serious issue for the British economy; the creative industries play a substantial role in the jobs/welfare economy of our society.

5 pm

The Government are concerned about this problem, which needs to be addressed. We need to get the balance right, which is why this is merely the first of what are bound to be more detailed debates on more detailed amendments over the next few clauses. We also have to address the issue of principle in the Bill. We have a great deal of time in which to address these matters, so we do not need to put all our eggs into the basket of this amendment.

The initial obligations on internet service providers under the Bill are based in part on making the existing law more effective. Rather than resorting to a scattergun approach, copyright owners will be able to focus their attentions on those who appear to be infringing most. We expect copyright owners to use existing law to obtain their details through a court order and take action against them to defend their rights, and to

[Lord Davies of Oldham]
demonstrate that this is not a risk-free activity. Such action is an essential element of the deterrent effect of the initial obligations.

Because the Bill provides a much more effective way of defending copyright owners' rights, we are confident that most responsible copyright owners will want to work through this process. I accept that this will not prevent those who see this more as a revenue-generating activity from using existing law, but it is of course the opportunity to defend an action if someone is convinced that they have indeed been accused without good cause. Removing the ability of responsible copyright owners to protect themselves would be a gross overreaction. Of course there may be cases—business software, for example—where each infringement could equate to thousands of pounds of products unlawfully obtained, and it is sensible and appropriate for the copyright owners in those circumstances to use the existing system, but the concern behind the amendment is not something that this legislation can properly address. On that basis I sympathise with the rather jaundiced view that the noble Lord, Lord Razzall, takes of the actions of particular firms; we appreciate that point.

I hope I can assure the House that we will investigate further with the Ministry of Justice and others within the Government with an interest to see if there are other ways in which the bullying activity identified by the noble Lord, Lord Lucas, can be addressed. There is no doubt, though, and this debate has reflected all dimensions of the issue, that, first, there are rights that need to be safeguarded, and, secondly, some are in a position where they can appropriately use existing legislation and can pursue the force of law in those terms. However, we certainly have to address the fact which my noble friend Lord Mitchell identified—that great activity goes on at the other end of fraudulent activity. It is innocent activity by people who think that they are doing no wrong. Within that framework, the Bill has a much softer approach on the process by which people who are engaged in activity that is not acceptable and not lawful will be warned and given the opportunity to correct their behaviour. We are not talking about criminal sanctions with regard to such activity at all.

I hope that it will be recognised by the Committee that this has been an extremely useful debate. The noble Baroness, Lady Miller, asked me a particular question. We have put in the Library a document about the Bill, *Online Infringement of Copyright: The Details*. In it, we have spelled out process in some detail. Copies are available in the Library and I imagine elsewhere too. I will happily send the noble Baroness a copy of that document, because it indicates the careful way in which we are addressing this issue.

We are at the beginning of very substantive debates in which will be able to deal with every nuance of these matters. However, I hope that the noble Lord will feel that he can safely withdraw his amendment at this stage.

Lord Lucas: My Lords, I apologise to the noble Lord for the use of the word "criminalise". "Civilise", which I suppose would be the equivalent, did not seem quite right in the circumstances. I am sure he knew what I meant.

At the beginning of this part of the Bill, I ought to declare my interests. I earn most of my income outside this House from the sale of copyright material. So, I should naturally be on the side of the companies, but, perhaps instinctively, I am not.

We should not forget that the main companies involved have methods of protecting their copyright that they have chosen not to use, namely digital rights management. It was there in music to begin with and now is not, which is not because they found it difficult to sell music that way. They are asking us to use a different way. It is not as if they are alone in the world without a friend or way of looking after their own interests.

We should be conscious in what we are doing of the proper balance of things, because there are alternatives. We should also not put ourselves in a position where we are encouraging these industries to stay in the market positions that they are in at the moment. The market is changing fast. It is full of new opportunities. Yet these big companies are used to their old comfortable ways and seem to want to stick to them. The noble Lord used the example of films. I listened to people from a major film company the other day. They were surprised that, when they release a film in the States, suddenly copies start appearing here on the internet. The old practice of releasing a film six months ahead in the States and making us wait six months for it will not do. They have to move. They have to change.

People love going to the cinema to see something like "Avatar". It is an extraordinary experience on a big screen. However, why do the companies not sell DVDs and allow the downloading of copies of the film at the same time? It would not reduce their cinema take; it is nothing like the same experience. It just gives people who would never go to the cinema the chance to see the film.

These companies created the piracy problem. They are continuing to create it. We must not, in this Bill, give them the illusion that they can stay where they are and that beating up on their customers is the solution to all their problems.

Viscount Bridgeman: My Lords, before the noble Lord sits down, I am sure that we do not have to remind him that there are copyright holders—I am thinking particularly of small-time photographers—who are of very limited means and experience in this kind of practice. They are the ones that need to be protected in this Bill.

Lord Razzall: My Lords, I well understand the temptation that the Minister succumbed to of joining in what I think is the third Second Reading debate that we have had so far; I look forward to many more. I was particularly glad that he got so carried away that he conferred on me an earldom that is well deserved but which I suspect is above his pay grade to award.

I do not wish to join in the fun, other than to say that it is seriously important to pick up on the comment made by the noble Lord, Lord Mitchell, to which the Minister and the noble Lord, Lord Lucas, referred: that this Bill is not about criminalising individuals, whether they are 12, 20 or 85. No proposal in the Bill involves criminalisation. It is very unfortunate when people suggest this, because it gets the debate off on

the wrong foot. Indeed, those of us who followed the process that has ended up with the proposals in Clauses 4 to 17 will be well aware that a lot of the internal debate was about the absolute importance, in trying to get the balance right, of eliminating criminalisation from the Bill.

I will withdraw the amendment in a moment, but one or two issues to which the amendment relates should be focused on. First, the Minister suggested that its purpose—the noble Lord, Lord Howard of Rising, who is now returning to his place, made the same point—was to remove copyright holders' current rights to pursue individuals who download, or who commit what they would regard as copyright theft. That is not the case at all. If noble Lords read the amendment—clearly, few noble Lords who have participated in this debate have done so—they will see that all that is proposed is a graduated response and that the process set out in Sections 124A and 124E of the Communications Act 2003 should be used by a copyright holder who wishes to engage their lawyers to pursue individual infringers. That is all they have to do. While that graduated response is gone through, they have exactly the same rights that they have under existing law.

The amendment in no way attempts to remove from existing copyright holders the rights that they already have to pursue individuals if they choose to do so. This is important because, as the noble Lord, Lord Mitchell, has indicated, thousands and thousands of people out there are illegally downloading material. The whole purpose of Clauses 4 to 17 is to set up a system through which there is a graduated response to get those people to stop before they lose their internet access. A graduated response would deal with the issue raised by the noble Lord, Lord Mitchell, and others: namely, getting the balance right between people who feel that they are entitled to download material and copyright owners who feel that they are being deprived of their royalty income.

In conclusion, the owners of the rights—the companies, the individuals—cannot have it both ways. They have spent an awful lot of time lobbying the Government to bring in the proposals that are now enshrined in the Bill, assuming that it is passed. The whole point is that there should be a graduated response, and education—people should realise that they cannot do this. They cannot, on the one hand, say that they want the huge effort that is being made by the Government, by the ISPs, by their own companies and by Ofcom to get a code that everyone will observe, and, on the other hand, say that they also want exactly the same rights to pursue individuals in the ways that have been criticised. That is the purpose of the amendment. Until I heard this debate, I had not realised how important the amendment was, but I have pleasure withdrawing it. I beg leave to withdraw the amendment.

Amendment 33 withdrawn.

5.15 pm

Amendment 34

Moved by ***Lord Clement-Jones***

34: Before Clause 4, insert the following new Clause—

"Compliance with fundamental rights

In drafting or amending any code, laying any statutory instrument, or taking any other action under sections 124A to 124L of the Communications Act 2003 or under section 302A of the Copyright, Designs and Patents Act 1988, the Secretary of State must demonstrate before such action is implemented that he has considered whether such action—

(a) is necessary and proportionate to the goal of protecting and enforcing copyright, and

(b) appropriately balances the interest of rights holders and the interests of the public in due process, privacy, freedom of expression and other fundamental human rights guaranteed by inter alia the European Convention of Human Rights and the EC Charter of Rights."

Lord Clement-Jones: My Lords, as the Minister said, the debate that we have just had represented all dimensions, and this amendment follows on from that very neatly. I shall not indulge in a Second Reading speech, as both my noble friends Lord Razzall and Lady Bonham-Carter made our approach to the Bill very clear. Of course we recognise the issues surrounding internet downloads. We recognise that problem and the need to provide better enforcement of copyright to protect creators. If we do not protect copyright, we shall not have a creative economy. However, as the Minister said, we have to get the balance right. This amendment provides a general framework, an umbrella if you like, for getting the balance right.

All sorts of amendments will arise before we have finished with these clauses, but the areas where we want to see changes—I have no doubt that my noble friend Lady Miller agrees with me on this—concern the quality of evidence that is presented, the burden of proof and the necessity of ensuring that sanctions are proportionate, codes are clear, costs are fairly apportioned, thresholds are proportionate, and that the overall scheme of things is not oppressive to those who it is claimed are in breach of copyright.

I am sure that we will discuss these aspects in further Committee sittings. We believe that the language of the new EU telecoms directive is important in these areas. I bow to the superior knowledge of the noble Earl, Lord Erroll, in this regard. Indeed, his speech was largely devoted to the language of the new telecoms directive, which specifies that a balance must be struck between the different interests and rights. That seems utterly apposite to these provisions. We may express a range of different views, but I was struck by the fact that nobody denied that the interests of creators had to be protected. On the other hand, I do not think that anybody in this Chamber believes that we need a draconian, disproportionate way of enforcing those rights. I am sure that many of these aspects will be dealt with by the end of the Committee stage. I believe that we can usefully use this framework in that process. I beg to move.

Lord Lucas: My Lords, this is an extremely worthwhile amendment. Copyright at its heart is not a right, it is a compromise. Copyright can be described as a tax or as a monopoly. Neither is a desirable thing to my mind. Copyright is merely what we do—the tough, difficult, bad things we do in order to enable the good thing, which is creativity, to flourish. It is inherently, therefore, a balance between the costs we impose on the innocent enjoyment of good things by members of the public in

[LORD LUCAS]
return for making it possible that such good things can be created. So the idea of balance ought to lie at the heart of our consideration of copyright.

In discussing the previous amendment we touched on how we balanced the rights of the individual copyright holder with the rights of the citizen who was faced with a demand which they had no reasonable way of defending. One idea that we did not touch on when discussing the previous amendment—so I cast it before the Minister now as an idea—is that perhaps we should have within this a tariff, a means of establishing the fine which the offender should pay, should they choose to admit their offence. In that way we could establish a reasonable and rational level of cost for the infringer, rather than leaving him at the mercy of the courts and of solicitors who push on the fear factor. As I say, balance should be key to this, so I support this defining amendment as part of the Bill.

Lord Whitty: I, too, support this amendment or something like it. The Government would be wise to accept at least the principle of this amendment because it would calm some of the fears of the system outlined in the next few clauses, both in relation to the existing system and, more particularly, to the new system proposed in Clauses 4 to 16, where there are issues of proportionality, of due process, and of privacy, all of which would be covered by reference to a check against the Human Rights Act. I therefore hope that the Government can accept something like this amendment.

Baroness Miller of Chilthorne Domer: The Minister has cleverly got round my question of how the evidence is gathered by referring me to the note in the Library. Although it is a very helpful technical note, it would still be useful to have something on the record. This amendment speaks to the particularly important issue of the right to privacy. Checking on other people's internet traffic to see whether file-sharing is taking place is akin to opening somebody's post in envelopes to see whether they have illegally photocopied books, for example. It is very similar. Can the Minister explain a little how that technical process is going to take place, and also how the person accused of that will refute the allegation? I think that this goes to the heart of whether the public will be able to understand how the evidence against them is gathered and how they can refute it.

The Earl of Erroll: I know that I pointed this out under the previous amendment but, looking at it and thinking more about what people have said, I think that part of it applies to this amendment as well.

"Access to, or use of, services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons".

It goes on to say that they can only be imposed,

"if they are appropriate, proportionate and necessary within a democratic society, and their implementation shall be subject to adequate procedural safeguards".

And it finishes up:

"The right to an effective and timely judicial review shall be guaranteed".

If we do not comply with that in the Bill, we will be in breach of our commitments to Europe and the European Convention on Human Rights. The Minister's certificate on the front of the Bill may actually be misleading. I would like to see something like this in the Bill, as I think that it is essential.

It can also be used to cover some of the issues around proportionality in Amendment 33. Was it proportional even to use the civil law in the way that it was used? The noble Lord, Lord Birt, represents that all this creativity will disappear if we do not have this provision. Actually, the Bill protects the back catalogue of six or so large digital rights companies. On the whole, the small people will not be protected by patent law because they cannot afford it. There will be no one on the internet looking for their songs being downloaded and no one interested in pursuing those cases. The small people are already putting their stuff out through other methods. The other day, I looked at Pledge Music, for instance. It is a rather clever idea for people to pledge money for some of the stuff that has been produced. It has been shown that a lot of the people who do this downloading also spend a lot of money on other products associated with it, so the concept that these people are losing all their money because there is downloading going on is not necessarily true.

This is slightly, but not entirely, off the point. I remember back to when the music industry said it was going to be wiped out by the Philips cassette. Exactly the same thing went on. It tried to crack down on people caught with Philips cassette recorders and ban the production of machines with two cassette decks which were clearly for copying cassettes. Did it make any difference? At the end of the day, no. "Avatar" is an interesting example. Has it suffered as a result of the fact that 300,000 copies have been made? Would people have gone to the cinema anyway? Perhaps they will go to watch it in full 3D glory, having sampled it on an inadequate little screen. These things may have benefits.

The proportionality of this is important. I am afraid that that is what we are losing sight of by trying to pretend that the whole creative industry will collapse without protection. We need something that will protect the human rights of the ordinary citizen in a proportionate way. That is in the new framework directive and we need also to put it in the Bill.

Lord De Mauley: My Lords, a great deal has been said on the amendment. However, while acknowledging the statement on the front of the Bill regarding compatibility with the convention rights to which the noble Earl, Lord Erroll, referred, perhaps I may draw the Committee's attention to the internet freedom clause of the soon to be adopted European Union telecoms package, which sets out in relation to illegal file sharing that,

"measures may only be taken with due respect for the principle of presumption of innocence and the right to privacy".

The package states that a,

"fair and impartial procedure shall be guaranteed".

That is fundamental to these proposals achieving widespread support from across the Committee. I therefore hope the Minister can confirm that the

Government have received thorough legal advice that their measures are compatible with this and other European law.

Lord Davies of Oldham: My Lords, I am particularly grateful for that intervention from the noble Lord, Lord De Mauley, because it provides me with a opportunity to respond directly to the point raised on this issue by the noble Earl, Lord Erroll, in the previous amendment. I have taken steps to make sure that we are in a position to allay anxieties on this point.

We believe, of course, that the Bill is consistent with the EU framework provisions that the noble Earl mentioned. The proposals in the Bill will ensure that subscribers have an opportunity to be heard, should they feel that they have infringed copyright. They will also have a right of appeal to a first-tier tribunal, which is a judicial body. We certainly do not underestimate the seriousness of imposing technical constraints on a subscriber's internet account and that is why we believe that we have got that balance right throughout the Bill. I wanted to reassure the Committee in those terms as regards compatibility.

I also want to reassure the Committee on the next obvious point, which is that I have a great deal of sympathy with the sentiment behind this amendment and appreciate the fact that noble Lords, such as my noble friend Lord Whitty, enjoined me to accept the principle. I have no difficulty in accepting the principle, but it is the direct implications of the amendment with which I have slightly more difficulty. However, I am grateful to the noble Lord, Lord Clement-Jones, for moving the amendment. He asks that the Secretary of State, when acting under Clauses 4 to 17, should demonstrate that the action is proportionate and necessary to achieving the goal of protecting copyright and that it appropriately balances the interests of copyright owners and the public. That is an important principle which the Government regard as underpinning Clauses 4 to 17.

I agree that any Secretary of State carrying out the actions ascribed to him, or exercising any of the powers given to him by those clauses, should have particular care to ensure that his actions are proportionate and necessary. In our debates over the past hour and a half or so all sides have emphasised that point. It is also essential that in taking any action the Secretary of State should consider the interests of the public as regards due process, privacy, freedom of expression and other human rights. Therefore, of course, all those elements underpin the amendment and the principles that the Government are working to with regard to the legislation. In practical terms, what would be involved in demonstrating that these proper and essential considerations had been made? To put in such a statutory obligation to demonstrate that the Secretary of State has considered these things looks to be a substantive exercise in bureaucracy.

5.30 pm

In relation to the more significant Secretary of State actions under Clauses 4 to 16 this may be appropriate. Where the Secretary of State is to make a decision to impose technical measures, for example, or to make a decision on cost-sharing, those actions will have to be done by statutory instrument. In preparing those statutory instruments the department will compile an impact assessment that will look at the costs and benefits of all sorts—not just financial—to all parties. That part relating to the necessary statutory instrument surely meets the intention of the amendment. In addition, this House and another place will have the opportunity to consider those statutory instruments and, as the noble Earl, Lord Erroll, emphasised, the powers will have to be exercised in accordance with the European Convention on Human Rights.

However, there are many less significant actions that the Secretary of State will have to take, such as under the proposed new Section 124G that is just asking Ofcom to carry out research and preparation work, or under proposed new Section 124F which allows the Secretary of State to ask Ofcom to include matters in its progress report. Surely it would be cumbersome to have an impact assessment process applying to a direction of that sort.

Clause 17 aims to give the Government a flexible tool to act in a timely fashion to reduce new sorts of copyright infringement that may emerge in future. We are well aware of the concerns raised by Clause 17 and when we discuss it later we will aim to tackle those concerns head on and find ways to address them. But I suggest that Clause 17 is different in nature from Clauses 4 to 16 and we should consider it separately.

In short, I appreciate why the noble Lord, Lord Clement-Jones, has tabled the amendment—several noble Lords have sympathised with it and I recognise its merits—but I believe that in relation to Clauses 4 to 16 the existing requirements on Ministers to act reasonably and proportionately, as well as our normal statutory instrument processes, are enough to deliver what the noble Lord is looking for in relation to significant Secretary of State actions. If we were to accept the amendment we would add a layer of unnecessary bureaucracy, costs and delays to much less significant actions that are not of sufficient importance to merit that consideration.

The noble Baroness, Lady Miller, asked me a question for the second time, having got what she obviously regarded as a less than satisfactory response in my first effort. She asked how rights holders can find out who is infringing copyright and how they can refute it. They go online and search for copyright material that they own on file-sharing sites. They identify the material and download it, noting time, date and IP address, which is the basis of the system. The initial letters that are sent out—I emphasise this as we had a debate on the question of sanctions on the margins and I have no doubt that we will get to this debate in the fullness of time and deal with it thoroughly—are simply warning letters allowing subscribers to take the necessary action to put them in the right where it can be established that they have been acting wrongly in downloading.

Of course, there are the great sanctions available through processes of law to big operations. The noble Lord, Lord Lucas, also suggests that rather than recourse to law, the conduct of the big organisations ought to change. I bear in mind the significance of his point.

[Lord Davies of Oldham]
However, I emphasise that when dealing with young people who are engaged in a great deal of this activity and do not seek to put themselves on the "wrong" side of what is right and wrong in doing this, the first sanction is modest. I hope that the noble Baroness accepts that point and that the noble Lord, Lord Clement-Jones, will feel able to withdraw his amendment.

Lord Clement-Jones: My Lords, I thank the Minister for that reply. I thank the noble Lords, Lord Lucas and Lord Whitty, the noble Earl, Lord Erroll, and my noble friend Lady Miller for taking part in the debate and supporting the amendment, and the noble Lord, Lord De Mauley, for his contribution.

The Minister claimed that the Bill is compliant with EU law. He claimed that elements such as the fact that subscribers can be heard as a right of appeal make the Bill compliant. The reason for the amendment is that we do not believe that the Bill is compliant with those principles. There is a lack of specific statement about the burden of proof, the allocation of costs, and the quality of the evidence. There are many aspects that need to be explicit but are not stated. We need a set of guiding principles.

The Minister says that he sympathises with the sentiment of the amendment. He accepts the underlying principles and says that the Government are working to those. If they are working to them, I hope that they will be accepting a whole load of amendments coming down the track on precisely some of the areas that I have mentioned. Perhaps those who wrote the Minister's notes have not noticed that increasingly in legislation we see sets of principles specifically set out at the front of Bills. If the Minister does not like the language here, which is that the Secretary of State must demonstrate before any actions are taken that they accord with EU law, certain principles and so on, there are other ways of writing that in legislation, such as by saying that certain principles have to be observed when orders are brought forward and when codes are drawn up. There are other ways of stating that certain principles need to inform the warp and weft of the clauses.

I thought that the Minister went somewhat off piste on Clause 17. I know that there will be a great conflagration on Clause 17, but I shall resist the temptation to talk about it now. If there were ever an example of how the principles that I have been talking about will be transgressed by the Government, it is in proposing Clause 17. We have battles to come in that respect. I do not believe that putting these principles in the Bill would be some unnecessary bureaucracy. The Minister seems to be adopting a Bill drafting pragmatism, but he needs to consider the reassurance of stating in the Bill a certain set of principles by which any order or code is to be drawn up or any procedure is to be adopted. That is vital if he is to create public confidence and that very balance that he himself mentioned. The Minister may not have heard the last of this in terms of the kind of umbrella network or framework of principles that we wish to see in the Bill. In the mean time, I beg leave to withdraw the amendment.

Amendment 34 withdrawn.

Clause 4 : Obligation to notify subscribers of reported infringements

Amendment 35

Moved by ***Lord Clement-Jones***

35: Clause 4, page 6, line 5, after "infringement" insert "allegation"

Lord Clement-Jones: My Lords, these are less important amendments than the previous one, but nevertheless of significance. The purpose of these amendments is to clarify that legislation is in respect of allegations of copyright infringement and that this is not some sort of open and closed issue in terms of copyright evidence. The information obtained by copyright owners, and in a sense laid before ISPs, is allegations of breach of copyright, not infringements in themselves. I think the wording of the Act—we have set out a number of amendments where they are appropriate—should be changed as there needs to be a full understanding that it is only a first step. These are allegations; they are not proof in themselves of copyright infringement.

Amendments 36 and 37, also in this group, are very similar. A wide degree of judgment seems to be available to the copyright owner. In our view, it should be narrowed. Therefore:

"In the reasonable opinion of",

seems to us to be a sensible addition to those provisions. I beg to move.

Lord De Mauley: My Lords, as the noble Lord, Lord Clement-Jones, has pointed out, Amendments 35, 47, 48 and 58 seek to clarify that when a copyright infringement report is compiled and sent, that in itself does not constitute evidence of guilt. We agree that such a clarification would be useful, although I believe that new subsection (3) does its best to make it clear that copyright infringement reports describe apparent infringements where there appears to have been an infringement—that is to say, not an actual infringement. I hope the Minister can confirm that this means that a report will clearly only establish that infringement has been alleged and that nothing in these provisions will in any way establish a new and lower threshold of guilt.

I turn to our Amendments 36, 37 and 49 in this group, to which the noble Lords, Lord Razzall and Lord Clement-Jones, have added their names and which move in the same direction as their amendments. These seek to tighten up the evidence base required before a rights holder can send a copyright infringement report to an internet service provider. We are concerned that, by making the evidence simply the "appearance" of a breach of copyright, the bar is being set too low. For this process to work, internet service providers and consumers need to have confidence that when an allegation is made it is not on a spurious basis, but that the rights holder is as reasonably confident as he can be that an infringement has taken place. As the drafting stands, allegations could be made and copyright infringement reports compiled and sent simply on the basis of appearance. I do not believe that this is a sufficient level of evidence for this process to go forward, and I hope to hear from the Minister that the current drafting will indeed not lead to lots of speculative allegations.

The Earl of Erroll: This is an example of why we needed the previous amendment, Amendment 34, because it was the noble Lord, Lord De Mauley, who quoted the bit out of the European directive which said that these measures may only be taken with,

"due respect for the principle of the presumption of innocence".

In order to presume the innocence, I suspect we need to put in "allegation", just as has been spoken about. This could be a typical example of where the Bill might become non-compliant if we do not add these amendments.

5.45 pm

Lord Young of Norwood Green: My Lords, Clause 4 sets out the requirements that must be met to produce a copyright infringement report. These reports are the mechanism by which the copyright owner brings specific apparent infringements of their copyright via a particular IP address—and I stress "apparent"—at a particular point in time to the attention of the relevant internet service provider.

Some of these amendments seek to change the name of these reports from copyright infringement reports to copyright infringement allegation reports. Others propose a change of the wording to require the trigger leading to the creation of a CIR to be that in the "reasonable opinion" of the copyright holder an infringement of their rights has occurred on that internet account, rather than it merely "appearing to them" that an infringement has occurred.

I recognise that the apparent infringements are not tested and proved to court standards. It will not be possible at the time the copyright infringement report is made to be able to declare with legal certainty that an infringement has occurred or that the IP address in the reports was responsible. Given this, clearly it is of the utmost importance that the standards of evidence surrounding the identification of both the infringement and the IP address of the infringing account should be as high as possible. I certainly concur with the points that the noble Lord, Lord Clement-Jones, made in relation to the standard of evidence and not presuming this is an open-and-shut case; and indeed with the point that the noble Lord, Lord De Mauley, made about speculative allegations—in other words, what is important is the standard of proof and evidence.

New subsection (3) in Clause 4 already expressly recognises that the infringement described in a copyright infringement report is, as the noble Lord, Lord De Mauley, reminds us, only ″apparent″. Equally I think that the copyright infringement reports amount to more than mere allegation. New paragraph (b) requires the copyright infringement report to include,

"a description of the apparent infringement",

as well as evidence that shows the subscriber's IP address and the time at which the evidence was gathered, so that there will be—I stress this—a clear and robust audit trail. The CIR will also have to comply with any other requirements imposed by the code to be approved by Ofcom. We provided last week an outline draft code that will help to give the Committee an idea of what the code will cover.

All this will require the copyright owner to have rather more confidence in, and evidence of, the existence of the infringement and the IP address of the infringing account than is implied by the term "allegation" or even the words,

"in the reasonable opinion of".

Copyright owners will not be able to issue such notices on a whim or with insufficient justification. There will be that clear, robust audit trail. Therefore, although I recognise the point that noble Lords are making with these amendments, they are not necessary. We will ensure that any notifications issued under the code make it clear that the copyright infringement report represents only an apparent infringement and that it has not been proved in a court that an infringement has occurred.

Amendment 49 would change the terms in which the copyright owners refer to the alleged infringement but would not have any practical impact on how the copyright infringement report is handled.

I am aware that there are some with an interest in these issues who are very concerned to note that the alleged copyright infringements have not been tested by a court of law, and that therefore we have only the copyright owner's assertion that such an infringement has taken place. The wording in the Bill gives sufficient recognition to this fact and the amendment suggested adds nothing to the substance of the provisions. I understand the concerns about the nature of proof and the question of no presumption of guilt. We believe we have covered that with "apparent" and that we have demonstrated that there has to be a clear and robust audit trail. This is a necessary debate given the importance of these issues.

I hope on the basis of the explanations I have provided that the noble Lord will feel able to consider this and be able to withdraw his amendment accordingly.

Lord Clement-Jones: My Lords, I thank the Minister for that response, which offered very helpful clarification. We now have the draft outline of the initial obligations code. Particularly helpful were the Minister's statement about the audit trail and his general statement, which is now on the record, that the standards of evidence should be as high as possible. Of particular importance was his saying that it will be made clear in the code that these are allegations. I hope that there will a review of this draft and further drafts to make sure that that is the case. One of the purposes of Committee is to hear from Ministers that procedures are very much in line with assurances that have been given, so that we can be informed when relevant statutory instruments—about which the noble Lord, Lord Davies, and the Minister spoke earlier—are going through and when codes are being approved. It is extremely important that the language that we use about these allegations is reflected in the code.

I notice that the outline code already states:

"The CIL will facilitate targeted civil action by copyright owners against the most serious alleged infringers".

That gives me hope that the way in which infringers will be talked about is in terms of allegations, but it is important that we do not stray over the boundaries and suddenly think that people are "guilty". Otherwise, we will not have due process, which is what the amendments from these Benches are striving for. I beg leave to withdraw the amendment.

Amendment 35 withdrawn.

Amendments 36 and 37 not moved.

Amendment 38

Moved by ***Lord Whitty***

38: Clause 4, page 6, line 6, at end insert—

"( ) infringement of the owner's copyright appears to have taken place through peer-to-peer filesharing networks on a subscriber's IP address;"

Lord Whitty: I shall speak also to the other amendments in this group, most of which are in my name. The amendment is about not the substance or process of what is covered by Clauses 4 to 16 but the scope. On one level, these are probing amendments, because they seek a view from the Government on why they have changed the terminology used in the Bill from that used in the consultation process. However, there is also anxiety behind them.

The original consultation paper on this part of the Bill referred to,

"unlawful peer-to-peer file sharing".

In the impact assessment accompanying the Bill, the same terminology was used. However, the Bill talks about copyright violations. The remedies proposed by the Government, although I do not agree with them in their entirety—as may have become apparent to my noble friend the Minister—are very much geared towards illegal peer-to-peer file-sharing. There are many other forms of copyright violation, some of which may be achieved by electronic means. Therefore, the scope of the clauses seems wider either than the original intention of the Bill or the consultation which led up to it. It would be helpful if the Government explained their change; they may even convince me. However, it takes us into a wider territory of trying to use these measures, which were designed to deal with peer-to-peer file-sharing—that is, from one computer to another—for possibly other, more complicated forms of copyright violation. My noble friend the Minister may say that it is to anticipate changes in technology—we already know that some new forms copyright violation are probably not covered by the original term. However, there are some fairly old forms of copyright violation for which these remedies would seem not to be apparent.

This group of amendments is therefore designed to seek clarity on that and to restore the original terminology relating to illegal peer-to-peer file-sharing. To be helpful to the Government if they accept our argument, we have proposed in Amendment 211 a definition of peer-to-peer file-sharing which they may wish to consider. The change that has been made is a little odd, and a number of people on all sides of the argument have wondered why it has been made. It would be helpful at this stage of the Bill for that to be clarified. I beg to move.

Lord Lucas: My Lords, my amendments in this group are also just excuses to seek clarity from the Government. The noble Lord, Lord Davies, gave us a few moments ago a pretty good idea of how evidence is obtained in relation to uploading; in other words, where someone has made a file available on a peer-to-peer network. We have not yet heard how it is intended that evidence should be obtained of downloading; that is, where someone who has not made any of their own material available on a peer-to-peer network goes out and finds material that they want on such a network. That is what is alleged to happen in the cases about which the noble Lord, Lord Davies, and I were fulminating earlier. We are talking about people who would not know enough about a computer to join a peer-to-peer network but are alleged to have downloaded copyright material. Those allegations are based on very secretive processes carried out under no known protocol and of uncertain legality. I hope that we are not looking at allowing that kind of evidence to appear as part of this process. I would be grateful for a greater understanding of whether the Government intend to attack people who just download and, if so, how it is intended that robust and understandable evidence is to be obtained.

Lord Maxton: We are talking entirely about downloading; that is, the act of bringing something down from the internet on to your own computer and then using it. What about streaming? If I watch a film on my computer without downloading it on to the computer, on a stream basis, is that an infringement of copyright? I could listen to the same piece of music on the internet again and again without ever downloading it on to the computer. Is that an infringement of copyright?

Lord Lucas: My Lords, I presume that it is, but I find it difficult to understand how robust and challengeable evidence that I have done it can be produced without one having access to my computer or reconstructing my internet traffic in some detail, which is an entirely different subject. My understanding of what the noble Lord, Lord Davies, said was that the evidence could be provided in the case of uploading; in other words, where I have made a streaming download available or where I have placed a piece of music on a peer-to-peer network, and someone can go along and download it and, there it is, it has come from my IP address. You would then have an exact match to time and IP address with which it would be pretty difficult to argue—we will doubtless come on to the difficulties of IP address identification later, but it is at least pretty good evidence. However, on downloading, which goes the other way, I am still bemused as to how the Government think that they will get evidence.

The Earl of Erroll: My Lords, I entirely agree with what noble Lords have just said. The amendment strikes at the heart of the complications of all this and at why the Bill is probably not going about the issue in the right way. Peer-to-peer technology offloads content from servers and can be very useful for universities which distribute large data sets for examination or for people to run large mathematical models against them et cetera. It can be useful for distributing software updates without overloading one or several central servers from a particular company. There are many uses for it. Equally, when we come to the definition of "computer", do we also include, for instance, personal digital assistants, which are effectively small computers in your pocket, and mobile telephones, which are also effectively computers these days? There are proposals to take the load off radio base station masts, for instance, by using mesh systems which will transmit from telephone to telephone. This would be a form of

file-sharing. You would not know you were doing it, but you might be an intermediary in passing this stuff through.

6 pm

Later, we get to the definition put by the noble Lord, Lord Whitty, which is a good one in many ways, but we must be careful that it does not draw in some desirable technology for having a resilient infrastructure around the country. This is the danger of trying to proscribe it. If we go the other way and do not proscribe it at all, then we get into exactly the problem which has just been mentioned.

On streaming, I am told that already, in anticipation of this Bill, there are streaming servers being set up from which you can download as well as just watch. People will start downloading from specific servers. The only way to find out about this is through something like the Home Office's proposed interception modernisation programme, where you track all the internet traffic of individual subscribers, or deep-packet inspection where you ask the ISPs to look at what is inside these packets. The latter is exactly why the noble Baroness, Lady Miller of Chilthorne Domer, who is about to speak, was so against the former system. Many other people were as well.

This is why we have to be careful in the powers the later clauses give the Secretary of State to suddenly do other things. In a way, this amendment highlights the dangers in this Bill of handing incredible powers to the Secretary of State to stigmatise or interfere with desirable technologies. The Government do not realise the unintended consequences of what they are doing. They are so blinkered; they are looking at one issue only and not the other, desirable effects which get hit by the same thing. This is a useful amendment to illustrate the problem. It would be good to limit it to peer-to-peer but I do not want to see peer-to-peer stigmatised as the thing that is illegal or unlawful. It is not. However, I am worried by the powers that the Secretary of State might take to cause greater problems to other technologies out there which are hugely useful.

Baroness Miller of Chilthorne Domer: I speak to Amendment 40 and Amendment 82 in this group, which explore the effect the Government think the legislation here will have on corporate and communal facilities. As the Bill is drafted, I find it hard to understand what the effect will be, other than negative, on, for example, an internet café. Internet cafés and communal wi-fi, such as that being pioneered by Swindon, are aimed at exactly what I thought the Government were trying to include: digital inclusivity to enable people who cannot afford their own broadband connections to access all the things that those of us with our own connections enjoy, such as entertainment, learning and so on. If we are going to have a digital knowledge-based community and digital economy, we cannot exclude everybody who does not have their own internet connection.

As drafted, this Bill will be extremely discouraging to anyone providing any form of connection like that. As soon as somebody goes on to it and downloads something that they should not it will be the provider of the internet connection who is liable. The Minister may say that they can have contracts with those who sign on with them to say that they will not illegally download, but that illegal download will have happened. That person will have paid their pound, had their half an hour and gone away, and the only sanction that the Bill envisages will be that that internet connection is either throttled or cut off after a certain point.

I worry how that will affect those and other communal networks. The noble Earl, Lord Erroll, also spoke, for example about universities. We could speak equally about corporate networks. How will the sanctions here work in a university situation? Other noble Lords talked about just about everybody under 30 doing this. In a university environment, the connection must be used time and again in a way that would invite all of the sanctions in the Bill. How will the Government ensure that this legislation does not have an extremely chilling effect on the provision of communal networks?

Lord Young of Norwood Green: These amendments are intended to restrict the application of Clauses 4 to 16 to copyright infringements that occur via a peer-to-peer network. It is absolutely true that these provisions have been written with peer-to-peer networks in mind. That has been the trouble causing so much damage to the creative industries and is certainly the primary problem we set out to address in this part of the Bill.

When we came to consider whether we should, as these amendments suggest, restrict these provisions to allow them to apply only in the case of infringement via peer-to-peer networks, we found that there seemed to be no good reason to do so. As we all know, and have recognised in these debates, technology moves exceedingly fast and user behaviour on the internet moves even faster. The one risk we are taking with these provisions is that the behaviour we are trying to address will have moved on by the time the provisions take effect and infringers will be doing something else. It is worth while keeping the application of these measures open to be used in the case of any sort of online copyright infringement—I stress "any"—if they can be applicable.

At this point, we have not identified a non-peer-to-peer application that these provisions could be used in relation to. The provisions in Clauses 4 to 16 rely on the issuing of copyright infringement notices which are described in the Bill and would be further constrained by the code, as I have already said. For example, as a minimum we expect that the code would require that the method of detection was via a robust and reputable technology—I try in part to reassure the noble Lord, Lord Lucas—which was open to independent or Ofcom scrutiny. A copy of the copyright material or significant part thereof should also have been captured as part of the detection process. The copyright owner should have verified that he had reason to believe that the usage identified was an infringement. The uploading IP address should have been captured and an exact date and time it was taken.

On uploading, the noble Lord, Lord Lucas, asked a pertinent question: what about downloaders? As a fairly mature silver surfer I confess I have not engaged in these activities, but I am reliably informed that

[Lord Young of Norwood Green]
when you try to access these sites, many of them only tell you in the small print that you will be uploading at the same time unless you take measures to stop it, which you can do in some cases. If you want to participate in certain file-sharing sites they do not allow you to do that.

It is for copyright owners to identify infringement and at present there is no reliable, remote way compatible with EU law to identify somebody who is just a downloader. That is where we are technologically at the moment. Many people do not realise when they are downloading that all their files are also open to uploading as well. That is the way they are identified. That is a fact, it is why it goes on and it is why so many of the infringers can be identified.

The noble Baroness, Lady Miller, was perhaps taking a rather extreme view of the effect of the legislation by saying that it was somehow going to depress to a large extent communal use of the internet. That is certainly not our intention and we do not believe that is the case. She asked a relevant question about these sorts of communal networks. We recognise that libraries, other wi-fi operators and open-access providers such as universities serve an important function, not least in helping the less advantaged in getting access online. We do not think that they are caught as individual service providers, which we think they are not, or as consumers.

However, the fact remains that they can take easy steps to prevent infringers using their connection. They can apply controls so that file-sharing sites are blocked at a subscriber level, particular protocols are blocked or that the amount of bandwidth available is limited to make file-sharing on such connections unrealistic. After all, there are many organisations that take steps to ensure, for instance, that pornographic sites are not, so far as possible, accessible. Bearing in mind that most such providers—libraries are a good example—offer a service to allow e-mail or web browsing, they need to offer significant bandwidth or access to specific sites or technologies. This is not new. For instance, libraries will not allow you to photocopy a complete book. All we are saying is that libraries and similar communal organisations can take measures to prevent widespread infringements and still allow people to enjoy online access.

The consistent theme of the noble Earl, Lord Erroll, is that this is all too complicated and too difficult and that what we are doing will suffer from the law of unintended consequences. We do not believe that to be the case. As other contributors to this debate suggested, we believe that we are taking a balanced and proportionate approach to a real and serious problem. The noble Earl is right that there are plenty of legal uses of peer-to-peer file-sharing, but they are not the ones that we are interested in prohibiting and will not come under these measures. He said that the Secretary of State will stigmatise people. That is not our intention; it is our intention to try to change behaviour and effect a cultural change so that people recognise that creative activity and its copyright support is of real value to society as a whole. If noble Lords look at the nature of the measures we are taking, that is the case.

The noble Earl asked about mobiles. As before, if file-sharing is a problem on an ISP's network, then the obligations will apply to it. However, we recognise that mobile networks face particular challenges, including technical issues and subscriber identification; for example, pay-as-you-go contracts. We anticipate that if the cost to a mobile network is significantly higher, we would, for example, allow a higher flat fee for notifications on a mobile network. I was asked why we have not excluded mobile networks. We agree that file-sharing is not, as yet, a significant problem on mobile networks, but that may not be the case in future. Mobile costs are falling while performance increases, which could mean that file-sharing on mobiles becomes a more realistic concern over time.

Baroness Miller of Chilthorne Domer: I shall use the gap in the Minister's reply to check something with him. He said that a university or internet café could take various steps, but is it the Government's intention that if it has not taken those steps, it will be just as open as an individual is to all the processes and sanctions in the Bill?

Lord Young of Norwood Green: We are taking a positive approach. We are saying to people, "Here are some positive steps that you can take. Here are steps that similar organisations have taken". If there was an unwillingness to respond at all, then I think that there would be further consequences. The point that the noble Lord, Lord Clement-Jones, made so eloquently seems to have been ignored. As he pointed out—it may have been the noble Lord, Lord Razzall; I apologise if I have confused the two—we are talking about a graduated response.

6.15 pm

Lord Clement-Jones: My noble friend is far more eloquent than I am.

Lord Young of Norwood Green: Methinks that there is too much modesty there. We are talking about a graduated response. I make a plea that we should not exaggerate the approach we are taking. We have no intention of penalising communal organisations unreasonably. The approach will be to suggest ways in which they can stop these kinds of infringement. Similarly, we will say to individuals, "Look, perhaps your wireless network is not being used by you in this infringement, but it is being used by somebody. Why is it being used by somebody else? It is because you have not adopted the necessary security precautions that are easily available to people using wireless networks".

I have spoken about the speed with which technology moves on. I would say at this point, as I think I said earlier, that we have not identified a non-peer-to-peer application in relation to which these provisions could be used. The provisions in Clauses 4 to 16 rely on the issue of copyright infringement notices. I have identified the point about the role of independent or Ofcom scrutiny.

I cannot think of any form of online copyright infringement that we would not want to prevent. We have currently identified the primary cause as peer-to-peer

applications, but if these provisions could be used to combat other forms of online infringement, I cannot see how that could be a bad thing. Indeed, I cannot see how restricting these provisions—which I stress are already restricted to online copyright infringement—to peer-to-peer could do anything other than prevent the possible future beneficial use of the provision should the occasion arise. On the basis of those explanations, I hope the noble Lord will feel able to withdraw the amendment.

Baroness Howe of Idlicote: I have been listening to the debate with fascination. I have a great deal of sympathy with the noble Baroness, Lady Miller of Chilthorne Domer, because the area of schools, colleges and so on could be quite problematical. However, I have another concern. We are talking about the very important matter of the most deprived groups in society, but what about the charities that could use more modern methods of attracting people into whatever service they provide? Perhaps the Minister can explain how the Bill might encourage the various people involved—the various owners—to join together and perhaps agree that in some areas downloading, which might be regarded as very enticing by those who would come in to use the services, could be made free? Would making exceptions be a way forward? Perhaps there could be incentives for copyright owners to provide this sort of service.

Lord Howard of Rising: If, as the Minister says, the broader definition will cope with future unforeseen infringements—I am not sure if this is the right time to raise this, but I would like to mark his card for the future—what possible need can there be for Clause 17?

Lord Lucas: My Lords, I am very content with the answer that the noble Lord has given me on the questions I asked. I think that he explains the limitations succinctly. I have many doubts, though, about what he said in reply to the noble Baroness, Lady Miller. One of the principal things he said was that there is a list of sites that you should not let other people on the network use. Those providing an open wi-fi system often include your local restaurant. They want to bring customers in, so they say, "Come in, bring your kit and you can drop into the wi-fi." In order for people who provide that service to be comfortable under the Bill, first someone has to provide them with the list of sites that they should block. At the back of that there has to be a proper appeal mechanism because, as noble Lords will know, you get on to various people's spam blacklists from time to time. There are appeal mechanisms, and by and large they work, but there has to be a system with a list of sites that you do not expect a public site to make available, because they involve copyright infringement, and an appeal mechanism to go with it. Then you have to have an easy way of getting that list and implementing it on your system. I would be grateful if the noble Lord could write to me and say how far we are in having such technology available. However, even if we have it available, there has to be a defence in the Bill which says, "I have done everything I can in industry best practice. Even though you can see that this is going on, I have done my best."

The problem is greater for somebody who is using an ordinary domestic router and having various people tapping into it. I am not aware that there is any mechanism where you can drop this software into your standard Netgear router, or whatever you have at home, to enable you to block other users of that router on the internet. You have no power to find out what they are doing, no access to their computer, no right to monitor their traffic or even to ask them what they are doing if they are over a certain age.

To pick up the point that the noble Lord made about access to wireless networks, yes, you can say that someone who is using WEP is being delinquent and they should use WPA. However, going beyond that to produce something which is proof against someone who is kitted out with the best of the stuff that you can pick up on the internet is getting extremely professional. I have been through the instructions. It would take me a couple of hours and a good deal of head-scratching to set up the protections at home that I would need to be protected against the most proficient bore driver. It comes back to the question of balance. We have to have some way of making sure that people who are potentially providing a public internet service have done whatever is best practice and is reasonable to make sure that they are not enabling illegal file-sharing; but if someone has done that, they have to have protection under the Bill.

Lord Young of Norwood Green: My Lords, it might be useful to write on these complicated issues. We should be wary of saying that these things cannot be achieved. I do not wish to engage in an overly technical debate on this with the noble Lord, Lord Lucas, but I am reliably informed that, in terms of the average home user protecting their wireless network, there are reasonable steps that people can take. When we talk about communal networks, I am also assured that there are steps that can be taken. This is a complex issue and an important one, given the organisations that were identified by the noble Baroness, Lady Miller; and I will try to address the concerns of the noble Baroness, Lady Howe. There are examples of plenty of free information material being available, but that is not the point. It is the copyrighted material that people seek to obtain for free, even though in many cases it is available at reasonable prices. That is one of the problems that we are dealing with. We will write specifically on this question of communal usage and make a copy available in the Library.

I do not want to repeat what I said previously in response to the suggestion of my noble friend Lord Whitty. I just want to take the main point that we have identified peer-to-peer as the main problem; but, as we know, technology moves on. I had a fear that the nemesis that appeared in relation to the contribution of the noble Lord, Lord Howard, would appear—if this is the case, why do we need Clause 17? As my noble friend Lord Davies said, we will scale that Everest when we come to it. I do not know whether that is the right metaphor to use in this case, but I think there are good reasons for it.

Lord Clement-Jones: You could say that we will fall into that pit when we come to it.

Lord Young of Norwood Green: I am an optimist. I always travel in hope, so let us hope that, whether it is a height that we have to scale or a pit that we have to avoid, we will achieve it between us.

In the light of the explanation provided, I hope that the noble Lord will consider withdrawing the amendment.

The Earl of Erroll: Can I raise one other point, which is not on the key point list? The Minister mentioned that this was to be able to cover all forms of infringement and over all technologies, and I see why he wants to do that. Does this also cover written copyright? There is no distinction in this amendment between music, film and text copyright, so the Bill could be applied to all of that.

Lord Young of Norwood Green: Inspiration and information from the Box says yes.

Lord Whitty: My Lords, I clearly will withdraw the amendment. For the record, I think that I omitted to declare my interest as chair of Consumer Focus in moving the amendment. I am not sure that either I or the organisation is reassured by the noble Lord's arguments.

No doubt we will return to the issue of communal use, so I will not speak on that. On the basic definition, however, it is clear that the original concept and design of these measures were based on peer-to-peer, and that is what was consulted on by all sides. Extending it to any future new technology or changing use of existing technology seems to me slightly dangerous without some brake on it. I accept that technology moves on, but could that not be met simply by having another clause in the Bill which effectively says that by secondary legislation we can extend this to other forms? Otherwise, quite a lot of old forms of copyright violation could be achieved through electronic means, even though historically they were dealt with by physical means. It is not as if the owners of those rights do not already have the right of redress through the courts. With due respect to the noble Lord, Lord Birt, we are not in the situation that the Swedish rights owners were when they did not have access to the courts until the recent case. Their only recourse was to turn it into a criminal offence.

In all forms of copyright violation, the rights holders have the right of redress via the courts. The point about illicit peer-to-peer file-sharing is that that did not appear to be suitable for most instances of this relatively new form of copyright violation. That is why we developed these special measures—which I do not agree with, but nevertheless that is why it happened. To have an open-ended extension to all other forms when there is already one form of redress seems to me quite dangerous.

I had hoped that my noble friend's reply would say that peer-to-peer was too techie for the parliamentary draftsman and therefore he reverted to "old speak" in terms of copyright violation. Unfortunately it was not such a simple explanation; it was a deliberate act of Government to decide to extend this, and that leaves me with a few fears. For the moment, although I may return to the issue—or I may not—and I accept many of his assurances, I think that it is a significant extension of the use of specifically designed remedies for a potentially much wider area. The Committee should rightly be wary of that. I beg leave to withdraw the amendment.

Amendment 38 withdrawn.

Amendments 39 and 40 not moved.

Amendment 41

Moved by ***Lord Clement-Jones***

41: Clause 4, page 6, line 8, leave out "by means of the" and insert "while connected to the internet access"

Lord Clement-Jones: My Lords, what the noble Lord, Lord Whitty, has just uttered in terms of the width of the provisions of this Bill is extremely important in the context of our discussions going forward, particularly on Clause 17, but also more generally with regard to how this impacts on the way service providers operate. I thought that the Minister's response to Amendment 82 tabled by my noble friend Lady Miller was particularly important. In that context, Amendment 41 is a relative minnow when compared with some of the principles involved in communal wi-fi services, internet cafés and so forth. Quite rightly, those issues have been raised and I believe that further amendments are coming down the track.

It may be that this amendment should have been grouped with some of the earlier amendments, but there is a lack of clarity on this, and I was interested to note that the Minister is proposing to write about the liability of those service providers. It is not just the communal internet service providers or internet cafés that are extremely concerned about the wording of the Bill, but also some of the commercial providers. It is also interesting that the Minister started to talk about the kind of steps it is right for those service providers to take in order to prevent their service users infringing copyright and so on. Again, we are back into the realm of proportionality and so on. But some of the wording here is not particularly clear, and this amendment is designed to elucidate the meaning in line 8 on page 6; it actually also applies to line 11.

The phrase,

"by means of the service"

suggests that it is the service itself that has allowed the infringement, not the subscriber, while,

"connected to the internet access"

is a much more neutral term that does not put responsibility on the internet service provider. It may be—and indeed I thought that the Minister came close to this—that it is deliberate and that the provision is creating that kind of liability. Perhaps there are duties implicit in the wording of the Bill to which the internet service provider must pay heed. If that is the case, there needs to be a general understanding of that so that internet service providers can take steps right at the very beginning. Completely outwith the initial code of obligation and the technical code and so forth, it needs to be very clear just what the internet service provider's duties are, and as I say, this goes wider than

purely the communal service provider. It is generally applied to the commercial sector as well. I beg to move.

Lord Young of Norwood Green: My Lords, I must confess that I was not sure what the noble Lord is trying to achieve with this amendment. It seems to us that infringing copyright while connected to someone else's internet access is the same as infringing copyright by means of their internet access service. The problem we have with the formulation in the amendment is that it could include an infringement that happens at the same time that a subscriber is connected to their internet service but does not actually use that internet service. I think that the term we use in the Bill is more accurate.

On the other concerns expressed by the noble Lord, I take the point about the obligation on commercial providers to notify subscribers of copyright infringement reports as set out in new Section 124A. This section applies if it appears to a copyright owner that a subscriber to an internet access service has infringed the owner's copyright by means of the service. We do not intend to embrace the internet service provider if that was one of the concerns expressed.

We understand in part, having listened to the noble Lord's contribution, the concern here, but we do not believe that the amendment will do what he says—either elucidate or clarify. I have indicated that we will take away the points of concern in relation to communal providers whether they are commercial or not. On that basis, I hope that the noble Lord will feel able to withdraw the amendment.

Lord Clement-Jones: My Lords, I thank the Minister for that reply, whether he understood the purpose behind the amendment or not. I shall certainly look at his explanation. In the mean time, I beg leave to withdraw the amendment.

Amendment 41 withdrawn.

Amendment 42 not moved.

Amendment 43

Moved by ***Baroness Miller of Chilthorne Domer***

43: Clause 4, page 6, leave out lines 9 to 11

Baroness Miller of Chilthorne Domer: My Lords, the purpose of Amendment 43 is to explore with the Government what sort of defence there would be when a subscriber to an internet access service allows another person to use the service and that other person infringes a copyright. The Minister said helpfully in response to my Amendment 82 that he would write to Members of the Committee setting out a series of things that a communal network might have in its defence, and it would be similarly helpful if the Government were to think about what would be useful to an individual subscriber to an internet service. For example, if you operate an unsecured wi-fi system in your own home, are you less likely to have a defence under this provision than if you have a secured system? That is the sort of guidance to member of the public which would be helpful.

Further than that, if you have an internet connection in your own home which a member of your family or a friend from next door has used, why should you be liable for their copyright infringement? Is it that you should be liable if you knew that they were downloading and you did nothing about it? But why is simply allowing others to use the connection different from, for example, allowing someone to use your car if they were insured to do so, and they were caught speeding? In those circumstances you are asked if you were using the car, to which the response is, "No, it was X who used the car". If X was speeding, X is liable for the fine and the points on their licence. But in this case, as the Bill is written, it is still the person who provides the internet connection who is liable for disconnection, throttling or any of the other sanctions provided, not the person who was actually using the internet connection.

This is a particularly strange approach. There is not even a defence provided for in the Bill for the person who generously allows their internet connection to be used. The upshot of that is that if the provision stays as drafted at the moment—lacking any defence or rationale from the Government about how this might work in practice—people will become much meaner about allowing others to use their internet connection. It would be as regrettable as closing down or chilling communal networks if individuals did not feel able to say, "Yes, sure. Log on and use my computer if you want to". That is the sort of attitude I would have hoped the Government would encourage.

It is important that the Government are clear on what they mean here, and that it is made clear that there would be defences for a subscriber to the internet who has no knowledge that another person using their connection, either because it was lent to them knowingly or unknowingly if someone simply logs into a wi-fi network. There is no reason why that person should be disconnected. I beg to move.

The Lord Speaker: My Lords, I must tell the Committee that if this amendment is agreed to I cannot call Amendments 44 and 45 by reason of pre-emption.

Lord Whitty: My Lords, my name is on this amendment and I support what the noble Baroness, Lady Miller of Chilthorne Domer, has said. I refer to the deletion of the reference to "allowed". I think what "allowed" means in different circumstances would be subject to different interpretations if it ever went to the courts. Clearly, it does not just include internet cafés, but all the educational and equivalent institutions that we referred to earlier as well. It also relates to the individual family, teenagers and all their friends and it could, with a wider system, involve neighbours who are tapping into it. It is clear that if "allowed" means simply a passive "did not stop", a lot of people become vulnerable. This is where the issue of proportionality comes in. It is not the equivalent of certain other measures where the owner is legitimately the person who suffers. If you are a small business and one of your employees conducted the infringement, if you are a university, college or

[LORD WHITTY]
library and any visitor could have done it, or if you are a family with a lot of visitors, then closing down or even seriously reducing access to broadband and to the internet in general has a disproportionate effect. The issue of proportionality is very much bound up with this clause.

It is important that the Government at least give us some reassurances that the code, the guidance, or the thresholds above which any measures should be taken make it clear what, if anything, the actual subscriber should have done to provide for a prima facie defence against such charges. At the moment, I do not think the contemplation of the code deals with that. I would argue that, particularly in relation to educational and other institutions, some exemption needs to be provided in the Bill. The Minister's colleague has already said that he is going to write to us on communal provision and we will undoubtedly return to the debate on these issues at that point. Therefore I will allow the Government a little time. However, this is a big issue about the practicality of this Bill and the measures under it to which the Government will have to give more satisfactory answers.

Lord Howard of Rising: My Lords, again this is a critical group of amendments. They deal with one of the most difficult issues regarding the practical application of these proposals. We have touched on the issue already in an earlier group, but I hope this will give us the opportunity to explore the issue of infringements committed not by the subscriber but by a guest or a hacker.

As it currently stands, a copyright owner, as has been pointed out already, can start the initial obligations process if they believe either that a subscriber has used an internet service to infringe their copyright or if a subscriber has allowed someone else to use their internet service to infringe copyright. In both circumstances, the process will be started against the subscriber to the internet service for either infringing copyright themselves or for allowing someone else to do so. It is still not clear what happens if someone uses an internet service without the knowledge or permission of the actual subscriber. It is possible to hijack an internet account, particularly a wi-fi account, as we have already heard, without the subscriber's knowledge. Unfortunately the vast majority of people do not have particularly high security settings, and so, I am informed, this hijacking is relatively easy to do.

Lord Maxton: I think the police have already taken cases which have been proven in court against people who have illegally taken a wi-fi service from someone else's computer. I know of a case where somebody knew a bloke had an unguarded wi-fi system in his house and so he sat outside in his car and got into the wi-fi service every day. As a result, he was charged with theft, I think.

6.45pm

Lord Howard of Rising: I thank the noble Lord for his intervention. The point I am trying to make is that the person living in the house can get blamed for what the chap in your example did while sitting in his motor car. It may not be the subscriber who has infringed or even allowed a copyright infringement. The Government need to clarify how they will try to tackle this problem. I can understand the thinking behind targeting the measures at an internet service subscriber but there must be some process of recognition at least that copyright infringement may have taken place using a subscriber's internet account without their knowledge.

Amendment 53 is designed to probe what sort of evidence will be available to indicate whether the infringement was by the subscriber or not. As I understand it, there is no way to tell, so a legitimate subscriber is open to penalties for something that was entirely unrelated to him. Of course, the subscriber has some responsibility not knowingly to allow file-sharing on his account, but there will be many cases where he has no way of knowing or preventing the hijacking of his account, as my noble friend Lord Lucas has pointed out.

There is an example of this which might be of interest to the Bench opposite. There is a railway line on which you can plug in and get an internet connection. At the moment, the ultimate person there is the noble Lord, Lord Adonis, who described himself the other day as the Thin Controller. I would hate this to be another example of the Government not listening to the Opposition when making legislation and ending up with one of their Ministers falling foul. I hope the Minister can clarify the Government's current thinking on this problem as the Bill does not seem to deal with it.

The Earl of Erroll: My Lords, I want to make a quick comment. Rather than leaving it till later, this is the moment when I probably should raise the point about who the subscriber is, which is what we are starting to discuss.

Another example is Parliament. I am not sure who signs the parliamentary contract, but presumably it is the subscriber. If, like me, many noble Lords have a home connection which is paid for by Parliament, presumably though they are the end user, they are not the subscriber: the contract is actually between PICT and Demon. As I have discovered when trying to get information as to why my internet is not working, you have to go through the very tortuous procedure of ringing up PICT, which then rings up Demon, which then tries to get hold of BT Wholesale, which says that it is not responsible and will only deal with someone else. It then talks to Openreach— PICT is not allowed to talk to Openreach because it has to go through Demon, which has the contract. It all runs on, and no one takes responsibility for the fault.

If anything can be done in this Bill to put a single responsibility on one single body so that these Chinese walls that we have artificially erected between the different parts of the BT group cannot be used, it might go a long way to getting decent internet access sorted out for people, so that you can actually get wholesale to talk to retail, et cetera.

That is not quite a red herring. The point really is: who is the subscriber? When some noble Lord's child, or maybe not even a child, a friend, downloads music or something like that, or, as we have just heard, downloads some text which was in copyright—though

let us leave that out for the moment—in their home, over the connection provided by Parliament, is Parliament going to be prosecuted? Does the whole parliamentary system then get suspended, if sufficient noble Lords do this? It is an interesting thought. We have to be very careful about what on earth the description of subscriber is, and the Government should be looking at that.

Secondly, on the legal definition of "allowed", the noble Lord, Lord Whitty, is right. I would like to hear from the Minister—following advice from his legal advisers—a precise definition of "allowed". We hit this problem in the Computer Misuse Act with the definition of the word "likely" which, we were told authoritatively by the Government's lawyers, meant "more likely than not". That is why it was not written into the Bill. For me and for most people that is not common usage. In common usage the word "allowed" would mean that I had given positive approval to an action. However, I am not sure that that is the legal definition. It may be that "failure to prevent" is the legal definition. If we do not accept one of these amendments, or the definition of the noble Lord, Lord Lucas, with authority, I would like by the next stage of the Bill to have a proper legal definition of "allowed".

Lord Clement-Jones: My Lords, I support the amendment of my noble friend Lady Miller. This has been an important debate because it could have considerable repercussions if we do not get the new clause right. As has been pointed out, there is no reference to the state of knowledge of a subscriber in such circumstances. To treat all subscribers the same as the clause appears to do is extraordinarily disproportionate. I am sure that word will be repeated again and again as we go through the Bill. If the proposed subsection is to remain, there needs to be provision within the clause in regard to the state of knowledge of the subscriber; putting it in the code will not be good enough. Right across most legislation "knowingly" and "having constructive knowledge" are common concepts in legal terminology. A liability which is triggered by a subscriber simply allowing someone to use their service—knowing that they are using it but having no knowledge of the activities engaged in—is well beyond what is acceptable. The general public would not understand it.

The idea that everyone will have to guard jealously the codes to their wi-fi systems at home—we all understand there are security issues with the general public passing by in a car, the example used by the noble Lord, Lord Maxton—is not acceptable. Having to treat your wi-fi system within your own home as some kind of fortress when visitors come is grossly disproportionate. Additional language needs to be inserted in the proposed new subsection before it will even begin to be acceptable.

Lord Davies of Oldham: My Lords, I am grateful to noble Lords who have spoken on these four amendments. The noble Earl, Lord Erroll, asked who is the subscriber and there is obviously one clear definition. I understand entirely the ramifications of his point about the provision of services by Parliament, but it is no part of the Bill to sort out the difficulties that he might have in identifying who is responsible for ensuring that his services are effective. Essentially, the subscriber is the person who receives the service under an agreement between the person and the provider of the service. That is the person we are identifying in the clause and on whom the amendments are concentrated.

The Earl of Erroll: So I am not the subscriber on the parliamentary network, Parliament is; or I am the subscriber although the contract is not with me. Which is it?

Lord Davies of Oldham: Let me be clear about one aspect which has clouded this debate and ought not be introduced again because we have been round the course before. We are not talking about heavy sanctions at this stage but about letters which will be sent out where activity has gone on, perhaps innocently but wrongly. I am being asked to address the matter as though a massive legal sanction is being deployed. We are trying to safeguard copyright. It may be other members of a family who have caused the infringement and, in such circumstances, we will not bring in the full rigour of the law. We will indicate that a transgression has been identified which may have been committed by a fond wife, by a junior member of the family or anyone else within the family. That is why the legislation envisages that the first response will be expressed in very limited terms.

I am not prepared to accept the constant reiterations, through these amendments, that a constable and the heavy hand of the law will arrive at a house with an arrest warrant for a signal charge, with a penalty of at least 25 years hard labour, as a result of the transgression. We are not talking about that and it will not do to translate it into such condign terms every time we get into this area. I understand that noble Lords may think and argue in a libertarian way that a transgression has occurred but no action needs to be taken. However, that is not the view of the Government. I am not too sure that it is the view of any noble Lord except when they are arguing the precious case of their particular amendment. The general view, in principle, is that the legislation seeks to deal with an issue which we need to take seriously. That does not mean that every measure in the Bill has a heavy sanction attached to it.

I emphasise that because at this point we are identifying who is the subscriber. Is any noble Lord maintaining that such a subscriber has no responsibility for the service they take out? Is any noble Lord maintaining that any Tom, Dick or Harry—whether a member of the family, a casual acquaintance or someone who drifts in from the road and is treated with due hospitality—can commit an offence on the computer and no one should pay any regard to the issue? If that were the case, then quite clearly the legislation would fall at the first fence and would not tackle the problem.

Lord Lucas: Does the Minister admit that we should not attach a liability to someone who has done all that could be reasonably be expected of them to behave correctly?

Lord Davies of Oldham: That is always a defence in terms of any ongoing sanction. However, they do not need a defence to the first letter because it merely indicates that the practice should cease. That process is reasonable enough, is it not?

Lord Whitty: My noble friend is being a little disingenuous. We are not talking about simply who receives the letter; the question of the subscriber runs through all the gradations of action. The only person against whom action can be taken under these provisions is the subscriber. The question of the noble Earl, Lord Erroll, applies all the way through. It is no use claiming that this clause relates only to the first letter, which does not matter much, because it applies all the way through.

Lord Davies of Oldham: That is right. It is a defence if the subscriber can identify that the connection has been hijacked in circumstances where they could in no conceivable way be held responsible.

7 pm

Lord Lucas: Can the noble Lord enlighten me, and indeed I suspect everybody in the technical world, as to how it is possible to identify that your network has been hijacked?

Lord Davies of Oldham: I am not going to attempt from this Dispatch Box to be fertile on the range of defences that might be erected. These amendments have been advanced against a background that members of a family may be guilty—others who have access to a home may cause the difficulty—and I merely indicate that the Bill is graduated to take account of offences of that kind. The challenge has to be laid at someone's door. It cannot be addressed to a possible member of a family in circumstances where the provider can have only one source of information—the person who commissions and buys the service. We must start from that point. Noble Lords will be emphatic that the range of potential offences can go from the most mild inadvertence, almost, by a young person to the most serious form of copyright infringement. The Bill is designed to take account of that. I seek to reject these amendments on the concept that it is not right that the Bill should identify an individual—a location—against whom the first charge can be laid and who takes responsibility for the computer.

I understand the point that the noble Baroness, Lady Miller, has re-emphasised. She brought it up earlier with regard to communal facilities. My noble friend Lord Young indicated that we will write about the provision of communal facilities. We recognise that the point needs a response. In dealing with Amendments 43 and 45 I merely seek to establish that there is bound to be a necessity for someone to be identified if a transgression has potentially occurred, and the identification is bound to address the subscriber. I hope noble Lords will recognise—the noble Lord, Lord Whitty, emphasised it—that we need to be proportional. I am seeking to reply to that. I am seeking to indicate just how balanced the Bill is in that relation.

The noble Lord, Lord Howard of Rising, has a rather different perspective with regard to his amendments. I am shaking in my boots at the thought—as the noble Earl, Lord Erroll, indicated—that if an offence occurs on railway trains, for which my noble friend Lord Adonis has significant responsibility, then it is my noble friend Lord Adonis who committed the offence. I will seek to defend my noble friend providing he is not the direct subscriber involved in this issue; I am sure he never would be.

I am grateful for the amendments that the noble Lord, Lord Howard of Rising, has put forward, but I do not think we can adopt them. There are bound to be occasions when a subscriber's internet service connection is used without their knowledge or consent—where their neighbours use an unprotected wireless hub. I do not think it is wi-fi in quite the way that my noble friend Lord Maxton indicated, but there is the potential for access through an unprotected wireless hub. Clearly it would be a proper defence for the subscriber that such an action had been taken without their knowledge, without their permission and had been—perhaps I will not use the word "hijacked" as I have already been brought to book over that—appropriated by someone.

It is important that people are aware that their connection can be used without their knowledge and permission and that there are simple measures that they can take to make such freeloading more difficult. They risk getting into trouble if they do not take the precautions. If we are going to make this legislation effective we have to increase the defences that individuals have with regard to the use of computers, and increase their awareness that giving casual opportunities to others to access the internet via their machines could render them considerable difficulty.

I appreciate that there may be some who do not object to unlawful file-sharing or their connection being used by whoever wishes to avail themselves of free, but unlawful content. All the illustrations that have been advanced with regard to these amendments today have been of relatively harmless unlawful uses. However, there are those who would use these opportunities for very improper purposes indeed. We are all too well aware of the problems caused by the downloading of child-abuse images in the wider society. The idea therefore that no one is going to be held responsible when an individual avails themselves of an opportunity through access to someone else's computer just will not do. We have to have the ability to protect society against illegal actions via the computer which can be for much darker purposes than have been suggested in the debate.

I want to emphasise the effect of Amendment 53, tabled by the noble Lord, Lord Howard. It would remove that part of the copyright infringement report that presents the evidence on which the report is based. In my view, the information has to be included as it is the basis on which subsequent action is taken. It is not at all clear how, if such information were not part of this, internet providers would be able to associate the report with their subscriber who is using the IP address at the time of the alleged infringement. It is a crucial part of the build-up of the case in significant circumstances.

There is a real problem, as indicated by anxieties in all parts of the House. IP addresses have a dynamic quality—they change every time you log on. Without the information prescribed in the Bill and in this clause, it would not be possible to process the reports.

This would mean that the whole system would be inoperable. We need that information. I respect the probings of the noble Lord, Lord Howard of Rising, on the matter. I am all too well aware that he has anxieties about the extensive ramifications of public action. In this area I hope he will recognise that if the information is not available then we would not be able to operate the safeguards on which the legislation is based. I therefore hope that the noble Lord will feel able to withdraw his amendment.

Lord Clement-Jones: My Lords, the Minister talked about darker purposes. No one quarrels with the concept of the real transgressors, but the whole discussion today has been about trying to protect those who are innocent or unknowing about what is happening and the use that is being made of their communal wi-fi system. The Minister was eloquent about the need to sweep everyone into the net so that the code could then begin to operate and so on, but he was not so eloquent about the defences that will be available to people. Where are they going to be available? Are they set out in the code? Is the householder's or subscriber's state of knowledge going to be set out in the code? Will there be a level of constructive knowledge that will be expected of a subscriber? Where will this be set out? Where will the defences be set out? It is all very well to have this broad sweep, but that is precisely why those who are advocating a narrower scope for this subsection are concerned: the state of knowledge does not seem to be covered in the Bill, and there is speculation about whether it is covered in the code.

Lord Davies of Oldham: My Lords, I understand the important point that the noble Lord makes. The code is important because it introduces flexibility in way that the primary legislation cannot. That is why the primary legislation is bound to be somewhat starker and less sophisticated than the code can be, and addresses itself less to the nuances that the noble Lord has identified. I have indicated, though, that we are fully cognisant of that point. That is why the code will be important in the consideration of the Bill.

I hope, though, that the noble Lord will appreciate that at this point we are not amending a code but dealing with the legislation. He will therefore see why I am reluctant to see changes to the Bill as drafted in circumstances where it has graduated elements. Nevertheless, we have certain principles that are essential if we are to reach the Bill's objectives, and that is why I am against the amendments.

Lord Lucas: My Lords, the Minister hangs on to the principle that the subscriber must be the one with whom the buck stops. I can see the practicality of that; the question is then how to make that practically liveable-with. Coming back to what the noble Lord, Lord Clement-Jones, has said, we must have some kind of idea what defences will be available to a subscriber.

I would very much like the Minister to say what I tried to get him to say before: that a subscriber who has done what he reasonably ought to have done will not find himself prosecuted under the Bill—in other words, his appeal against his details being given to the copyright holder will be successful if he can show that he has done what he ought to have done. He has, perhaps following the warning notice, taken some action of which he is reasonably capable and therefore, if a further transgression occurs, he has done what he could.

There has to be some kind of defence here, otherwise subscribers are being laid open to the actions of people over whom they have no control. The poor Clerk of the Parliaments is going to be in a great deal of trouble; every evening when I go home, I sit upstairs and zip a movie down on to my machine—my internet is very fast so it takes only a few minutes—and he is going to be liable for it. Presumably we will have some defences put up on the parliamentary network and there will be some accepted means for the Clerk to evade what would otherwise be his liability under the Bill. That is if it is indeed the Clerk; I presume it is, because Clerks seem to control everything in this place. There has to be some protection for the person who is essentially innocent and diligent, because the technology has too many holes in it otherwise.

The Earl of Erroll: It may assist the noble Lord to know that if you download from home, you are going straight out on to the internet rather than the parliamentary system, even if you are also getting e-mails over the virtual private network, so what you are downloading at that point cannot be monitored at all. If you are in the House they may be able to do monitor you, but those with home connections could quite easily circumvent that and there is no software that I know of that could prevent it.

7.15 pm

Lord Davies of Oldham: In response to the noble Lord, Lord Lucas, I agree with everything he said about what is necessary. Within this framework, of course I am identifying that the subscriber is responsible. If it reached the stage that the subscriber had got past the early stage and the issue was of such seriousness that the copyright owner was concerned to take court action, all the normal defences under copyright legislation would apply and the defendant would be within the framework of law in the same way as for any other offence. The Bill does not change or challenge that. The Bill quite properly sets out a different approach for before we reach such a significant stage, in order to take account of exactly the expressions I have had from all sides today about the limited responsibility of a subscriber in so many circumstances where they are not involved in major copyright fraud of this kind.

Baroness Miller of Chilthorne Domer: My Lords, this has been an interesting debate. I thank all noble Lords who have drawn the Minister out to get at least the statement he made in the last 30 seconds. The clause is remarkably sloppily drafted; noble Lords are right that we do not know what is meant by "allowed", nor do we even know what is meant by "subscriber". I am grateful to the noble Earl, Lord Erroll, who induced the Minister into what was for him a record speech, at something over 20 minutes, declining to answer the simple question of which subscriber it would be;

[Baroness Miller of Chilthorne Domer]
Parliament or the individual. I never cease to be an admirer of the noble Lord, Lord Davies of Oldham, because he is able to carry on at length, which enables him to avoid answering a very direct question like that.

The real clue in the Minister's answer, though, came when he started to talk about child abuse. Nothing in the Bill aims to deal with that issue, nor should it want to; we already have perfectly strong laws to deal with it. The only reason why I can imagine he would stray into that territory is to distract us all from the total inadequacy of the definitions in the clause.

I would be grateful if the Minister could come up with a list of the defences. I am grateful to my noble friend Lord Clement-Jones for his suggestion that there should be more that we can draw out from the code. However, it will not be adequate for us to feel that we can rely entirely on the code; there are some fundamentals that need to be defined in the Bill, and the definition of "allowed" is certainly one of them.

The other point that the Minister rested far too heavily on was the claim that we are all making a meal of the fact that there are not heavy sanctions and that this is not a very serious issue; the first letter will simply arrive for the subscriber, and if they are not guilty then they need not worry very much. I was under the impression, though, that by the time they receive that first warning letter, they will already be on a list. For most normal law-abiding citizens, even being on a list of people who have done something that they should not is not a position that they should be in if they have done nothing wrong.

There are a lot of issues there. However, the fundamental issue is that the subscriber is still, in the way that this is drafted, in the box labelled "guilty" until proven innocent. The Ministers may shake their heads, but until they have defined "allowed" then the subscriber is in the box marked "guilty" because they are not able to prove that they are innocent without going through the whole rigmarole of what is allowed in the Bill. They may only get a letter, and no further action may be taken. However, at that time, they are already, as I have said, on a list.

These are serious issues. It will be quite right to return to them on Report. Anything that the Government can do in the mean time in terms of elucidating exactly what they mean would be helpful. However, further definition is required. In the mean time, I beg leave to withdraw the amendment.

Amendment 43 withdrawn.

Amendments 44 to 49 not moved.

Amendment 50 unallocated.

Amendment 51 not moved.

Amendment 52

Moved by ***Lord Lucas***

52: Clause 4, page 6, line 19, at end insert—

"( ) sets out the value of the infringement on the basis described in the initial obligations;"

Lord Lucas: My Lords, in moving Amendment 52, I shall speak to the other amendments in this group. We come to the question of the threshold: how big a transgression is required before the subscriber can be thrown to the wolves? My objective is twofold. One is to not have the Government pay too much attention to the exact drafting. They are not paying attention to anything at the moment; I will wait a moment.

My first objective is to not have the Government pay attention to the exact drafting of any of these amendments. I am merely trying to flesh things out to see where the logic leads and what sort of provisions we might need. The concept of the threshold is important and we ought to take the opportunity in the Bill to say what we mean by it, rather than just leaving it as something which is mentioned at one point in the Bill and never returned to again.

As has already been pointed out, we will start this operation with millions of our own citizens being active transgressors. So, we are going to have to go through a process of education. Certainly to start with, and I hope to continue with, we are aiming at those who are causing a significant amount of damage. Those who are occasional transgressors are not going to find themselves picked up, because that level of misbehaviour is not doing any great damage to the industry and that level of enforcement would do a great deal of damage to polity. That is the position that I hope the Government are setting out to achieve.

If we are going to have a threshold, we have to define that threshold in terms of something. It seems to me that has to be value. One film, one music track and some large piece of software do not add up to three, if you see what I mean. These things have different values, and the only reasonable way of summing up the damage that has been done to copyright owners is to look at the value. It is perhaps not the most convenient way of doing it, but if the Government have a different way of describing the threshold I would very much like to hear what it is.

The second aspect, which comes through in Amendment 110, is that we should be looking at a proper sequence of events. Once the subscriber has been notified that they are suspected of having infringed, and have had the time to go through an appeal process—if they choose to avail themselves of it—only then should the clock start on the second infringement. The second infringement has to date from after that process in order for it to qualify them for their details being given to the copyright owners. In other words, you cannot do what one of my friends did, which is to travel from Edinburgh to Inverness tripping four speed cameras and lose one's licence on cumulative points. You have to be given notice and go through the process of education before you get onto the process of punishment. Those are the points I am trying to make in these amendments.

I hope to draw out of the Government how they see the process of threshold working; what it will feel like for a subscriber; and how their points will be totted up. Doubtless we will come back to this at another stage. I beg to move.

Lord Howard of Rising: My Lords, these amendments would require rights holders to provide the value of the alleged infringement in the copyright infringement report. Although sympathising with the thinking behind the amendments of my noble friend Lord Lucas, we believe that the copyright infringement report should focus on proof of a breach in online copyright and proof linking such a breach to a particular person. The actual value of the infringement is of great importance to the copyright owner. As such, any value is bound to be subjective, which makes it inappropriate for the value to be included to be obligatory, but if the Government come up with an alternative, as suggested by the noble Lord, Lord Lucas, we would be interested.

The Earl of Erroll: My Lords, I will make a couple of points on this, because it is a very important issue. Are we talking about numbers of infringements? There are many other amendments, coming up later, which talk about the number of infringements as opposed to the value of the infringements.

An awful lot of figures are being thrown around by various interested parties, for example, that X billion pounds are lost per year to the industry. Some of it I doubt, because I do not think that the people would have spent the money on it; some of it is probably real. There are also figures of how many people are involved. It would be useful to gather some of these for statistical purposes so that we can see how big the issue is and if it is really as big as they say.

For instance, one lot of people say that 7 million UK citizens are involved in this unlawful activity. That is a lot of people. It would be very useful to know whether this is the figure before we get heavyweight. If that is the figure and we are going to have an impact on it, these measures will not be able to go to them in one letter. The Minister very often says, "Oh, well, they're just going to get a letter and, of course, they are going to desist at that point". I would be very surprised if they did.

I know several senior government employees—it is probably safer for them if I leave it very general—who have unsecure wireless networks at home. One of them, who I was having a go at because he really ought to know better, said, "Oh, I'm miles out in the country; I'll be perfectly safe". Someone else at the same dinner said very much the same thing. This was a few nights ago when we were discussing this Bill. Do not think that there are a lot of sensible people out there who know what they are going to do or that this is going to happen overnight. You will catch a lot of people.

Let us say that to crack down on this 7 million, you are going to have to send out 1 million, perhaps 2 million, letters. It is quite a lot. Let us say that at the end of this you send a second letter, then a third letter; I do not know where we will get to. This is why the number of the infringements, or the value of the infringements, is so important because, at some point, technical measures will be taken to render that person's internet access useless. Music files are not very big. To prevent the downloading of music your internet access will be unusable. To prevent the downloading of film and large games programmes, you can throttle access to deny that and still allow moderate internet access. Some government websites, like Defra, will still time out on you but some of the others will not.

The whole point about this is that there has to be a proportionate and commensurate gain for the level of harm that we are going to do when we start cutting off, possibly, half a million or a million people's internet access. The rest of the Government are watching and will be worrying about it. I quote from the 8 January edition of the *Daily Telegraph*. Under the headline of a smiling chap who calls himself Gordon Brown and looks very like the Prime Minister—I am quite sure he is the Prime Minister—he says:

> "This can deliver benefits both to the firm and the worker, as well as the wider economy, society and the environment".

He is talking about universal super-fast broadband in all areas of the country. He continues:

> "Indeed, it will soon be seen as indispensable as electricity, gas or water … The digital initiative … can create 1.5 million new skilled jobs … no one area should be left out … Thanks, too, to the exceptional work of Martha Lane Fox, our aim within the next five years is to shift the vast majority of large transactional services online. This should help secure even better value for money".

This is saving taxpayers' money and means the efficient delivery of government services, but you must balance that with the fact that it all goes out of the window if you cut off a significant number of people's internet. That will happen perhaps after the third or the sixth letter, or after a certain value of transactions. I thought that I might as well mention it at this early stage because, in all the debates on this, the question of the level of infringement before action is taken needs to be taken seriously. The Minister, in his circumlocutions, is trying to suggest that we are being very heavy-handed about this, but I am afraid there is no point in going on and on about this at length; at the end of the day, he does not fool us. It is very simple; we must balance the money for six large digital rights holders against the value for the UK taxpayer. At some point, that will have to be decided, and this is as good an amendment as any for raising the issue.

7.30 pm

Lord Young of Norwood Green: My Lords, the purpose of these amendments is to add the value of the infringement to the description in the copyright infringement report. As the noble Lord, Lord Lucas, suggested, the amendment is probing.

On the face of it, the amendment would require something like 79p to be inserted for music—for those who are not familiar with this genre, this is the cost of an iTunes download—which would highlight the small amount that is apparently being forfeited by the copyright owner. While an apparently simple amendment, this would be impractical as things are just not that simple. The infringement that the copyright owner detects and puts into the copyright infringement report is material that has been uploaded and offered for downloading. That material may have been downloaded thousands of times; it is not possible to say for sure. In that case, what value should the copyright owner place on the infringement? It makes little sense to put in a range of anything from 79p to £7,900, but that might be the only accurate way of doing it. Nor is it sensible to use a simple multiplier of 10 for unreleased material, which underlines the practical difficulty of placing a monetary value on the infringement. Someone who

[LORD YOUNG OF NORWOOD GREEN]
places an unreleased blockbuster film or game on a file-sharing website for the world to download could cause huge economic damage. To the extent that it may fall under criminal rather than civil damage, is it sensible to assign that a value of £50?

It is also worth reminding ourselves that copyright does not only allow investment; it also gives the creator control over what happens to their creation. We might wish to have the works of the Beatles available for download, but, since they choose not to license that use, should we assign that work a zero value, as the noble Lord proposes? Since the value system proposed by the noble Lord is not reasonable or practical, it follows that it should not be used for setting a threshold, as this would be an arbitrary figure arrived at through a flawed process for assessing the real cost of the infringement.

It is perhaps worth restating at this point why we are making these provisions. Indeed, it has much to do with the cost of infringement to the creative economy. Noble Lords may be aware of some of the figures used in our impact assessment that was carried out last year: a cost of £290 million to £500 million over 10 years, but with increased revenues over the same period. Some might question the robustness of that analysis, and I do not pretend that firm figures from independent sources are thick on the ground, but it certainly shows the scale of the opportunity.

Furthermore, there is the unquantifiable but serious issue of the corrosive effect of widespread unlawful activity carrying on unchecked. It cannot be healthy for a significant proportion of our population to think that it is acceptable to satisfy their demand for content by ripping off others, including the artists. Protecting their intellectual property is primarily the responsibility of copyright owners themselves, but as a country we need to guard against unlawful behaviour becoming accepted as the norm.

The noble Lord, Lord Lucas, talked about the threshold. We absolutely accept that the concept of a threshold is important, and the Bill allows for it. Our approach to the threshold is that it should be for the code, but I recognise that this is not a sufficient answer. Let me say that we would expect the threshold to be based on the number of CIRs received over a period of time. The details should be left to the code. I accept that we must develop the concept of a threshold. We make allowances for it in the Bill and we will put flesh on to the bones in the code.

I concur with the noble Lord, Lord Howard of Rising, that the subscriber is the focus. He is right in that respect.

What can I say to the noble Earl, Lord Erroll? It does not matter how many times we say that this is a graduated response. It is not a heavyweight response or a crackdown. We are not talking about half a million users being disconnected from the internet. I ask only that we should have a proportionate debate. The measures that we are proposing are reasonable, proportionate and about changing culture and behaviour. It does not help us to have a proportionate debate, if he does not mind my saying so, if we keep exaggerating the figures.

Baroness Miller of Chilthorne Domer: At this stage, how has the Minister arrived at the assessment that we are not facing half a million disconnections? The noble Earl gave a figure of 7 million people doing this, and we might reasonably assume that, despite this legislation, a number will go on doing this. What assessment has the Minister made to come up with a figure, and how many disconnections does he think there will be? Does he have an estimate, before he dismisses the noble Earl's figures so lightly?

Lord Young of Norwood Green: I am dismissing the figures not lightly but seriously, because I do not think that they are based on any validated or credible evidence.

The Earl of Erroll: There can be no evidence because we are going into unknown territory, but the British Phonographic Industry has told me that the figure is 6.5 million, and the Creative Coalition Campaign gave me the figure of 7 million that I just gave the Committee. Those are presumably well researched figures. The Bill quite clearly states that the objective is get the figure down and that if there is no response from the general public—from these 6.5 million or 7 million people—further action will be taken. There is nothing on which anyone, including the Minister, can base the figures, for the simple reason that it has not been done yet. I do not believe that the public will respond because there are so many holes in this.

I am not reassured by the lack of technical precision in the Bill team's briefing. You do not upload when you file-share peer to peer. The whole point about peer-to-peer file-sharing is that there is no central server on which to upload files. They are downloaded directly from the other person; no uploading is involved. If the Minister's Bill team does not understand even that amount of technology, I have very little faith that it can answer any of the questions asked by the noble Lord, Lord Lucas, either. Neither he nor I believe half the things that the Minister says so airily, including that it is easy to say who is doing what on your personal network at home. If you can show me technically how I can do that and if a program is recommended to me that I can use, I will gladly and happily buy it and publicise it when I next talk to PC Pro and others.

Lord Young of Norwood Green: I still contend that that is an extrapolation. We are talking about a graduated response, but there is an assumption that somehow no one will respond positively and that everyone will carry on being a serial transgressor. Of course I cannot predict this, but we are not embarking on a campaign. The noble Earl talks about disconnections, but we do not use the term because it is not in the Bill. We have talked about possible measures to restrict bandwidth and so on. All I am asking is that we do not accept the worst-case scenarios when we have no basis for doing so. We appreciate the seriousness of what we are trying to embark on. We believe that our approach, as other noble Lords have said during this debate, is balanced and proportionate. Therefore, we do not accept the descriptions relating to heavyweight measures, a crackdown or cutting off. Neither do I accept the description of previous responses to the noble Earl as circumlocutions. We have genuinely tried to respond to concerns expressed this evening. We have said that

we will write to noble Lords as regards identifying subscribers and about problems with communal provision. These are important issues. We have also said that we will address the question of a threshold, because it is an important issue.

The noble Lord, Lord Lucas, said this was a probing amendment to see whether this concept could fly. We do not think that it can, but nevertheless we will address the question of a threshold. On the basis of that explanation and assurance, I hope that the noble Lord will feel able to withdraw the amendment.

Lord Lucas: My Lords, to come back to the question of figures, I really do not think the Government can get away with starting this great moral panic about the state of our creative industries and then, when relevant figures are quoted, say that there is no basis for them. There either is a basis for this whole legislation and the worry the Government have or there is not. The figure that has been adduced, other than that relating to 7,000 users, is that the Swedish use of the internet dropped by half when they introduced these provisions. If anything like that is true of this country, we are talking about a very large scale of illegal behaviour.

I entirely agree with the noble Lord that these amendments are not appropriate because I was thinking in terms of downloading. Actually, what we are talking about in terms of enforcement is making material available for uploading. Somebody who signs on to one of these peer-to-peer networks and downloads one tune thereby makes the whole of their library available—1,000, maybe—and along comes some copywriter and his organisation and zips each of those, and then he has 1,000 reports against his name. So it is not the level of activity that we are measuring, it is the number of tunes, or other property, which have been made available on a peer-to-peer network. That makes it very difficult to think of a valid threshold in terms of a number because we are not talking about level of activity, we are just talking about the passive side of it—the making available of copyright material for download. How this whole concept of threshold is addressed will be crucial.

Lord Young of Norwood Green: I have acknowledged the importance of this matter but we have not started a moral panic. We have not used what I once described in a previous Bill as a piece of Lucasian hyperbole. Neither do I accept the disparaging and unfortunate remark of the noble Earl, Lord Erroll, when he suggested that the Bill team did not even understand the technical concept. We have a range of very talented civil servants who are more than capable of understanding that when one person is downloading a file from another, by definition the other is uploading it to them. That is precisely how these provisions will work. We know that this is possible because the BPI and other major ISPs successfully trialled this notification approach last winter. So I just make a plea for us not to make those kind of—

The Earl of Erroll: I apologise for casting aspersions—I know that I should not have done so—but it would not normally be termed uploading to transmit a file effectively horizontally, where you do not upload it on to a central server. However, I apologise for the aspersions. I was getting slightly frustrated.

7.45 pm

Lord Lucas: My Lords, it is very important that the Government should flesh out their ideas of how threshold will work before the Bill leaves this House so that we can begin to understand how the Government see this being enforced and so that we may have a proper care for and understanding of what we are letting our citizens in for. The whole concept of threshold will be difficult to get right. I should be very grateful if the noble Lord could confirm that we will have more evidence of the Government's thinking and direction, even if we are given nothing final, before the Bill leaves the House so that we can get our heads round that, because 7 million people is an entirely believable number. Whatever process we set out in the Bill must reduce that number by an enormous degree before we let the lawyers for the copyright owners loose on them in a big way.

As I say, being subject to the BPI's lawyers, let alone some of the fringe operators, is an extremely unpleasant business when defending yourself against something which is not an ordinary act. If my neighbour says, "You kicked my dog", that is something which you can comprehend. You did or did not do that and other people might have seen it. But if you are told that something has happened on your network—people use machines, they do not understand how they work—you have no particular concept of how to get at that, how to control it, who might have done it or what might have happened. It is very difficult to defend yourself. You are dealing with potentially very large demands, as the noble Lord said. In America, where the industry has gone after people, it has gone after them for hundreds of thousands of dollars. The noble Lord has said it himself: what is the value of putting a thousand tunes on the net? It could be that a lot of damage has been caused. The industry cannot present any evidence as to how often these things have been downloaded by other people. We could get into the American scenario where people who put 1,000 tunes on the net are being gone after for $1,000 each.

Unless we get a sense of proportion and understanding into this, that what we are trying to do is educate the public and go after the determined and worst offenders, we are in real trouble as regards the consequences that this will have for people by just allowing an industry to delude itself that treating customers in this way is the way forward. So if the Government do not have figures that are better than ours, they must get some and give us an idea of how many people they think will fall foul of this and how we are to ensure that the overall effect of the Bill is effective for the industry and proportionate as far as our citizens are concerned. However, I entirely accept that these amendments will not do. I beg leave to withdraw the amendment.

Amendment 52 withdrawn.

Amendment 53 not moved.

Amendment 54

Moved by ***Lord Razzall***

54: Clause 4, page 6, line 20, leave out second "the" and insert "a"

Lord Razzall: My Lords, this is clearly not the most significant amendment that we are considering this evening. It is a small drafting amendment. Having looked at it, I must say that I think the Minister's officials should think about this. The reason that I move it is that, having in the course of the debate so far been quite rude to BSkyB and its lobbying, this amendment is very close to its heart, so I am happy to support it. On that basis, I assume that the Tory Party will as well.

Lord Howard of Rising: Will the noble Lord tell me why the Conservative Party would support the amendment?

Lord Razzall: That is very easy, because it is proposed by BSkyB.

Lord Howard of Rising: What connection does that have? Surely, if there was a connection, it would be with the gentlemen opposite, who have been supported by the *Sun* newspaper for the past X number of years until a short time ago.

Lord Razzall: Yes, but if we are going to continue the fun, times change.

Lord Davies of Oldham: If the noble Lord, Lord Razzall, is being all inclusive he can leave the Government out, because we are not going to accept the amendment on rational grounds that have nothing to do with extraneous factors.

Each copyright infringement report will identify a specific infringement of a specific copyright work by a specific IP address at a particular point in time. That IP address at that particular point in time will be expected to apply to a particular subscriber. The copyright owner has no knowledge of who that subscriber is, of course. It seems, therefore, that the definite article, rather than the indefinite, is the appropriate formulation.

Lord Razzall: I do not agree, and no doubt BSkyB will support me, but I beg leave to withdraw the amendment.

Amendment 54 withdrawn.

Amendment 55

Moved by ***Baroness Miller of Chilthorne Domer***

55: Clause 4, page 6, leave out lines 23 and 24

Baroness Miller of Chilthorne Domer: The Minister will be relieved that this is simply a probing amendment. It seeks to discover in new subsection (3)(d) what the Government think,

"any other requirement of the initial obligations code",

is likely to cover. This amendment was drafted before we had any idea what was likely to be in the code. I would be grateful if the Minister could outline what he thinks the other requirements are likely to be. I beg to move.

Lord Davies of Oldham: I am grateful to the noble Baroness for indicating that this is a probing amendment. We do not think the amendment would improve the Bill since, while it attempts to make the contents of a copyright infringement report clearer, it would have the effect of reducing the flexibility afforded by reference to the initial obligations code. We discussed in previous amendments the advantages of elements of flexibility introduced by the code which we would not want the rigidities of primary legislation to control. We all appreciate that primary legislation has great difficulties with a situation prone to change as rapidly as this industry and this technology. I accept the noble Baroness's point that the amendment was drafted before we had made progress with regard to the code. That is the basis for our position and I hope she will feel reassured that it is in that context that I am asking her to withdraw the amendment.

Baroness Miller of Chilthorne Domer: I am not sure the Minister quite answered my question about examples of any requirements but I will look again at the code. In the mean time, I beg leave to withdraw the amendment.

Amendment 55 withdrawn.

Amendment 56

Moved by ***Lord Razzall***

56: Clause 4, page 6, line 24, at end insert "; and

( ) includes a sworn statement by the person making the report that the information collected has been obtained in compliance with all relevant laws, including data protection and privacy laws, and by persons entitled to gather such information"

Lord Razzall: Amendments 56 and 57 touch on quite a fundamental point referred to by the noble Lord, Lord Lucas, at Second Reading about the beginning of this clause. It is quite clear that currently copyright owners, through their solicitors, are in danger of being accused of collecting data not necessarily in compliance with the law in order to pursue their justifiable claims on behalf of copyright owners. In Amendment 56, to get to the point dealt with by Clause 4, there must be,

"a sworn statement by the person making the report that the information collected has been obtained in compliance with all relevant laws".

This will insure that internet service providers are not compelled to act on information that is of questionable legality. This may be a small legal point but in practical terms it is quite a big point, bearing in mind the suggestions that currently people are obtaining information, perhaps contrary to data protection and privacy laws, which they are using against individual users charged with illegal file-sharing.

Amendment 57 makes a similar point and requires a sworn statement that the person making the report actually owns the requisite copyright. It is in line with

the amendments tabled by my noble friend Lord Clement-Jones that this should not be just in relation to allegations but in relation to significant and sworn statements, both with regard to compliance with the law and to the effect that the person making the report owns requisite copyright. It is a straightforward amendment which the Government ought to be prepared to accept. I beg to move.

Lord Howard of Rising: I have a great deal of support for these amendments. It is important that any internet service provider has confidence that, if they are to take action based on the receipt of a copyright infringement report, the evidence that it includes has been obtained legally and that, if they make use of such evidence, they will not be exposed to legal action from any alleged infringer. We have tabled a later amendment dealing with similar issues around mere conduit status. We will deal with this at the appropriate time but it is important to state that Amendment 56 would ensure that internet service providers are not using evidence that is of a dubious legal nature, as pointed out by the noble Lord, Lord Razzall, or that may incriminate them in the future.

Amendment 57 is equally important. First, internet service providers should not be expected to establish if a copyright infringement report has come from the genuine rights holder. Such an expectation would place too much of the burden of this process on internet service providers, who are not equipped to establish who actually holds the copyright. A sworn legal statement asserting ownership would give the internet service provider a level of security that they need to proceed. Secondly, this is an important element in the protection against scams and unscrupulous firms who may make false claims simply to pursue financial gain. The House, as has already been said today, is aware of a number of law firms who are already attempting to contact people threatening to disconnect them unless they pay a fine. It would be a small step for these firms to contact internet service providers with similar false claims. Evidence of ownership of the copyright would help prevent such an abuse of the system from taking place.

Lord Davies of Oldham: At the end of a reasonably testing sitting, it is my great pleasure to indicate that I am broadly in sympathy with the contributions of both noble Lords, Lord Razzall and Lord Howard of Rising. I am not going to accept the amendment but I will indicate why I think the noble Lord, Lord Razzall, will feel quite confident in withdrawing it.

There is no doubt that this is an important issue. It would clearly be extremely undesirable if information for a copyright infringement report was itself gathered unlawfully. However, it is not usual practice to put a requirement in legislation that it should be implemented in accordance with existing legislation. The law of the land applies and it goes without saying that it must be complied with in exercising the rights and fulfilling the obligations provided for in this Bill. The code of practice will set out in detail the conditions that a copyright infringement report must comply with. Ofcom and the Secretary of State will have to approve that code of practice and neither could do so if it permitted copyright owners or ISPs to breach laws relating to data protection, privacy or anything else. I do not, therefore, think that the first amendment is necessary.

In respect of Amendment 57, where the noble Lord is seeking a sworn statement that the person making the report owns the copyright being infringed, the Bill would mean that a copyright infringement report must comply with code requirements. Clause 8 makes clear that this must include requirements as to the means of obtaining evidence of copyright infringement for the CIR and the standard of evidence that must be included. A copyright infringement notice will only be valid if it is issued by the true owner of the copyright or someone authorised to act on his behalf. I am going this far: we will require a sworn statement of ownership of the relevant copyright. I apologise—when the noble Lord is suggesting that there should be a sworn statement, I think that that is otiose and an unnecessary additional cost factor. We expect that for a copyright infringement notice to meet the requirements of the code, the copyright owner would, indeed, have to sign a statement confirming that they had compiled the CIR, in compliance with the code, and that they were the owner of the copyright concerned. Therefore, there will be an attestation—an assertion and a clear written position—where the ownership is identified. I think that that will meet the point and, therefore, renders Amendment 57 otiose. However, I am grateful to the noble Lord for raising two important issues.

Lord Lucas: Perhaps I may pick up the noble Lord on Amendment 56. I would have more confidence in his reply if it were not the case that the details of tens of thousands of internet subscribers have already been passed to copyright owners on the basis of entirely black-box evidence. No one knows what system is being used to recover the information that forms the basis of the allegations that internet subscribers have downloaded stuff illegally. As the noble Lord said earlier, no known system can do this without breaching laws. It appears that this is already happening. Why, then, should we not guard against it happening in the future?

Lord Davies of Oldham: That is the whole purpose of the Bill—to actually guard against it and to identify to people the dangers involved in not complying with the law. The noble Lord will recognise that I identified in my response that the code of practice, backed by Ofcom and the Secretary of State's approval of it, will ensure that the way in which the CIRs are compiled are in accordance with the law.

Lord Razzall: I thank the Minister for his response. Having heard the noble Lord, Lord Lucas, I wonder whether the Minister's promise to me is rather the same as his earlier promise to me of an earldom. However, I will, of course, look in *Hansard* at what he said. In the mean time, I beg leave to withdraw the amendment.

Amendment 56 withdrawn.

Amendments 57 and 58 not moved.

Lord Faulkner of Worcester: My Lords, in view of the hour and the number of Members who have indicated that they wish to speak on the next item of

[Lord Faulkner of Worcester]
business, the usual channels have agreed that it may be for the convenience of the House if we do not resume proceedings on the Bill this evening. The intention is, therefore, to adjourn the House after proceedings on the Motion of the noble Lord, Lord Roper, have been completed. I hope your Lordships will agree that this is a sensible way forward in the circumstances.

House resumed.

Asylum: EUC Report

Motion to Agree

8.04 pm

Moved By ***Lord Roper***

To move that this House agrees the recommendations of the European Union Committee that Her Majesty's Government should exercise their right, in accordance with the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, to take part in the adoption and application of the proposed Directives on Asylum Qualifications and Asylum Procedures (documents 14863/09 and 14959/09) (First Report, HL Paper 6).

Lord Roper: My Lords, when your Lordships' House considers reports of the European Union Committee, it is almost invariably on a Motion in the name of the chairman of the sub-committee which compiled the report, and the terms of the Motion are that the House should take note of the report. The noble Lord, Lord Jopling, will shortly be elaborating on the reasons why the sub-committee which he chairs took the view—a view endorsed by the Select Committee—that the Government should opt in to the two directives in question. First, however, let me explain why this Motion is in my name, and why it invites your Lordships not to take note, but to agree.

Provisions on visas, asylum, immigration and other policies related to the free movement of workers were introduced into the Treaty establishing the European Community by the treaty of Amsterdam, which was signed on 2 October 1997 and came into force on 1 May 1999. The Government did not necessarily wish to be bound by EC measures on visas, asylum and immigration, and negotiated a protocol to give the United Kingdom the necessary flexibility. The effect of this protocol was that the United Kingdom does not take part in the negotiation and adoption of such measures, and is not bound by them unless, within three months of a proposal for legislation being presented to the Council of Ministers, the United Kingdom notifies the President of the Council that,

"it wishes to take part in the adoption and application",

of the proposed measure. This is the United Kingdom opt-in. What is sometimes referred to as an opt-out is simply a decision by the Government not to opt in, and requires no action by the United Kingdom.

While the terms of the proposed legislation are important in every case, the Government's decision on whether or not to opt in is of at least equal importance, since without an opt-in, the legislation, whatever its terms, will not apply in this country. Yet until recently there has been no procedure for Parliament to consider and give its view on what that decision should be—let alone a procedure for doing this speedily, so that the Government can be aware of Parliament's view before the three months have elapsed.

The matter came to a head with the signature of the treaty of Lisbon. Provisions on police and judicial co-operation in criminal matters were previously in Title VI of the Treaty on European Union—the so-called third pillar—and thus required unanimity. There was therefore no way in which the United Kingdom could be bound by such legislation against its will, and no need for an opt-in on such legislation. But under the Lisbon treaty the first and third pillars are merged, and the protocol giving the United Kingdom an opt-in has therefore been extended to cover this category of legislation as well.

When the European Union (Amendment) Bill was before the House, both the European Union Committee and the Committee on the Constitution—whose chairman, the noble Lord, Lord Goodlad, I see is in his place—sought to obtain from the then Leader of the House, the noble Baroness, Lady Ashton of Upholland, a procedure for allowing the House to give its view on whether the Government should opt in to any particular proposal for legislation before the time for doing so had expired. In April 2008, my predecessor, the noble Lord, Lord Grenfell, set up a small sub-committee of the European Union Select Committee to consider such a procedure. The Select Committee took evidence from the noble Baroness, Lady Ashton, in May 2008. The upshot of these discussions was that, on 9 June 2008, just before the Report stage of the Bill, the noble Baroness agreed to a series of undertakings, which are set out in Appendix 2 to the report that we are considering.

Two of these undertakings are of particular importance. First, the Government undertook to take into account any opinions of the committee on whether the United Kingdom should opt in. This is qualified by the words,

"Provided that any such views are forthcoming within 8 weeks of publication",

even though there are still five weeks of the three-month period to run. But, thus far, the Government have not suggested that they would ignore any views made known after eight weeks. It would be helpful if the Minister could confirm that the Government will take account of the committee's views whenever they are forthcoming, although I concede that this may not be possible if they are received very close to the end of the three-month period.

The second undertaking given by the noble Baroness was that where the committee concluded that the question of whether or not to opt in to a measure should be debated, this should be on a Motion that is amendable and the Government would make time for the debate.

The two undertakings amount to a substantial extension of Parliament's powers to hold the Government to account on European matters. They took effect when the treaty of Lisbon came into force on 1 December 2009, and your Lordships' Select Committee on the European Union lost no time in putting them to work. The two proposals for directives on asylum issues which are the subject of this report were published by

the Council on 23 October. The report, with the committee's views, was published six weeks later, on 4 December, having been agreed by the committee on 2 December, the day after the treaty came into force. The three-month period for opting in will expire on 23 January, and I am grateful to the House authorities for having made time for this debate today. I should be grateful if the Minister would confirm that the views expressed by all noble Lords in this debate will, like the committee's views in its report, be considered by the Government before they reach a decision to opt in to these proposals.

All the committee's substantive reports make recommendations for the Government to take particular courses of action. This however is the first of a category of report where the Government will have to decide within a matter of days whether to accept the recommendations and where the application of important legislation in the United Kingdom will depend on their decision. Without going into the substance of the report—which the noble Lord, Lord Jopling, will be dealing with in a moment or two—its recommendation are, in paragraph 17, that the Government should opt in to the proposed second-phase qualification directive; in paragraph 22, that the Government should opt in to the proposal for a revised Asylum Procedures Directive; and in paragraph 24, that the report should be debated, which is what we are about to do.

The Procedure Committee will shortly be considering whether any particular rules should apply to the debates on such Motions but, for the present, I hope that this Motion will allow a full debate on all the points raised in the report. I beg to move.

8.12 pm

Lord Jopling: My Lords, like the noble Lord, Lord Roper, I thank the Government for finding time for this debate. Of course, we would have liked to have the debate somewhat earlier, but I understand that the Leader of the House was not able to find time so, if I can put it this way, we have to be thankful for what we regard as second best. That second best is very much more than nothing at all.

As the noble Lord, Lord Roper, said, this is a report of Sub-Committee F of the European Union Committee, of which I have the honour to be the chairman. The noble Lord has dealt with the general issue of scrutiny by your Lordships' House of decisions by the Government on whether to opt in to the ever wider categories of legislation to which the opt-in applies. It now falls to me to explain why, in the case of these two proposals, the Committee took the view that the Government should opt in to both.

The new common European asylum system was one of the main planks of the first justice and home affairs programme under the treaty of Amsterdam, as the noble Lord, Lord Roper, said. Between 2000 and 2005, proposals were brought forward and adopted for six measures making the first phase of the system. Three of these measures were directives addressed to the member states. In logical order, though not the order in which they were adopted, they dealt with, first, the minimum standards for qualification as a refugee under the qualification directive; secondly, minimum standards on procedures for granting and withdrawing refugee status under the asylum procedures directive; and, thirdly, minimum standards for the reception conditions for asylum seekers under the reception conditions directive. All three proposals were the subject of reports from the European Union Committee which were debated previously in the House, and the Government opted in to all three, which have been implemented and apply currently in the United Kingdom.

The problem with the first-phase instruments is that they were negotiated under unanimity of the Council of Ministers, which meant that agreement could be found only at what I describe as the lowest common denominator. Obligations were vaguely formulated and the wide discretion allowed to member states in the way these were to be met has to some extent worked against the desired harmonising effect. It was envisaged that in the longer term, when the Council procedures turned towards qualified majority voting, these instruments should be replaced by fuller measures making for a truly common asylum policy and a unified status for refugees.

Accordingly, between December 2008 and October 2009, the Commission brought forward proposals for recast versions of these three directives. The first in time was the reception conditions directive, to which I referred earlier. In February last year we were told in evidence that the Government intended to maintain the minimum standards laid down by the existing directive, but they felt that the amendment dealing with arrangements on detention, wider access by asylum seekers to the labour market and some elements of financial support would be too onerous, and in March the Government told us that they had decided not to opt in to the recast directive.

The qualification and asylum procedures directives were brought forward on 23 October, and they are the subject of the current report. In appendices 4 and 5 we have printed the Government's explanatory memoranda setting out the major changes, and their views on them. In the case of the qualification directive they find many of the changes unobjectionable, but they have three main concerns. The first is the extension of the definition of family members to include minor married children and minor unmarried children even if they are not dependent. The second is that the draft appears to extend the international protection to persons who might have protection provided in their home countries, but not by agents able to enforce the rule of law. The third is a provision which appears to require protection to be continued to persons who may not still need it if they can provide compelling reasons arising from the previous persecution for not returning to their home country.

In the case of the asylum procedures directive, the Government seem to have one major fear. This is that their ability to make what they refer to as "fast and fair" decisions through the detained fast track scheme will be constrained by the proposals. They are also concerned about the more restrictive definition of what constitutes "manifestly unfounded applications" and the effect this may have on the United Kingdom's continued use of non-suspensive appeals.

[LORD JOPLING]

I am far from saying that these are trivial concerns but the Government have two choices. The first is that they should not opt in to either directive. In that case they will to all intents and purposes have abandoned all the common European asylum system other than the Dublin system of jurisdiction. Their second choice is to opt in to both proposals. They will then be able to play a full part in the negotiations. Other member states are likely to have identical fears. We have evidence to that effect. Surely it is likely that the Minister and his ministerial colleagues together with their officials will be able to persuade other delegations to meet their concerns.

A Justice and Home Affairs Council was held on 30 November and 1 December 2009. In advance of the council, the Parliamentary Under-Secretary of State at the Home Office, Meg Hillier, said:

"The UK believes these directives are not necessary at this time as they undermine the migration pact".

After the council, the Home Secretary in a Written Statement, stated that the United Kingdom did not support the draft directives. He feared that changes in who qualified would result in member states granting asylum to those not in need of European Union protection, and that restrictions on accelerated procedures would prevent fast and fair procedures on asylum applications and increased costs. He added significantly—this is important; I referred to it earlier—that:

"These concerns were supported by other member states".—[*Official Report*, Commons, 8/12/09; col. 17WS.]

This is precisely why the committee believes that the Government should opt in and then if necessary take up these points and try to settle them in the negotiations.

There is another most important reason why the committee believes the Government should opt in to both directives. Last year, in the context of the Government's failure to opt into the reception conditions directive, we explained the legal and technical problems this would cause. They are set out in full in our earlier report, which I am sure is familiar to noble Lords, and more briefly in our current report. I will sum them up in one sentence, which is very important indeed. While in nearly all other member states the recast directives will apply in place of the first-phase directives, a failure to opt in will result in the first-phase directives continuing to apply in the United Kingdom.

I know this is not the view of the Home Office's legal advisers. They believe the Government will be free to apply whatever law they like in this field. However, they have ranged against them, apart from Sub-Committee F and the European Union Committee, a formidable body of legal opinion. Sub-Committee F was assisted by the noble and learned Lord, Lord Mance, whose legal expertise is well known to your Lordships. The European Commission, whose views are printed in appendix 3 of the report, unequivocally agrees with our analysis of the law. In a memorandum of 8 December 2009 the Immigration Law Practitioners' Association, a body of distinguished lawyers who are specialists in the field, expressly concurs with us.

For all these reasons, I hope that the Minister will give us tonight the Government's reaction to these matters. Clearly the directives are not satisfactory as they stand but my committee feels that, to get them right, it would be better to be inside the negotiations than outside. This debate, as the noble Lord, Lord Roper, has said, is a new departure. The Committee badly wanted to debate these issues before decisions have to be taken. Of course, the debate is in a way putting the cart before the horse—but it is welcome for all that—because the Procedure Committee, of which I happen to be a member, has yet to make formal proposals to the House for dealing with the opt-in procedures. Until the House has those formal procedures, we must be content to have this debate on an interim basis with regard to the rules of the House.

8.24 pm

Lord Dykes: My Lords, I thank the noble Lord, Lord Roper, for coming to the House and presenting his remarks on this matter, and for representing the EU Select Committee as its chairman. I thank him for the excellent work that has been done in that regard. On Sub-Committee F, I also warmly thank the noble Lord, Lord Jopling, for his detailed explanation. I have no hesitation in, and derive great pleasure from, saying that I agree entirely with the remarks of the noble Lord, Lord Roper, as well as with those of the noble Lord, Lord Jopling, to whose warnings it is very important for the Government to pay attention—I except only his final remarks about the involvement of the Procedure Committee, but that is a matter that will have to be considered by the whole House tonight. I do not dismiss the importance of his point, but there may be a slightly different approach that I hope will also meet with some agreement at least from Members of this House, depending on how the debate now transpires.

I shall be brief, because there is not a great amount of time left for everybody to contribute and I do not want to repeat the points that have been made, except to echo the noble Lord, Lord Jopling, in his rightly saying that the Commission agreed with the committee in its recommendations. That is not to do down the British Government, but to give a practical illustration of the way in which the whole Union can co-operate, armed as we are at long last—happily, in my opinion; I hope other noble Lords agree—with the treaty of Lisbon. After all its travails, and as it unfolds gradually over the years, I hope that it will make interinstitutional and intercountry co-operation in the new, enlarged Union much easier and more practical. Therefore, to support the institutions when they plan common policies which have been agreed by the sovereign member Governments, both at European Council and Council of Ministers level, is reassuring and should not be a matter of anxiety for the Government.

This being the first of the opt-in debates makes it very important for the House tonight to try to reach the correct solution on this matter. I strongly agree with the recommendation that the Government should complete their opt-in intention, as we understood it to be originally, in respect of both directives, allowing for the obvious reality that, now that directives are put forward under codecision by the European Parliament and the Council of Ministers, there is much authority behind them on each and every occasion. Even if they

are quite rightly constructed as directives, allowing each member state substantial operational and practical administrative discretion in the way in which they operate policies if they are eventually approved and taken through as international law within the European Union is also very reassuring under the new procedures. That takes away some anxiety. Equally reassuring is the reality that once a directive is approved by the member states and by the Union as a whole, officials get down to detailed negotiations on the practical steps of implementing directives where common policies are concerned, while national officials do their own thing through the discretionary powers allowed even on fairly tightly drafted directives.

We on these Benches therefore underline the importance of this occasion, which is the first of the opt-in procedure debates. The Government indicated at Second Reading, in Committee and at the later stages of the debates on the Lisbon treaty in 2008 that they wished to be very positive about these matters. We were armed by the important reassurance of the noble Baroness, Lady Ashton, on 8 June 2008, which has been quoted already by both noble Lords, Lord Roper and Lord Jopling. That, too, is reassuring for those who are anxious about this new territory and this new kind of European legislation.

Perhaps I may make a European point without scaring any noble Lords: this is all in the context of our working together and solidarity with fellow member states, which is all the more important now that the Union is much larger and substantial differences still exist at the margins between member states in their internal policy functions on various directives and legislation proposed by the European Union. There is a manifest and enormously strong wish among the other member states and among committed Europeans here that the Lisbon treaty should work effectively. JHA, as was the old title, will be a crucial area, with a lot of legislation now flowing through to reassure the public of each member state that they will have very strict immigration, asylum and refugee policies. However, they will be policies—supported by the useful and helpful brief that we had from the UNHCR—which are fair, too, to genuine refugees and asylum seekers. That is a European point as well as a national, British one. This country is rightly proud of having been an asylum haven for refugees and asylum seekers over the centuries, not just in recent times where there has been some increase in these cases because of various conflicts in the world.

Once again I thank the noble Lord, Lord Roper, and his colleagues and the noble Lord, Lord Jopling, for the excellent report. It strongly recommends that Her Majesty's Government opt in to the second-phase qualification directive and the revised text of the APD. That meets with the practical support outside. For example, without misquoting, I have been told on good authority that many senior police officers in this country and elsewhere are increasingly impressed with Europol and Eurojust and their operations, one of them at least headed by Britain at the moment. They also feel that the practical access that is now applied to those institutions and to this need for opt-in, creating a common field of endeavour and policy framework for all, will make each country's task easier in dealing with not only their own countries when they are discussing these matters together but also the common policy throughout the European Union.

We have noted, too, that the usual channels on this occasion have adhered to a brisk timetable, although someone said that it could have been done a little earlier—I agree. This has been the first example and we had the Christmas break to intervene as well. This ensures that the House has full control and participation in this complex procedure. To conclude, once again these Benches strongly support in all respects the Government opting in to these two directives tonight. I hope when the Minister speaks he will confirm that that is their intention.

8.31 pm

Lord Hannay of Chiswick: My Lords, our debate tonight, as the noble Lord, Lord Roper, the Chairman of the EU Select Committee, has already said with great lucidity and force, marks an important step in the development and strengthening of this Parliament and this House's procedures for the scrutiny of draft EU legislation. This new system for handling opt-ins and opt-outs in the field of justice and home affairs is today being given its baptism of fire.

The new system was put in place as one of the concessions made by the Government during the process of clearing the way for the ratification of the Lisbon treaty. It thus represents common ground between those who supported ratification of the treaty, as I did, and those who opposed it. The challenge now is to make it work effectively.

For that to happen, a considerable acceleration of our procedures will be required at every level: the relevant EU sub-committee to which the piece of legislation is referred; the EU Select Committee; the scheduling of business of the House; and the Government's response to draft legislation so that we know what the Government's overall attitude is and what specific problems they foresee. I hope I am not being too complacent to claim that the sub-committee—on which I serve and which is led by the noble Lord, Lord Jopling, who so clearly introduced its views—and the EU Select Committee have produced their report to the House on these two proposals in a rapid and timely fashion.

As to the scheduling of this debate, I, too, feel, like the noble Lord, Lord Jopling, that it would have been better to have had it before the recess, giving the Government more time to consider the House's view before the deadline for reaching a decision on whether to opt in or out. In future, the responses of those who schedule debates will need to become more prompt if we are not to squander an opportunity to strengthen our scrutiny of EU legislation. Today's debate is better late than never. I am making a point for the future, not looking a gift horse in the mouth. The Government's response to the Commission's proposals has been pretty dilatory. Their Explanatory Memorandum only provided the vaguest idea of the problems they might have with the proposals. If the new system is to work, they will have to do better in future.

Lastly on the House itself, if the new procedures, including the quite separate one to handle passerelle proposals which is not involved tonight, are to work

[Lord Hannay of Chiswick]
well then a much wider selection of noble Lords will need to get involved, and not simply leave matters to a rather lonely dialogue between the members of the EU committees and the Front Benches.

The choice that the UK faces on the draft directives for asylum qualifications and asylum procedures is not between whether to accept the drafts as they stand or to opt out. It is whether to join the other member states in negotiating the final terms of the directives, seeking to improve them where we see problems arising or flaws existing, or to stand aside from the whole process of negotiation and leave the directives to be adopted without our having any influence on the final outcome as the price for them not applying directly to us.

It is important to underline this point. In proposing that the Government opt in, the committee and its sub-committee are not for one moment—the noble Lord, Lord Jopling, made this point extremely clear—suggesting that they should accept the draft proposals as they stand, nor are we dismissing or overlooking the concerns that the Government have expressed about their current state, vague and imprecise as they so far seem to be. We are merely saying that we believe that it is in the UK's interest to address these concerns at the negotiating table, rather than walking away from it and relying on the pretty illusory comfort blanket of an opt-out over our heads.

Asylum in an EU where movement between member states is more and more difficult to control is an area of policy that matters to us, whether the specific provisions apply to us or not. We need to be there at the table helping to shape EU policies. If the Government were to decide to opt out, there is a further legal complication, to which the noble Lord, Lord Jopling, referred, and to which we drew attention in the context of an earlier directive on reception conditions. It is that when we opt out from a new directive that covers matters dealt with in an earlier existing directive to which we have opted in, an anomalous and disputed outcome arises. Both your Lordships' committee and the Commission, when they responded to our report on the earlier directive, take the view that in those circumstances the earlier directive to which we had opted in will continue to apply in this country, while the Government's view is that it will not. This disagreement is only too likely to cause confusion and perhaps ultimately to give rise to litigation before the European Court of Justice. It is not the basic reason for our recommendation that the Government should opt in to these two directives, but it increases the potential disadvantages if we were not to do so.

While this is the first occasion on which the House has been required to operate a new post-Lisbon procedure, it will not be the last. It is therefore the beginning of a process, and it will set precedents for the future. Above all, it will begin to demonstrate whether we can put to good use the increased role that the Lisbon treaty provides for national parliaments to have their say on draft EU legislation. We therefore need to get off on the right foot, so I very much hope that the House will approve the Motion as tabled by the noble Lord, Lord Roper, and, in so doing, will make clear its view on these proposals for the Government's further consideration. That is the position I shall support in the Division Lobby, if that becomes necessary.

8.38 pm

Lord Avebury: My Lords, as every noble Lord who has spoken so far has said, this report is important not only because it deals with the UK's response to proposals for a common asylum procedure and uniform status of subsidiary protection adopted under the treaty of Lisbon, but because we are embarking on the first occasion of a completely new procedure in this House, which the Government undertook to introduce to enhance the scrutiny of justice and home affairs opt-ins.

The position is that legislation on these issues, including any that covers border checks, asylum and immigration, is subject to the UK opt-in and, in the case of these directives, which deal with the criteria for being treated as a refugee or a beneficiary of subsidiary protection, and with procedural standards for granting and withdrawing international protection, we have, as the noble Lord, Lord Hannay, has pointed out, very little time left before we have to make a decision. In practice, if the views of the House are to be taken into account by the Government, they need to be made aware of them, as the committee has pointed out, five weeks before the deadline. One hopes that they have been working on the assumption that the committee's recommendations would be approved, as the Motion before us proposes.

If we decide to part company with the rest of Europe on asylum, the complications are formidable. For example, as a refugee acquires the right of free movement, he might be able to claim asylum in France and then move to the UK even if he could not have qualified under the UK rules. The UNHCR's view is that the EU's effort to codify a legal framework applicable to all member states has great value and it also believes that the recast procedures directive would help to reduce the extraordinary variations in recognition rates between one country and another, exemplified by one nationality where the rates went from less than 1 per cent in country A to 50 per cent in country B.

The noble Lord, Lord Hannay, drew attention to the problems arising from the Government's decision not to opt in to the receptions directive, which deals with standards applying to conditions under which asylum seekers are received in member states. I would add to what he said because of its cross-references to the Dublin regulations identifying the state which has jurisdiction to examine and decide on asylum applications. More generally, the committee pointed out the legal conundrums that can arise when the UK has opted in to a measure and then does not opt in to a measure that repeals or replaces it, as with the receptions directive. The Commission agreed with the committee that where a measure was repealed and replaced, as the receptions directive was, and the UK did not opt in to the new version, the original version would continue to operate here. The committee asked for the Government's response to that view and the answer from the Minister, Meg Hillier, arrived after the report had gone to press. However, the Government disagree with both your

Lordships' committee and the Commission, as well as the many other experts cited by the noble Lord, Lord Jopling.

There is now a similar problem with the qualifications directive. The committee says that the objections that the UK has to, for example, a wider definition of family members can be dealt with, as the noble Lord, Lord Jopling, explained, in the negotiations on the final version of the directive. I would add that ILPA and the AIRE Centre say that the definition in the directive reflects our existing practice, which is based on Article 8 of the ECHR and the UN Convention on the Rights of the Child. Our policy, which is to be found in paragraph 349 of the Immigration Rules, taken with the asylum policy instructions on dependants, actually defines family members more broadly than in the directive. In any case, as the noble Lord, Lord Hannay, said, if we opt in, we can play a full and influential part in the further negotiations and we will have a vote in the final decision. Not opting in would reduce us to mere observers, with less weight and no vote. Again, if the rest of Europe admits family members outside those who are qualified under English law, they and their descendants would be free to move here in the end anyway.

On the procedures directive, the Government object to Article 34, which requires that if an applicant from a "safe third country" submits reasons for considering that, in his particular circumstances, the country is not safe, they have to be considered; whereas in our asylum rules, that application would be rejected as "manifestly unfounded". They also say that the six-month time limit for initial decisions on particular applications is too onerous, although the UKBA had got the average down to seven months, and its aim is to reduce it to two months, with a maximum of six as in the directives. All they need to do in the negotiations then is to insert a proviso that in a few defined awkward cases— for example, where an applicant's true identity or nationality cannot be determined— there could be a procedure for an extension, which would be welcome if it brought these cases under parliamentary scrutiny.

The UKBA's asylum statistics do not analyse applications by the time taken to reach the initial decision, but as the National Audit Office has said, there are big savings to be made in support and accommodation costs if the process is speeded up. Compliance with an EU obligation would be an additional incentive to prompt initial decisions. However, the UKBA has made impressive progress in reducing the average time from 22 months in 1997 to seven months in 2007 and it says that its aim is to get it down to two months with a maximum of six. Again, these are matters that can surely be ironed out in the further negotiations on the directive and not a justification for sabotaging the goal of a single, united asylum system throughout the whole of Europe.

Finally, the committee points out the extra difficulty that the UK faces if it does not opt into the procedures directive. The measures in the common European asylum system are intended to form a coherent whole with cross-references between them, and if we sign up to some and not others, we will get into an appalling legal muddle. The Minister has no doubt read the comments on these matters not only by UNHCR and ILPA, already mentioned, and by Asylum Aid, but many others as well. These NGOs are unanimous in wanting the Government to opt in to both of these directives, and I hope that they will be convinced not only by the arguments of our own committee, but those of every other body that knows anything at all about the subject.

8.46 pm

Lord Hodgson of Astley Abbotts: My Lords, I should like to address a few words to the procedural implications of what we are doing for the first time tonight, and then a few words on the actual issues under consideration in the directives. Membership of your Lordships' House gives one many interests and pleasures, not the least of which is the opportunity to serve under the chairmanship of my noble friend Lord Jopling, whose felicitous introduction to the subject tonight has illuminated the debate very well indeed.

Another important and fascinating opportunity for me has been to be part of the Lord Speaker's outreach programme. It enables one to visit groups and many schools to discuss and explain the role of your Lordships' House. I make three or four visits a year to maybe a couple of schools each day, and I never fail to learn something from those events. They are like a mirror held up in which you can see reflected the House of which we are all a part. I mention this because too often the reflection is formed by the single impression of the House at State Opening—predominantly elderly white males involved in a ceremony that seems, in the graphic words of a young man in Birmingham before Christmas, to belong to King Arthur and the Knights of the Round Table. One is able to put them straight about the diverse make-up of the House—plenty of women and representatives of religious and ethnic minorities—and also to explain the way that the procedures of your Lordships' House have evolved, and continue to evolve, to reflect the changing nature of our society, and to say that in many ways, despite appearances to the contrary, it is arguable that the House has moved more with the times than the other place. But, and it is a very big but, one is always conscious that, to be seen to be relevant by the generation that blogs and twitters, we need constantly to re-examine the efficacy of our procedures. I do not for a moment recommend a rolling programme of change for its own sake, but there is a need for a continued, careful, considered and searching analysis of how the House can carry out its tasks more effectively.

Earlier this year I had the privilege of taking part in the first Bill under another new procedure, that introduced for Law Commission Bills, when we considered the Perpetuities and Accumulations Bill. Our ability to hold evidence sessions during the passage of the Bill with the Minister—on that occasion the noble Lord, Lord Bach—present was, in my judgment, a much better way of getting good legislation on to the statute book. It was a mixture of technical, expert and political views received and acknowledged before the jelly had set. That is why I think the procedure we are using for the first time tonight is so important, because this procedure offers the chance to make

[LORD HODGSON OF ASTLEY ABBOTTS]
views known before the jelly has set, and to do so formally on the Floor of the House, as we are doing this evening.

I have to join the noble Lord, Lord Roper, and my noble friend Lord Jopling in the quibble; because to be of value, debates such as this one need to be held in time to influence the Government's thinking. As the noble Lord, Lord Roper, has told us, the deadline for a decision on whether to opt in must be taken before 23 January, which my diary tells me is Saturday week, and we are at Tuesday evening now. If we are going to implement this new approach effectively in the future, the Government need to find time earlier in the three-month process or else the approach will be stillborn. To change my metaphor swiftly, I hope that when the Minister comes to wind up he will tell us whether this particular horse has bolted.

This takes me to my final comment about the procedure. I said earlier that reforms to your Lordships' House needed to be careful and considered. I understand that the Procedure Committee will consider this reform again at a meeting on 2 February. I very much hope that they will endorse it, but—again it is a big but—it is for that committee to take the final decisions, because it can see the whole picture. It sees the whole canvas, not just the corner of the canvas that we are discussing this evening. Only with its endorsement are we likely to carry the whole House with us on this important step.

I turn briefly to the specifics under review. It must surely be critical that the Government find a way to align the legal views of the Home Office and the Commission on the interrelationships between these two sets of directives, and indeed future sets. The most urgent policy objective must be to reach agreement on whether the second directive does or does not repeal the first. Without this cornerstone agreement, it is hard to see how further useful discussion can take place on the other issues raised by the directives themselves. I certainly accept some of the concerns that the Government have expressed, particularly those in respect of the Asylum Procedures Directive. How to give the most effective voice to these concerns on a European stage is an important issue. I look forward to hearing from the Minister whether he believes that these concerns can best be addressed by withdrawal, as my noble friend Lord Jopling said, which failure to opt in would represent, or by negotiation from within. His summary of that decision will be very interesting, and I am sure the whole House awaits it with eager anticipation.

The approach we are using for the first time tonight is an important one, and I hope the Procedure Committee and then the whole House will endorse its use. Inter alia, it will provide a useful way for the Government to get out of the knots into which they have tied themselves on this important issue.

8.52 pm

Lord Wallace of Saltaire: My Lords, this morning I got down from my shelves the seventh report of Sub-Committee F of 1998-99 in which for the first time we addressed Schengen and the United Kingdom's border controls. It states:

> "Weaker United Kingdom influence over the development of European policies will mean that such policies will reflect the preferences of others, and fail to take into account particular United Kingdom concerns".

Well, we have come a long way from that. We are facing the possibility of the United Kingdom marginalising itself yet further in a developing European common asylum policy, and also tying ourselves up in an area in which there is a deliberate lack of clarity.

I have followed this issue and was a member of that sub-committee for several years. I compare the United Kingdom with Denmark in its whole attitude to this: we are fully prepared to co-operate as far as possible provided that we do not have to admit it to our public or our media. What we want to do is to have a large formal opt-out and an awful lot of informal opt-ins which we hope the *Daily Mail* will not notice. That is what we have done and what we continue to do, and I suspect that the Minister will tell us—not quite so bluntly, though he is wonderfully blunt on occasion—that that is what the Government wish to do on this occasion. It results in increasing confusion and great difficulties for anyone trying to in understand, in a paradise for lawyers, and a purgatory for officials. That is the direction in which I fear we are now drifting.

After all, Her Majesty's Government do have options. They can say that they have confidence in the negotiating skills of our Ministers and officials as we move from Commission proposals to agreed directive. We have potential allies—like-minded partners—with whom we can find coalitions to support our preferences, and we have to have a certain willingness to seek mutually acceptable compromises. That is the way in which many of us think we have to work through European and international co-operation.

On the other side there is the *Daily Mail* and *Daily Telegraph* image that foreigners in Brussels cook up appalling new rules and impose them on the innocent and powerless English. We hear this occasionally from the noble Lord, Lord Pearson, and others in this House. We recognise that at the moment there is a panic over migration in Britain and that the Government suffer almost as much as the Conservatives from pre-election fears of stirring-up fantasies of EU-enforced liberalisation in the press. Thus—I am sure that this does not apply to the Minister—there are many among the Labour Party's spin doctors who are frightened of the noble Lord, Lord Pearson, and Viscount Rothermere, and even more frightened of Sir Andrew Green.

UK interests are strongly at stake in this. Indeed, I recall Tony Blair, as Prime Minister, saying some years ago that Britain's frontiers are now on the Mediterranean. We know that the trickle of irregular immigrants and asylum seekers comes through Asia Minor and North Africa. When I was in Greece last spring I discovered that it has a camp of illegal immigrants in Patras. People arrive, flooding into Greek islands, but want to get through there to the northern and western members of the EU, including, of course, the United Kingdom.

We therefore have strong interests in working with others for common laws. Not only that, but we do actually work with others very closely. We have liaison officers in every other European member state and in others, and we have Border Agency staff working in

France and in other countries. In practice on the ground, we know that that is in our interests. I have not yet met a senior British police officer who does not believe that the entire corpus of European co-operation, from Europol down, is actively in Britain's interest. Indeed, I was surprised some months ago to sit in on a meeting of serving and former intelligence staff of various countries and to hear British participants saying how much European assessment co-operation is actively in Britain's interest.

Of course one hears none of that from the Government let alone from the Conservatives. The gap between the realities of co-operation and the sense that we are outside this continental co-operation—with its threats to English common law, English policing and British border controls—is at the root of our problems. I fear that in the run up to the general election the Government will accept the frightened option of deciding not to opt in, but I hope that the Government, with Ministers of the intelligence and judgment of the noble Lord, Lord West of Spithead, will accept that it is in our interests to opt in and then to negotiate carefully and positively.

8.58 pm

Baroness Hamwee: My Lords, I am glad that we have had longer to debate the report than we initially thought. I had wondered whether, had we been confined to the dinner hour, I could transfer my time to my noble friends, particularly my noble friend Lord Avebury, who could keep us going on the substantive issues—not only the procedure—for the whole of the dinner hour and longer.

It is a pity that our proceedings do not enable us to hear from the Minister early in the debate so that we could be clear about the Government's current thinking. I am not clear about it from the Explanatory Memorandum and I wonder, picking up on the point of the noble Lord, Lord Hodgson, whether school students would not find the way we go about these matters slightly back to front. However, I prefer to think of this as the Government still wishing to listen rather than giving a fixed position. I hope the Minister can tell us where the Government have got to.

I have been perplexed by some of the contents of the report—not the way it is framed but by some of the issues that have been raised. If, to use the vernacular, there is an opt-out, it seems a little odd that we are faced with disputes about interpretation and impact. There is something wrong with the procedures—but not in this building—if it is not clear whether the first phase measure will continue to apply. It would be abundantly clear to your Lordships that these Benches support the committee's recommendations. One might say that what the committee has said is even stronger than a recommendation in its normal meaning. Twice it urges—that is the term it uses—the Government to opt in; I doubt that the committee could have been more forceful.

As has been said, consistency across the EU is of fundamental importance in these issues. The Minister, Meg Hillier, referred to the migration pact. Her statement included in paragraph 21 of the report, which seems to me to be internally inconsistent, reads:

"The UK believes these directives are not necessary"—

I emphasise those words—

"at this time as they undermine the migration pact".

I could see that it might be one or the other. I find it difficult to understand that something might be not necessary because it undermines. The argument that the noble Lord, Lord Jopling, so clearly put forward about opting-in allowing for subsequent negotiation, answers Meg Hillier's point very clearly. The point made by the noble Lord, Lord Hodgson, is important as well. It involves not just negotiation on these particular directives but our future position on the original work.

I intend not to go through every detail but to pick a handful of instances. In response to many of the points in the Explanatory Memoranda arguing against the directives, one must say, "Yes, but what harm does it do?". References have been made to the points about unaccompanied minors. We are told that the changes would reflect the UK's existing practice. I read—today of all days, with news on the court's decision on Section 44—a certain sensitivity about our position in Europe; one can understand that sensitivity.

On Articles 11 and 18, the Government do not like being required to continue protection for people who no longer require it. The memorandum overlooks the need to,

"invoke compelling reasons arising out of previous persecution".

Again, it seems to me that the memorandum has not really picked up the issue in the correct way. On the procedures directive, I have already mentioned the comment that it is not necessary and it undermines. There is a clear difference of view. The committee welcomed the proposal in that it meets the concerns in the first phase directive. The UNHCR said the directives would contribute to, rather than undermine, the objective of swift and fair decision-making and would improve standards and the application of basic safeguards. As has been said, there are not just powerful arguments; powerful and very respectable organisations are making these arguments.

The noble Lord, Lord Hannay, said of the Explanatory Memoranda that in future the Government must do better. I am afraid I am going to be even more blunt. I think that these Explanatory Memoranda are poorly argued, they make assertions not arguments and they are really rather mean-minded.

9.04 pm

Baroness Neville-Jones: My Lords, this debate has certainly reflected the complexities of European legislation in this area and the challenges to ensuring proper scrutiny that it throws up. I agree with a number of the previous speakers who have stressed the importance of what we are discussing, and I am grateful for the clarity with which a number of them, particularly the noble Lord, Lord Roper, and my noble friend Lord Jopling have set out the issues that we need to be aware of in taking a view on what is in front of us.

There are two sets of issues: procedural issues, and the question of the practical effect of the European directives on our existing asylum procedures and the asylum situation in this country. I shall spend a moment on the second aspect. The noble Lord, Lord Jopling, explained with extreme clarity what is involved here

[Baroness Neville-Jones]
and set out for us the issues under consideration: the proposed revisions to the qualifications directive and the asylum procedures directive. As he said, his committee takes the view that the Government should exercise their right to take part in the adoption and application of the proposals.

A number of noble Lords have mentioned that while the Government broadly support the objectives of the Hague programme and the intentions to streamline standards and simplify the law, they have not opted in to one previous revision and have a number of reservations about the changes currently proposed through the qualifications directive and the asylum procedures directive. No doubt the Minister will take us into further detail about the Government's reservations and what the proposed revisions could achieve. From our Benches, the worry is that the opposite of simplification and streamlining could be the result.

The Government themselves recognise that many of the proposals would, to quote from the Government's own Memorandum to the committee,

"work against Member States' ability to tackle abuses of the asylum system".

It is fair to say that this anxiety applies in particular to the asylum procedures directive and the proposals in it to place restrictions on the use of accelerated procedures, which would be calculated to prevent the UK from certifying claims as clearly unfounded. We take the view that the powers and procedures to do those two things are deterrents against false claims.

We cannot ignore the situation that we are currently in. There are great pressures on the UK's asylum system. I cannot help feeling that if these further obligations were taken on, it would increase the problems that are already inherent in the way that the Government run the asylum system. The UK receives more asylum applications than any country in Europe other than France. In 2008 this totalled 30,500 applications, including dependents, a 10 per cent increase from the previous year. This is a big administrative burden, which often turns into a judicial one.

The noble Lord, Lord Dykes, referred to this country's proud record of granting asylum. I agree with him and he is right, but we cannot ignore the fact that our asylum procedures and the applications for asylum in this country cause great trouble and that the system is creaking. I shall give an example. One needs only to look at the number of failed asylum seekers in the UK, which is estimated to be between 155,000 and 283,000 people.

The Public Accounts Committee has said that it will take between 10 and 18 years to clear the backlog of asylum cases; other speakers mentioned this and perhaps draw a different conclusion. The Government have said that this backlog can be cleared by 2011. Could the Minister explain the basis for this confidence that the backlog can be cleared so much faster than the Public Accounts Committee thinks it can? Could the Minister say what progress the Home Office Case Resolution Directorate has made in dealing with these legacy cases? Does he accept that, particularly for those who have been in the country for many years, human rights law means that it will be very difficult to remove them? Will there be in effect an amnesty by stealth?

We can also look at the time taken to process asylum applications. The Home Office's aim is to give half of asylum applicants a decision within one month of application and 80 per cent of applicants a decision within two months. These are very laudable aims. The National Audit Office's analysis last year indicated that the department still has a very long way to go to achieve this. Of the 27,702 asylum decisions made from January 2007 to June 2008, case owners had made a decision within 30 days in 16 per cent of cases and decided a further 17 per cent of cases within 30 to 60 days. I do not suggest that these are dilatory officials. These cases pose great complexity for those trying to decide them.

The Public Accounts Committee has said that the process of coming to decisions on whether to grant asylum is still too slow. It must be right about that, though we have to acknowledge the difficulties involved. This has further increased the backlog of cases that will need to be dealt with. In other words, there is not much evidence that the whole thing is being speeded up.

The UK's asylum system is already under significant pressure. So, the question is: what would the effects of adopting and opting in to these procedures be on an already difficult situation? It is very hard to see how it would do anything other than make it even harder to come to a final decision, given the complex problems that the UK now faces in this area. As the Government themselves acknowledge, the revisions to the qualification directive can result in member states granting asylum to those who are not in any need of EU protection, and the measures on unaccompanied minors could undermine efforts to reduce the scourge of human trafficking. That is something that we cannot ignore. Let me be clear. Our view is that the implications of the proposed changes in these procedures, far from helping, would actually make what is an already bad situation even worse.

The Government have not indicated whether they will opt in to the proposed changes, although they have made clear that they have some quite significant reservations, and certainly on these Benches we have some reservations. The Select Committee is of the view that the Government are more concerned about the asylum procedures directive than the qualification directive. Is this actually the case? Also, could the Minister give your Lordships' House an indication of the extent to which the Government think that the proposals can be improved through negotiation? This is obviously a very key point. It is a point that has been made by other speakers who take the view that you opt in and then get your result through negotiation. I wish I shared the confidence of the committee and other speakers that, by opting in, the UK would get the changes that it wanted and needed.

At issue is this question: which is the best way to protect UK interests? We are all here to protect UK interests and so I hope that we will honour that point between us. What is the right way to do it? If the Government decide to opt out, they will nevertheless

be bound by the provisions of various directives, as amended, if and where those directives are cross-referenced in other legislation. I put that as a statement. My question, which other speakers in this debate have asked, is: will the Government confirm, or do they deny, that there will be no obligation on them to accept other cross-referenced legislation if they decide to opt out? Their analysis on that point would be very helpful.

Our position on these Benches is very clear. My right honourable friend David Cameron said that if we on these Benches are elected, we will introduce a UK sovereignty Bill to make it clear that ultimate authority stays in this country, and resides with Parliament, and that we will negotiate for a return of powers in the criminal justice area. It is particularly important for decisions about asylum to be taken by the British Government. The key part of the Stockholm programme for 2010 to 2014 is a proposed common EU asylum policy. We are on a path here; this is not the end of the road. This would introduce a central processing system for all EU asylum applications, and the quotas for each country would then be set. One has to ask what criteria would be taken into account, and what about the wishes of the individuals concerned? We on these Benches are pretty clear that the ultimate decision on who should be allowed to enter the UK must be made by the national Government.

The Government have said that they are considering the implications of not opting in to these revised directives for their broader, and bilateral, relationship with the EU and other member states, particularly the effect on their ability to secure co-operation and support from other member states on immigration and on wider areas of justice and home affairs. That is a perfectly legitimate point for the Government to take into account, but I come back to the central issue that we must consider here: the effect on asylum policy. Moreover, the UK's asylum policy is already compatible with many of the duties that the Hague programme would impose on it, so does the Minister accept that the UK can very well meet international standards and procedures without the need to give up its power to make independent decisions about asylum?

I am sure most noble Lords would agree that there is a need for greater scrutiny of European legislation, subject to the UK opting in. The procedural Motion laid down by the noble Lord, Lord Roper, arises, as he has said, from undertakings given by the noble Baroness, Lady Ashton, as Leader of the House during debates on the European Union (Amendment) Act. The Procedure Committee has not yet come to a decision on the procedure to be adopted in the circumstances that we face tonight. I understand that the committee hopes to resolve this at its next meeting on 2 February, and its recommendations will then be put to the whole House for a decision. That is obviously the right procedural order.

It is obviously perfectly appropriate that the House should discuss the directives, so that noble Lords can put on record now their views on the policies concerned and on the recommendations of the Select Committee report before us. That is what I have attempted to do. However, it would not be appropriate for the Motion in the name of the noble Lord, Lord Roper, to be pressed tonight, as that would prejudge the Procedure Committee's recommendations and the House's decision on the correct approach for handling such business.

Lord Hannay of Chiswick: I am most grateful to the noble Baroness for giving way. I have a very simple question. When this House approved the Lisbon treaty, did it not approve explicitly the concessions made by the Leader of the House that opt-ins would be debated and taken on an amendable Motion? That is not open to variance by the Procedure Committee. Will she confirm that is the case?

Baroness Neville-Jones: My Lords, I do not think I am in a position to confirm that that is the case. That is a matter for the Procedure Committee and it is obviously a matter for this House.

Noble Lords: Oh!

Baroness Neville-Jones: Well, we shall see. We do not believe that it would be appropriate for the Motion of the noble Lord, Lord Roper, to be pressed tonight, as that would prejudge the Procedure Committee's recommendations and the House's decision on the correct approach to handling such business. Clearly, there is a difference of opinion. Therefore, I ask noble Lords to support the noble Lord, Lord Roper, when he seeks to withdraw his Motion at the end of our debate.

9.20 pm

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): My Lords, I am very grateful to the European Union Select Committee for organising this debate and to all noble Lords who have contributed to it. As has already been explained most eloquently by the noble Lord, Lord Roper, another naval person, this debate is the first of its kind and is intended to enhance Parliament's role in scrutinising the application of our opt-in for justice and home affairs business. As the noble Lord, Lord Dykes, stated, this is very important for the House for that reason. With that in mind, I welcome the points made this evening and in the committee's report as a means of informing our deliberations on opt-in in relation to the two proposals for directives on asylum.

The noble Lord, Lord Roper, asked whether there was an opportunity post the eight-week period for any inputs to come in, because it is after eight weeks that the Cabinet committee take the collective government decision. I reassure him that, because this will not happen immediately on the conclusion of that eight-week period, there will probably be two or three weeks when further influence can be exercised in relation to that committee. But that said, there will be occasions in the future where debates are going on in Europe which mean that we shall need to take very quick decisions. In those cases, as the noble Lord, Lord Roper, concluded, it will be preferable to receive views as soon as possible.

The noble Lord, Lord Hannay, and a number of other noble Lords talked about tightening up procedures and how the procedures should go. I agree with that very good point. This needs to be looked at very

[LORD WEST OF SPITHEAD]
closely, and it will be. I would have preferred this matter to be taken earlier and I think we all understand the pressures that there were on the usual channels in this House to try to do that. In general terms, we should try to take it as early as possible. This was reinforced by the noble Lord, Lord Hodgson, who mentioned Knights of the Round Table. I should declare an interest as Knight President of the Society of Knights of the Round Table.

The enhanced scrutiny process does, none the less, reserve to the Government the final decision concerning the UK's participation in such measures and I must say that these directives do cause us real concerns. Consequently we would not be able to support a Motion urging us to opt into them. The key question for us will be whether the directives will help us to maintain the grip that we have now got on the UK's asylum system. The noble Baroness, Lady Neville-Jones, touched on this. The past few years have seen substantial improvements. Asylum intake is at less than a third of its 2002 peak. We have transformed the asylum system by introducing end-to-end case management by a single case owner. We now conclude more than 60 per cent of asylum cases within six months. The noble Lord, Lord Avebury, said some kind words about UKBA on that. However, I do not agree with him that a legally binding time limit is the best way of bringing this down even more. I think that probably practical co-operation with other member states is a better way of doing that. The key principle that drives our approach is very simple—those who need protection should get it quickly and those who do not should be sent home.

Our decision-making system was the first in the world to have its quality assurance endorsed by the UNHCR, and where protection is needed, we will provide it proudly. But we need to recognise that the majority of asylum claims are not well founded and are rejected—78 per cent in the last quarter and 72 per cent in the quarter before that, according to the most recently published statistics. Unfounded claims are often abusive claims, and dealing with them diverts resources that would be much better spent on genuine refugees, whom we want and need to support.

The key issue facing us and other member states is therefore to distinguish quickly and fairly between those who have well founded claims and those who do not. Sadly, our initial assessment is that the directives will make it harder, not easier, to achieve that aim. That is the hard-headed view we have taken. It is not fear of the *Daily Mail*, as the noble Lord, Lord Wallace, said.

The procedures directive is perhaps the more radical of the two. We have real concerns about many of its proposals, particularly restrictions on accelerated procedures and non-suspensive appeals. I know that the European Union Committee has, in the past, expressed concerns about the use by member states of accelerated procedures, as referred to by the noble Lord, Lord Jopling. An accelerated procedure is really nothing more than a way of deciding asylum claims more quickly than normal. Provided those subject to it have access to all the usual guarantees, there is no reason why an accelerated procedure should not be applied to any claim, as the current procedures directive allows. The new directive would allow this only in certain circumstances; for example, where the applicant comes from a listed "safe" country. That would stop us from operating our existing detained fast-track system (DFT), which provides fast and fair decisions on the applicants who go through it. It is an excellent way of managing the sort of asylum claims that are capable of being decided quickly and it also provides a deterrent to false claims as those making them will be refused quickly. The decisions it makes are fair—97 per cent of them are upheld on appeal. We therefore could not accept the restrictions proposed.

Non-suspensive appeals are a key tool that allows us to manage unfounded asylum claims. They are not given lightly. We have to be satisfied that an application is clearly unfounded—that is, so weak as to be bound to fail—before we can make the appeal non-suspensive. The directive would place additional and unnecessary restrictions on these appeals which would place an unnecessary burden on our asylum system and encourage unfounded claims. Other parts of the directive would create further restrictions. For example, more generous rules on translation will cost us probably in excess of £3 million a year. The attempt to specify in European legislation the training curriculum that asylum decision-makers should follow is a classic example of overregulation.

Overall, the directive, as drafted, strikes us as over-complicated and over-ambitious. We have real doubts about whether it would be sensible to opt in in its present form. The new qualification directive makes fewer changes but three in particular cause us concern. The first and most worrying is the amended definition of a family member—in particular, its extension to include the parents of unaccompanied minors. This carries an unacceptable risk of requiring us to admit the parents of unaccompanied minors who are granted status. We fear that this would create an incentive for children to be sent on ahead to member states in the hope that they will be granted status and their parents will be able to join them later. That would introduce a new threat to the welfare of children by incentivising their separation from their family units. We are already extremely concerned about the number of children and young people sent to the United Kingdom and the risks they face in making the journey, in particular those who are trafficked. We believe that the proposals for family reunion would simply lead to more children being put at risk. We also fear this would lead to a big increase in the number of applications we receive from minors—currently about 3,500 a year or 12 per cent of our intake—with very serious financial implications, given that at the moment the Government spend more than £140 million a year oin caring for these people.

We believe that the technical changes to asylum law that appear in Articles 7 and 8 referred to by a number of speakers risk leading to a big rise in the proportion of asylum claims that are granted. Of course, we have no problem with granting protection to those who need it—quite the reverse—but the people who may benefit from this would be those who do not need asylum because they can be protected adequately in their own country, either by a non-state agent or by relocating to another part of that country. We know that asylum intake is very sensitive to policy change in

the UK. For example, it dropped sharply after we tightened our policy on permission to work and stopped automatically granting leave to remain to certain nationalities in 2002-03. Intake from Zimbabwe went up dramatically after a court judgment favourable to Zimbabwean asylum seekers in 2008.

Both directives are bound to be amended during the course of negotiations—as referred to by a number of speakers—both by member states in the Council and by the European Parliament. The debate is whether we should be inside the tent or outside the tent. It is not, at this stage, possible to predict the outcome of these negotiations. Even if we were able to convince other member states to agree to remove those parts of the directives that we do not like, the European Parliament's approach to the asylum proposals to date indicates that it would be very likely to want to keep most of the original proposals, or even to go beyond them, and a compromise would need to be reached. This, in our view, means that there is a real risk that the directives eventually agreed will contain measures that we do not feel we can accept. Because of this, although we will reflect on the arguments that have been made tonight, we are minded not to opt in to the directives at this stage. That would not mean that we would be out of them permanently.

Under the treaties, we have the right to apply to take part in an instrument after it has been adopted if we have not opted into it from the start. If we did not opt in to these proposals, we would therefore remain engaged in the negotiations—not as fully as we could be, as has been said, but we are still able to influence them—and make our concerns known.

If the final directive addresses those concerns, we may well apply to take part. I can assure the House—

Lord Wallace of Saltaire: Can the Minister confirm that under that process we would ensure that we had much less influence over the final form of the directive, and would then have to accept what others have negotiated out of a process in which we had taken no part?

Lord West of Spithead: My Lords, the noble Lord is absolutely right; we would have less influence, but we would still have influence. This has been done in the past in that way.

I can assure the House that we remain committed to our international obligations towards refugees and asylum seekers, and to providing those who seek our protection with fast and fair decisions on their claims.

Whatever happens, we will also remain deeply involved in practical co-operation with other member states. We have already played a leading role in projects such as the European Asylum Curriculum, which helps to improve the training of caseworkers in Europe, and have provided bilateral support to member states experiencing pressures, such as Malta. We will continue to do that and, indeed, will seek to step up co-operation through our involvement in the European Asylum Support Office.

The noble Lord, Lord Jopling, and a number of other speakers mentioned the point about what happens to existing directives. Legally our view is that if we do not opt in to the new directive, the old ones are repealed and will cease to bind the United Kingdom. We know that there is disagreement over this, as a number of speakers mentioned. There is no doubt that the committee and the Commission have a very different view from that of our Government, and it is arguable that it is right that that should be taken up eventually and will have to be determined by the courts.

The noble Lord, Lord Avebury, suggested that an asylum seeker in France could claim a right to move freely to the United Kingdom. This is, of course, not correct. Asylum status in France or any other EU country does not confer the right to free movement. Only European Union citizens and their families have that right.

Lord Avebury: Perhaps I may clarify that by saying what I meant, which was that once the asylum seeker in France had obtained permanent leave to remain there, and had applied for citizenship, he would be free to move anywhere in the European Union.

Lord West of Spithead: If my understanding is correct, once someone is a European citizen, he has freedom to move. That is correct—I accept that. I misunderstood the noble Lord.

The Government's approach to these directives is well balanced and in the national interest. However, we have not yet taken a final decision on the opt-in and will reflect very carefully on the points that have been made tonight. We will also, of course, communicate our decision to the European Union Committee—

Lord Dykes: Would the Minister not agree that that is not the real motivation—it is actually to keep the Conservative Party at bay in the coming weeks and months? There are, after all, only three Tories in the Chamber. Why is he so worried?

Lord West of Spithead: My Lords, I can assure the House that it is absolutely not just to keep the Tory party at bay—

A noble Lord: "Just".

Lord West of Spithead: But we really believe these things.

It is only right that I tell the House that we are not minded to take the risk of opting in at this stage. We therefore could not support the Motion were it pressed to a vote.

Lord Roper: I thank all noble Lords for their useful contributions to the debate. I believe that the report prepared by the sub-committee under the chairmanship of the noble Lord, Lord Jopling, has provided a good basis for what has been a useful debate, and I thank the Minister for his reply, particularly on procedural matters. I suspect that the committee and the sub-committee would be rather less happy about some of the points he made on substantial matters, but nevertheless we are grateful that he has said that he will be taking our points into account in the Government's further consideration of these issues.

[Lord Roper]

On this occasion I do not think it appropriate to test the opinion of the House in view of the fact that the Procedure Committee has not yet completed its consideration of the House's procedure on these matters. I therefore beg leave to withdraw the Motion.

Some Lords objected to the request for leave to withdraw the Motion, so it was not granted.

Division on Lord Roper's Motion.

9.34 pm

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House adjourned at 9.45 pm.

Grand Committee

Tuesday, 12 January 2010

Northern Ireland Assembly Members Bill [HL]

Committee

3.30 pm

The Deputy Chairman of Committees (Baroness Gibson of Market Rasen): My Lords, if there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Clause 1 : Salaries and allowances

Amendment 1

Moved by ***Lord Glentoran***

1: Clause 1, page 1, line 7, leave out "may" and insert "must"

Lord Glentoran: My Lords, the purpose of this group of amendments is to force the Assembly to set up an independent body to decide on its remuneration packages, including pensions. I understand that it is in agreement with that. I am concerned that we jolly well get it done not in five years' time but in five weeks' time. On that basis, we hope that the first group of amendments can be welcomed by all parties.

We support the Bill as far as it goes but believe that it ought to go further and ought to be firmer on what it is trying to achieve—the establishment of an independent body to determine the remuneration of Members of the Legislative Assembly. Amendments 1 and 2 remove the option for the Assembly to retain its powers to set salaries and expenses and, under Amendments 5 and 8, direct that the Assembly must pass an Act to establish an independent body. Amendment 7 does the same with regard to pensions.

The amendments also mean that the Assembly cannot simply make a resolution conferring the functions on the Assembly Commission, which consists of the Speaker and five other Assembly Members. An Act of the Assembly is required. The Assembly will retain discretion on what kind of body it sets up, but the implication of the amendments is that the Assembly must act to address this issue. It is clear that all parties favour this. The letter from the Speaker of the Assembly, Mr Hay, to the right honourable Paul Goggins MP on 16 November showed that there is a willingness to set up an independent statutory board. Our amendments are designed to show how crucial this is. As the noble Baroness, Lady Royall, said at Second Reading, the Northern Ireland Assembly remains the odd man out among the United Kingdom legislatures as it currently cannot delegate its powers to set salaries.

It is clear that giving the task of setting salaries, expenses and pensions of the legislatures to independent bodies is the unstoppable trend. Parliament has been left chastened by revelations about the remunerations of Members and Northern Ireland was not immune. The Assembly in Stormont has been the subject of criticism since its creation—or, perhaps more accurately, since its first suspension—about the level of pay awarded to MLAs. As we have seen in Westminster, the criticism, whether justified or not, that politicians are in it for the money is incredibly damaging to the standing not just of individual politicians but to the very institutions of state. The delegation of powers to set levels of pay to a body which is seen to be separate from the political fray has come to be seen as one way to help restore trust in politics.

Clearly, there is a recognition from parties in Northern Ireland and from the Government of these facts, as that is the very reason we have this Bill. However, it seems to us that if we knew then what we know now, in all likelihood the 1998 Act which set up the Northern Ireland Assembly would not contain provisions merely giving the Assembly power to establish an independent body, but rather would have made provision going ahead and setting up such a body in tandem with the other organs of devolved Government. Our amendments seek to take that route. We have all agreed that an independent body is a good idea, but we do not want to have to wait for years for it to come about. We simply wish to see it established without delay. We hope therefore that noble Lords will wish to support this first group of amendments. I beg to move.

Baroness Harris of Richmond: My Lords, I am sorry that we cannot wholeheartedly support this set of amendments. We have not put our name to them because, as the noble Lord said, Amendments 1 and 2 would remove the ability of the Assembly to determine the Members' salaries and allowances, and we feel that the Bill is adequate in that regard. Amendment 5 is very similar. The noble Lord does not want the Assembly to be able to deal with its own matters but we feel that it would be retrograde to have Westminster do that.

Amendments 7 and 8 deal with Assembly Members' pension arrangements. Like the noble Lord, we very much hope that the Assembly will set up an independent body and would support that. In fact, we have had an indication that that will be so and that it will determine Members' salaries and allowances. It is up to that body, not us, to decide how those arrangements are made; we believe that it is inappropriate for Westminster to do this.

Lord Glentoran: My Lords, before the noble Baroness sits down, I think that she slightly misunderstood what I am attempting to do. Under my amendment, the Assembly would still have the power to set up the independent body. Therefore, it would have the power to make its own arrangements, but we are asking it to do that quicker than I think would otherwise be the case. It will have to be done by law but it will be done by the Assembly, not Westminster.

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My Lords, the Bill currently gives the Assembly discretion as to whether or not it should introduce independent control of salaries and allowances. This group of amendments would remove the Assembly's discretion and force it to introduce independent control.

Noble Lords will no doubt wish to note that the Speaker of the Assembly has informed the Government that the political parties in the Assembly are unanimously in favour of moving to independent control, as the

[Baroness Royall of Blaisdon]
noble Lord himself said. We are, of course, bringing this Bill forward at the request of the Assembly, so I see no reason to doubt that the Assembly will make the decision to introduce independent control. The Speaker has arranged a meeting of Assembly party leaders for 18 January to advance discussions on the make-up and establishment of the body. Therefore, I believe that we will have even more tangible information before the Report stage of the Bill.

Therefore, while in practice it may seem attractive for us at Westminster to impose independent control, there is an important issue of principle at stake here. At present, decisions on the level of salaries and allowances are taken in the Assembly, not here at Westminster. The function of decision-making on salaries and allowances is already devolved to Northern Ireland. Therefore, it is right that the decision on whether those salaries and allowances are set by the Assembly or by an independent body should also be a matter for the Assembly.

It is, in the Government's view, correct that devolved legislatures should retain responsibility for managing salaries and allowances for their elected representatives. These amendments would claw back some of that responsibility to Westminster by imposing independent control. The representatives in Northern Ireland are accountable to the electorate there and it is appropriate that they should have the discretion as to whether or not they introduce independent control.

It is important to note that independent control has not been imposed by Westminster on either the Welsh Assembly or the Scottish Parliament. I believe it is more appropriate for this legislation to enable the Assembly to make the decision about independent control. Taking the decision out of its hands would, in the Government's view, be a retrograde step, and therefore I cannot support this group of amendments.

Lord Glentoran: My Lords, I thank the noble Baroness for that response, which was as I expected. We are in the Moses Room and cannot divide in Grand Committee. With your Lordships' agreement, I beg leave to withdraw this amendment but I shall certainly consider it and almost certainly bring it back on Report, depending on what we learn from the meeting on 18 January.

Amendment 1 withdrawn.

Amendment 2 not moved.

Amendment 3

Moved by ***Lord Glentoran***

3: Clause 1, page 1, line 17, leave out subsection (5) and insert—

"( ) For subsection (4) substitute—

"(4) Provision under subsection (2A) must ensure that if a salary or allowances are payable to a member of the Assembly as a member of Parliament or as a member of the European Parliament, he shall not be eligible to receive such salary or allowances as a member of the Assembly until such time as he ceases to be a member of Parliament or a member of the European Parliament.""

Lord Glentoran: My Lords, the three amendments in this group make good the Conservative pledge to do away with the practice in Northern Ireland known as double-jobbing. Amendment 3, on which Amendment 4 is consequential, refers to salaries and expenses. Amendment 9 refers to Members' pensions.

The issue of Members of the Assembly in Belfast also being Members of Parliament is a peculiarly Northern Irish problem and one which all parties, I believe, including all those that represent Northern Irish constituencies in Westminster, have said they wish to end. The noble Lord, Lord Smith of Clifton, has committed his party's support for a measure which would get rid of double-jobbing, and indeed the noble Lord has put his name to the opposition amendments. At Second Reading, the noble Baroness, Lady Royall, reaffirmed the Government's intention to do something about it, although she was unable to specify what or how. These amendments will afford noble Lords the opportunity to debate the matter and, we hope, act decisively.

The amendments are not designed to prevent a person being elected to more than one legislature but they would in practice act as a very strong deterrent. They would prevent an Assembly Member drawing a salary, expenses, or pension for their membership of the Stormont Assembly if, at the same time, they were a Member of the House of Commons or the European Parliament. The latter institution is included to reflect the drafting of Section 47 of the Northern Ireland Act 1998, which provides for a proportionate reduction in salary if there is a double mandate. The amendments would not prevent somebody standing for—and, if the electorate were to endorse them, winning—a seat in two legislatures, but I think that noble Lords will recognise that we have tried to express strong disapproval of such a course of action by withholding any remuneration in the Assembly. The amendments stick to the narrow scope of this Bill but give realisation to the aspirations of both my party and our partners in the Ulster Unionist Party to end dual mandates as soon as possible.

As all parties are signed up in theory to the idea that double-jobbing must come to an end, we cannot see that these amendments will be controversial. The Kelly report made it a key recommendation for improving standards in politics in Northern Ireland, and the Government have committed themselves to implementing that report. The Democratic Unionist Party has agreed that the practice should end, although it would prefer to stretch out the deadline for five more years. We do not see why we should wait that long. We do not feel that constituents are served well by representatives who must be at both Stormont and Westminster but of course cannot be in two places at once. At Second Reading, the Minister suggested that,

"to be an elected representative in Westminster or the Northern Ireland Assembly is a full-time job in itself".—[*Official Report*, 1/12/09; col. 731.]

On a very basic, practical level, it is impossible to justify being a Member of both. To get from one to the other requires a trip to, from and through two airports and a flight in between; it is not a matter of hopping in the car or train for a short journey. The somewhat inflexible parliamentary and Assembly business

schedules and the need for a physical presence in both places mean that it may not be possible to conduct as much business by telephone or electronically as in other occupations. My personal experience covering no less than three portfolios here tells me that, with popping backwards and forwards and so on, I certainly could not do any more in Stormont. It is not a runner to do two jobs in two places; one cannot do them properly.

On a level where public perceptions are involved, meanwhile, it cannot have passed anyone's notice—we touched on this area in debating the last group of amendments—that a special type of fury is reserved in the public mind for politicians who are seen to be "on the make". I am sure that most, if not all, of the 16 MPs who are also MLAs work extremely hard for their constituents. However, the past year has shown us that simply carrying on as before is not good enough.

3.45 pm

The Kelly report is designed to bring a shift in the way that politics is conducted, by the good apples as well as the bad. One recommendation of Sir Christopher's report is to end double-jobbing. The issue is almost entirely exclusive to Northern Ireland; we have in front of us a Bill exclusively about the Northern Ireland Assembly. I hope that the Government grasp the opportunity that we have given them and support these amendments. As is customary in Grand Committee, we will not put this matter to a Division. However, it is clear that the appetite for the change that we are proposing exists, and we will certainly return to the topic on Report if the noble Baroness the Leader of the House is unable to give me what I am asking for.

Lord Smith of Clifton: My Lords, we support two of these amendments, as the noble Lord, Lord Glentoran, has said—and for the very reasons that he has articulated. Events of the last week have brought into particular focus and poignancy the problems associated with double-jobbing, and it can be in no one's interest for that practice to continue. We must give a strong signal to the Assembly and to the parties in Northern Ireland that this sort of activity must stop. That is why we support them, and we hope very much that the noble Baroness the Leader of the House will accept these amendments.

Viscount Brookeborough: My Lords, I support these amendments from an additional point of view, which is that in Northern Ireland we have had a great deal of trouble, perhaps over the last 30 years, with encouraging new blood into the political system. Even today, it is very difficult in certain respects to see where that new blood and those new people are going to come from. We have far too many people double-jobbing and excluding new blood from coming in. This is a really practical problem for the development of political progress, and for developing a future away from terrorism and some form of intimidation. We have far too many people who, if they have not been far too long in a single job, have also been holding people out of other jobs while not doing those jobs as fully as they should, so I support these amendments.

Lord Bew: My Lords, I, too, support the amendments in the name of the noble Lords, Lord Glentoran and Lord Smith of Clifton. There are two profound reasons why we have to consider these amendments very seriously. First, as the noble Lord, Lord Smith, has already said, since Second Reading on 1 December these issues have intensified. The issue of double-jobbing is not the essence of the current deepened crisis in the Assembly, but it is part of it. There is no doubt at all that there is a heightened public sensitivity in Northern Ireland about that issue, and it is right that this House should respond to that. There is now a crisis in the Assembly that has got considerably worse, and even a dangerous possibility that there will not be an Assembly drawing salaries of any sort in the near future unless some kind of negotiated breakthrough occurs in the next few days.

There is a second reason, which goes along with the point made by the noble Viscount, Lord Brookeborough, about bringing new talent in to the politics of Northern Ireland, which is so difficult to do. It is that during the Parliament that is now coming to an end, we have never had a time in which Northern Ireland Members in the House of Commons have contributed less to the wider issues of debate that affect the United Kingdom as a whole. This is not in any sense a personal condemnation; it is a legacy of a long and complicated peace process. There are very good reasons why that double-jobbing situation developed, going well beyond the aspirations of particular politicians. There is a political context to do with the Troubles that explains it and, to a considerable degree, as far as the recent past is concerned, excuses it.

Recently, the Assembly has been up and running. In that context, it is impossible for people to hold important positions or ministerial appointments in that Assembly, and appear in the House of Commons and contribute meaningfully to its work. The consequence has been that, in the past two years particularly, Northern Irish voices are not heard on wider issues of UK policy in this place. It is very important that we face up to the implications of that fact. That is why I support the amendment. It is not just a matter of the questions—now of public concern—about payments to politicians. There is also a more fundamental democratic question about the quality of the representation of Northern Ireland within the Parliament of the United Kingdom.

Lord Maginnis of Drumglass: I first apologise to the Committee for the unintentional interruption from my mobile phone a few moments ago.

I support the amendment, in so far as I have experienced the stresses of double-jobbing. It was necessary for me to be a member of the Northern Ireland Forum during the negotiations to establish an Assembly. At the same time, I was a Member of this House. It was a hideous time and I hope it can be noted—not as an example but as a practicality—that I did not find it possible to become a Member of the Northern Ireland Assembly when it was established. I knew exactly where my responsibilities lay. That has been the position of my party for some considerable time.

It is absolutely wrong that we should create virtually millionaires out of the political process. We know that we are here to serve the people who elect us. It is

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wrong—though I can understand that it has happened—that some politicians in Northern Ireland almost become the leaders of the very organisations that we have opposed. Those organisations have been involved in intimidation and power-brokering in Northern Ireland. That is not what the political arena is about. Hence, it is our obligation to the new and tender plant that is the Northern Ireland Assembly to ensure, first, that people who are elected are able to do the job properly and without distraction and, secondly, that there is an opportunity for the ordinary people who serve the public—we have many of them in Northern Ireland who are not and have never been elected—to contribute, if there is an opening or way through this powerful and tight cabal. I am not opposed to the party system but this cabal is currently part of the party system in Northern Ireland.

If you have lived all your life through the Troubles, you will know the difficulties of establishing something that will appeal to the entire community, serve the entire community and create confidence within the entire community, where one tradition is still distrustful of the other. We cannot have people elected to the Northern Ireland Assembly who are not totally dedicated to those ends. For that reason, I fully support—as I hope the Government will—the concept of one man or woman, one job.

Baroness Blood: My Lords, I support these two amendments. The previous speakers have already stated the perception in Northern Ireland that our elected people are simply in it for the money. One thing that I try to do with the young people with whom I work is to encourage them to become citizens and to take part in the political system. But when they see what is going on, they turn away. For that reason alone, the Government should support these two amendments.

Forgive my ignorance, but if this situation should happen, where would that leave Sinn Fein? Is it a special party? For the past 10 years, I have had an MP who has never—not once—sat in the House of Commons, but to my understanding he still receives a certain salary and expenses. If we intend drawing that line, we need to draw it.

Baroness Royall of Blaisdon: My Lords, I have listened carefully to the points made by noble Lords. The issue of dual mandates is clearly extremely important. Noble Lords sitting in this Committee have a great deal of experience in relation to double-jobbing. The noble Lord, Lord Glentoran, referred to the Kelly report. It may be helpful if I open my remarks by highlighting what Sir Christopher Kelly said when he addressed this issue in his report on MPs' expenses and salaries. He noted that:

"The holding of multiple mandates, or 'double jobbing' as it is known in Northern Ireland, appears to be unusually ingrained in the political culture there".

Sir Christopher suggested two reasons for this. The first was,

"because of the legacy of 'the troubles', which discouraged many individuals from getting involved in politics, leaving it to a small minority to participate".

The second was because of,

"the recent history of political instability, which led the political parties to be fearful of giving up seats in Westminster in case the local devolution settlement collapsed".

I am sure that we would all concur with the points made by Sir Christopher. At paragraph 12.22, Sir Christopher Kelly concluded:

"The Committee's view is that the practice of holding dual mandates in both the House of Commons and the devolved legislatures should be brought to an end as soon as possible. Ideally that would happen by the time of the scheduled elections to the three devolved legislatures in May 2011, or failing that by 2015 at the very latest".

It is the Government's view that the best way forward is for the parties in Northern Ireland to come to an agreement about how to bring dual mandates to a close. The Assembly and the Executive Review Committee have put dual mandates on their forward work programme. The Government are not therefore persuaded that this Bill should be used to force the hand of the Northern Ireland parties.

Consensus among the political parties in Northern Ireland has been a key feature of the process for many years. While it might seem attractive to push ahead with these amendments—I hear what noble Lords have said about the problems relating to double-jobbing, public sensitivities and the need for new talent, to which I shall return—I am not convinced that there is such a consensus among the parties and that this is the right approach.

The noble Viscount, Lord Brookeborough, and the noble Lord, Lord Bew, raised the issue of new blood being prevented by double-jobbing. It is clear that engaging people in politics in Northern Ireland is vital, as the noble Lord also said. I am confident that all political parties are keen to bring forward new talented people. It is entirely plausible that this is one reason why all parties wish to bring dual mandates to an end. It is a question of timing.

The noble Lords, Lord Bew and Lord Maginnis, and the noble Baroness raised the issue of heightened sensitivity to double-jobbing in the Assembly and the inability of Northern Ireland politicians to play a full part at Westminster—something about which we should all be concerned. I appreciate the concerns raised by noble Lords in relation to representation at Westminster.

Viscount Brookeborough: I thank the Minister for giving way. Would she not agree that she has contradicted the meaning of what she said? On the one hand, she said that the political parties in Northern Ireland do not have a consensus on this; on the other hand, she said that they will look at it. This is a voluntary regulation, and there are too many cases where we have looked for voluntary regulation and it has not come about. We will be waiting until the cows come home—the political parties will suppress new talent while they believe that they have a hold over the current system.

4 pm

Baroness Royall of Blaisdon: My Lords, the Government have said, quite clearly, that they agree with the Kelly report. We agree that double-jobbing must end by 2015. What we are talking about is

timing. We are trying to ensure that there is a consensus among the political parties in Northern Ireland, and we believe that ultimately this is what all the parties wish to do. One reason why they wish to do it is to ensure that new talent comes forward. We have to nurture that talent in order to nurture democracy—and goodness knows we all need to take care of our democracy and nurture new talent. We feel strongly that this decision should be taken by the politicians in Northern Ireland, and indeed by the electorate. Of course, I heed what the noble Lord says. Clearly he believes that there is a sense of urgency. We hope that the politicians in Northern Ireland will grasp that sense of urgency.

The noble Baroness asked how the amendments would affect Sinn Fein. The intended effect of the amendments would be that Sinn Fein MLAs who are also MPs would go from receiving the full MLA salary to receiving nothing. That is the effect of the amendments.

Were these amendments to be accepted, we at Westminster would be imposing a change of elected representative on many constituents in Northern Ireland. Whatever our opinions here about dual mandates, people in Northern Ireland saw fit to elect people to more than one legislature. Although I hear what noble Lords have said—

Lord Maginnis of Drumglass: I am grateful to the Minister for giving way. Perhaps I could suggest that there is an entirely different explanation for what has happened. I am sad to say that, through the actions of the Government, those parties that were supported until 1998, and which the population supported in a referendum to establish an agreement in Northern Ireland, were consistently—and sometimes, one is led to imagine, deliberately—undermined in order to change the balance of power in Northern Ireland and put it in the hands of those who had associations with the most difficult and despicable elements in our society. To walk away from this amendment would leave me—and, I believe, many in Northern Ireland—with the impression that the Government are determined to persist with building up those two despicable cabals to the detriment of the civil society that most people wish to see.

Baroness Royall of Blaisdon: My Lords, I hear the strength of feeling expressed by the noble Lord and understand what he says. However, this is not about cabals. We are talking about a timescale, as I explained earlier. There is a 2015 deadline and a 2011 deadline. However, I have not finished what I was saying. We believe that it should be the parties in Northern Ireland that come to an agreed position on the issue. If the parties that represent the people of Northern Ireland agreed that the amendments were the correct way to bring dual mandates to an end, the Government would have no difficulty with that.

Lord Maginnis of Drumglass: It sounds like turkeys voting for Christmas.

Baroness Royall of Blaisdon: Well, it is surprising what one has seen in one's life. It is not the case that the Government are interested in protecting the DUP and Sinn Fein, which is what the noble Lord was saying, although not in so many words. The Government believe that on an issue as important as this we should try to achieve agreement between the parties before taking action. However, I have heard the strength of feeling around the Committee this afternoon and I shall take this back and reflect further.

Lord Glentoran: My Lords, I thank the Minister, particularly for those last few words. It is a long time since I took the opportunity to tell the Government that I think they are totally wrong. There were many occasions in the past, but in recent years we have agreed on most things going forward and I am sorry that we do not on this particular issue.

Noble Lords behind me raised a number of issues, all of which are relevant and should be seriously taken into account. One word has not been used, which I think the Secretary of State needs to use—that is, to have a little courage. It is easy to walk away from the difficult decisions and leave them to somebody else. I do not believe that this is a difficult decision, however, or that if the Government accept this amendment there will be any problems from people who are Members of the Assembly and Westminster. However, it will take a certain amount of courage, and I have not seen much of that from the current Secretary of State.

The other thing that I do not wish to happen is to see the Government defeated on any Northern Ireland legislation. Having listened to what has been said in this debate and to the strength of feeling from the opposition parties, it is my inclination that that could well happen when we bring the amendment back on Report.

Baroness Royall of Blaisdon: There are two things. As I mentioned earlier, I have been listening to noble Lords and will reflect further and come back on Report, but I am not sure what is going to happen. However, I wish to defend my Secretary of State against the allegation that he has not shown courage. I know that Northern Ireland has had difficult days for many months and years, but in the difficult months in which I have been involved, my Secretary of State has shown courage. I wish to place that on record.

Lord Glentoran: I thank the Minister for that. I accept her defence of the Secretary of State and withdraw my criticism. I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Amendments 4 to 6 not moved.

Clause 1 agreed.

Clause 2 : Pensions etc

Amendments 7 to 9 not moved.

Clause 2 agreed.

Clause 3 agreed.

Bill reported without amendments.

Committee adjourned at 4.10 pm.

Written Statements

Tuesday 12 January 2010

Data Protection
Statement

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My right honourable friend the Minister of State, Ministry of Justice (Michael Wills) has made the following Written Ministerial Statement.

I am today publishing the Government's response to the consultation paper *Civil Monetary Penalties, Setting the Maximum Penalty*.

The purpose of this consultation was to seek views on the Government's proposal for the maximum civil monetary penalty that may be imposed by the Information Commissioner for serious contraventions of the data protection principles.

The consultation was launched on 9 November 2009 and closed on 21 December. At the same time, the Information Commissioner's Office consulted on its draft guidance which explains the circumstances in which the Information Commissioner would consider it appropriate to issue a monetary penalty notice, and how he will determine the amount of a monetary penalty.

Of the 52 responses to the Government's consultation paper, 27 agreed that £500,000 was the correct maximum level, eight thought it should be higher, nine thought there should be a lower level and eight did not respond directly to the question, but commented on other aspects of civil monetary penalties. The results show that a majority of respondents supported the Government's proposal to set the maximum penalty at £500,000.

I have today laid regulations before Parliament to provide the necessary legal framework to bring the Information Commissioner's power to serve a monetary penalty notice into force. I am making one statutory instrument, subject to negative resolution, which sets the maximum penalty at £500,000 and the information that must be included in a notice of intent and a monetary penalty notice. I have also laid another order in draft, which, if approved by Parliament, will outline other matters in relation to civil monetary penalties, such as provisions for the cancellation and variation of notices, enforcement and appeals. This will be subject to affirmative resolution and will be debated in due course.

Copies of the response to the consultation will be placed in the Libraries of both Houses and on the Ministry of Justice website at www.justice.gov.uk. Copies are also available in the Vote Office and the Printed Paper Office.

EU: Environment Council
Statement

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): My right honourable friend the Secretary of State (Hilary Benn) has made the following Written Ministerial Statement.

I represented the UK at the Environment Council in Brussels on 22 December.

The council adopted conclusions on international biodiversity, focusing on EU priorities for forthcoming global discussions on the post-2010 biodiversity framework, which will lead to a new global target on biodiversity. Conclusions on the combination effects of chemicals, which highlighted the need for further work to assess the combination effects of individual chemicals, were also agreed.

The council adopted conclusions on the marine environment and the Baltic Sea strategy. These include an invitation to the Commission to develop legislative proposals to phase out and/or ban phosphates in detergents, starting with phosphates in laundry detergents for domestic use and, based on the evidence from a further impact assessment, beyond that.

Over lunch, Ministers discussed the outcome of the Copenhagen climate change conference. The outcome had not been what was hoped for, but progress was made, particularly on a temperature goal, financing and monitoring, reporting and verification; and I urged colleagues to maintain ambition and work towards a legally binding text. Environment Ministers will return to the issue at their informal meeting in Seville on 15 to 17 January.

The council held a policy debate on the proposed biocides regulation, during which the majority of member states supported the option of Community authorisation for certain biocides. I supported Community authorisation as a means of streamlining the system, and asked for careful definition of "low-risk" products; decisions on the use of certain biocides would still be needed in specific cases.

Under any other business, I raised the timber due diligence regulation, which is being handled by the Agriculture and Fisheries Council. I argued for the inclusion of a prohibition on the first placing of illegal timber on the Community market, and urged Environment Ministers to support strengthening the regulation in this way as it progresses through the legislative process. On biomass sustainability criteria, the UK supported the call from Belgium, the Netherlands and Luxembourg for mandatory sustainability criteria. The presidency gave a progress report on the Commission proposal on CO_2 emissions from vans. Spain introduced the work programme for its presidency.

Foreign Compensation Commission: Annual Report
Statement

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): My honourable friend the Minister for Europe (Chris Bryant) has made the following Written Ministerial Statement.

I will today lay before Parliament the annual report of the Foreign Compensation Commission for 2008-09. This is the 54th such report.

Copies will be placed in the Library of the House and the Vote Office. A copy will also be available on the Foreign Compensation Commission's website at www.fcc.gov.uk.

The report provides an account of the Commission's activities during the financial year 2008-09. The Commission was not engaged in any active distribution programmes during the period in question and operates on a care and maintenance basis.

Housing Ombudsman Service: Annual Report

Statement

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): My honourable friend the Parliamentary Under-Secretary of State (Ian Austin) has made the following Written Ministerial Statement.

I have today deposited in the Library of the House a copy of the annual report and accounts of the Housing Ombudsman Service (HOS) for the financial year 2008-09.

The HOS is an executive non-departmental public body sponsored by Communities and Local Government to investigate complaints from Registered Social Landlord (RSL—a housing association registered with the Tenant Services Authority) tenants and prospective tenants who remain dissatisfied having completed the RSL's own complaints procedure. The scheme is an independent complaints resolution mechanism and is administered by a private, not for profit, company, the Independent Housing Ombudsman Limited (IHOL).

The report sets out its main activities and performance during the year, detailing the financial status of the service and providing casework statistics covering the past 12 months.

The statistics reveal that in 2008-09 HOS accepted over 3,800 new complaints for investigation, an increase of 21 per cent over the previous year. In addition to complaints, HOS also responded to over 2,800 enquiries. Greater efficiency in investigations has enabled HOS to meet or exceed performance targets and to invest more resources in improving customer care and dispute resolution in the early stages of the complaints process.

Pensions

Statement

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): My honourable friend the Minister of State for Pensions and the Ageing Society (Angela Eagle) has made the following Written Ministerial Statement.

Today is a very important milestone for the delivery of workplace pension reform, including setting up NEST (National Employment Savings Trust), previously known as personal accounts. We are publishing the:

Government's response to the workplace pension reform "Completing the Picture" consultation;

regulations that frame automatic enrolment, scheme quality, compliance and the other elements that combine to deliver workplace pension reform;

regulations for NEST and establishing the corporation that will run the scheme, as well as winding-up PADA in July 2010; and

associated impact assessment.

These reforms deliver the final part of the package proposed by the independent Pensions Commission, and reflect a significant delivery milestone based on a broad consensus.

We have worked closely with stakeholders, employers, industry, and others to get here, and the changes created by these regulations will allow millions of workers to save for a pension with a new mandatory minimum contribution from their employer, many for the first time.

A guiding principle has been to establish the minimum level of effective regulation to enable pension reform to succeed without placing unnecessary burdens on employers or the pensions industry. We listened to stakeholders and considered their responses to our consultations. We have made a number of changes, which we hope will be well received. These increase flexibility and reduce some of the process burdens without compromising our headline policy intentions or undermining protection for individuals.

The regulations include the changes to the implementation plan, announced in the Pre-Budget Report, which are designed to help small and start-up businesses adjust to the new arrangements for workplace pension saving. Auto-enrolment will begin as planned in October 2012 and the reforms will be fully implemented by October 2017.

Also published today is The NEST order and, the order to establish NEST corporation and, as a consequence, the order that will wind up the Personal Accounts Delivery Authority on 5 July 2010.

We are currently recruiting the chair and members for NEST Corporation. We will establish the corporation this summer, as only the trustee can make certain key decisions necessary to complete the implementation of the scheme for example, agreeing the statement of investment principles. As the policy and design of the scheme is established in regulations, we concluded PADA can be wound up at the same time, with the task of completing the operational implementation and the subsequent running of the scheme passed on to NEST Corporation.

Regulations published today:

The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010

These set out the practical arrangements employers must make to automatically enrol eligible jobholders into a pension scheme, including the arrangements an individual must make if they wish to opt out of pension saving and the minimum quality standards certain schemes must reach in order to be used by employers to automatically enrol jobholders.

http://www.opsi.gov.uk/si/si2010/draft/ukdsi_9780111490655_en_1

The Employers' Duties (Implementation) Regulations 2010

These set out the arrangements for implementing the new employer duties by applying the duties to employers over a period of time according to the employers' description.

http://www.opsi.gov.uk/si/si2010/uksi_20100004_en_1

The Employers' Duties (Registration and Compliance) Regulations 2010

These enable the Pensions Regulator to monitor and enforce compliance with the employer duties and safeguards.

http://www.opsi.gov.uk/si/si2010/uksi_20100005_en_1

The Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2010

This amends an existing order to ensure that any detriment or dismissal a worker suffers as a result of making a complaint to the Pensions Regulator is unlawful.

http://www.opsi.gov.uk/si/si2010/uksi_20100007_en_1

The Pensions Act 2008 (Commencement No. 5) Order 2010

Establishes the NEST Corporation from 5 July 2010.

http://www.opsi.gov.uk/si/si2010/uksi_20100010_en_1

The NEST Corporation Naming and Financial Year Order 2010

Sets out the name of the trustee corporation which will run NEST.

Sets the financial year of the corporation in line with Government's financial year—1 April to 31 March.

http://www.opsi.gov.uk/si/si2010/uksi_20100003_en_1

The NEST Order 2010

Sets up the framework for NEST, a simple, low cost scheme which employers can use to discharge their new duty.

http://www.opsi.gov.uk/si/si2010/draft/ukdsi_9780111490495_en_1

The NEST (Consequential Provisions) Order 2010, and the Application of Pension Legislation to the NEST Corporation Regulations 2010

Makes some minor modifications to existing pension legislation in relation to the scheme through The NEST Consequential Provisions Order and the Application of Pension Legislation to the NEST Corporation Regulations, for instance, that the scheme will not have member-nominated trustees, as the members' panel will represent the views of scheme members.

http://www.opsi.gov.uk/si/si2010/uksi_20100009_en_1; and

http://www.opsi.gov.uk/si/si2010/uksi_20100008_en_1

The Transfer Values (Disapplication) Regulations 2010

Bans transfers of cash equivalent sums built up under other pension arrangements into and out of NEST, to ensure the scheme complements those schemes already in the existing pensions market.

http://www.opsi.gov.uk/si/si2010/uksi_20100006_en_1

The Personal Accounts Delivery Authority Winding Up Order 2010

Winds up the Personal Accounts Delivery Authority from 5 July 2010. Transfers PADA's property, rights and liabilities in the main to the NEST Corporation.

http://www.opsi.gov.uk/si/si2010/draft/ukdsi_9780111490501_en_1

Documents published today:

Available at www.dwp.gov.uk/workplace-pension-reforms.

Workplace Pension Reform—Completing the Picture. Government response to the consultation.

This covers:

arrangements for implementing the reforms;

elements of the employer duty requirements not covered in the consultation of March 2009;

the quality requirements for defined benefit (DB) and hybrid schemes, and transitional arrangements during implementation; and

powers to enforce compliance with the requirements on employers.

Workplace pension reform regulations—impact assessment

The impact assessment builds on the analysis presented in the regulatory impact assessments that accompanied the Pensions Bill 2007 and draft regulations consultation in 2009. It presents the overall impact of the reform on employers, individuals, the pensions industry and the Government.

Written Answers

Tuesday 12 January 2010

Armed Forces: A400M

Question

Asked by ***Lord Gilbert***

To ask Her Majesty's Government how many C130s and C17s they would contemplate ordering to fulfil their requirements for military air transport should Airbus not proceed with production of the A400M or they cancel their order. [HL1098]

The Minister for International Defence and Security (Baroness Taylor of Bolton): The UK remains committed to A400M but not at any cost and we regard the current contract renegotiations as the best means to determine the way forward for the A400M programme. The department keeps its current and future airlift requirements under constant review, and is undertaking work to study the fallback options for alternative capabilities should that be necessary. At this stage we have no plans to procure additional C-17 or C-130Js.

Corus Steel

Question

Asked by ***The Archbishop of York***

To ask Her Majesty's Government what assistance they will give to Corus steelworks in Redcar, Teesside, and to the workers there who are facing redundancy. [HL967]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): We have maintained a close dialogue with Corus at the highest level whilst it tries to find solutions that safeguard as many jobs as possible and create new jobs on the Teesside Cast Products site.

The Corus Response Group, led by the regional development agency and involving Jobcentre Plus amongst others, enables these bodies to work together to offer the best assistance to those who may be made redundant. I understand they have been meeting regularly with Corus management and contingency plans are already in place. These will ensure that the full range of information, advice and guidance is available to redundant workers to help them with job search skills, advice on self-employment and other relevant issues such as pensions and tax matters. A resource centre has already been set up at the site to ensure that information is readily available to the workers.

On 8 December, my right honourable and noble friend the Secretary of State for Business, Innovation and Skills announced over £60 million of investment in the North East to support the region's industrial transition to low-carbon and advanced manufacturing. This has been done with record speed and in full co-operation with local agencies. It will be part funded by One North East and will secure long-term employment in sustainable manufacturing in the region.

It combines direct and immediate help for the workers who face losing their jobs at Teesside Cast Products with investment in projects which will help underpin the future economy of the Tees valley. It will create around 3,000 jobs and sustain over 10,000 in the long term.

EU state aid rules for the steel industry are stricter than for other sectors and therefore any practical financial measures that the Government could take to help Teesside Cast Products stay open are likely to be declared illegal by the Commission.

Cycling

Question

Asked by ***Lord Tebbit***

To ask Her Majesty's Government, further to the Written Answer by Lord Adonis on 30 November 2009 (*WA 10*), how much has been collected from fixed penalty notices for cycling on the footway since their introduction in 1999. [HL928]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): The information requested cannot be collected as data on fixed penalty notices for cycling offences are not reported to the Home Office.

Education: Home Schooling

Question

Asked by ***Lord Lucas***

To ask Her Majesty's Government whether home educators are able to access the tools on the everyonesreading.org.uk scheme. [HL975]

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): Last year the Department for Children, Schools and Families, commissioned the School Library Association to produce Everyone's Reading 11-18 as part of their Riveting Reads series. Home educators can access the booklist as an online database or download in a PDF format from the web at http://www.everyonesreadinq.orq.uk/.

Education: Post-16 Funding

Question

Asked by ***Baroness Walmsley***

To ask Her Majesty's Government with reference to press notice 2009/0184 issued by the Department for Children, Schools and Families on 12 October 2009, when they will announce which (a) schools, and (b) colleges, will receive funding for additional places provided to 16 year olds. [HL464]

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): We are investing a total of over £7.8 billion in post-16 learning in 2009-10 to provide more than 1.5 million young people, the highest number on record, with a place in learning and the support they need. The £11 million top-up payment announced in October will fund 518 providers to part-fund a further 20,260 learners in 2009-10—on top of the

additional 55,000 places in schools and colleges and 17,500 apprenticeship places already fully funded in 2009-10 under September Guarantee. The LSC will be informing all providers of how this additional funding will be allocated shortly.

Employment

Questions

Asked by ***Lord Kilclooney***

To ask Her Majesty's Government how many people are in employment; and how many were in employment 10 years ago. [HL1008]

To ask Her Majesty's Government what is the percentage unemployment rate; and how that compares to the rates in other European Union countries. [HL1009]

Baroness Crawley: The information requested falls within the responsibility of the UK Statistics Authority. I have asked the authority to reply.

Letter from Stephen Penneck, Director General, Office for National Statistics, to Lord Kilclooney, dated January 2010.

As Director General for the Office for National Statistics, I have been asked to reply to your recent Parliamentary Questions asking (i) how many people are in employment; and how many were in employment 10 years ago (HL1008); and (ii) what is the percentage unemployment rate; and how that compares to the rates in other European Union countries (HL1009).

The tables provided show the information requested.

Estimates for UK employment and unemployment are derived from the Labour Force Survey (LFS) and are published monthly in the Labour Market Statistical Bulletin. Comparisons with other European Union countries are also provided in the bulletin, via the following link:

http://www.statistics.gov.uk/statbase/Productasp?vlnk=1944

As with any sample survey, estimates from the LFS are subject to a margin of uncertainty. Indications of the sampling variability of LFS aggregate estimates are provided in the Statistical Bulletin.

Table 1: Employment levels and rates[1]

Three-month periods ending October, 1999 and 2009
United Kingdom, seasonally adjusted

	Level	*Thousands and per cent Rate*
	All aged 16 and over	*All aged 16-59 (women) and 16-64 (men)*
1999	27,210	74.0
2009	28,926	72.5

Source:
Labour Force Survey

[1] The number of working age people (aged 16 to 59 for women and 16 to 64 for men) in employment divided by the working age population

It should be noted that the above estimates exclude people in most types of communal establishment (e.g. hotels, boarding houses, hostels, mobile home sites etc.)

Table 2: Unemployment rates, seasonally adjusted

European Union country comparisons

	Latest Period	*Unemployment rate (%)*[1]
As published by EUROSTAT on 1 December 2009		
European Union (EU)		
Austria	Oct 09	4.7
Belgium	Oct 09	8.1
Bulgaria	Oct 09	7.9
Cyprus	Oct 09	6.0
Czech Republic	Oct 09	7.1
Denmark	Oct 09	6.9
Estonia	2009 Q3	15.2
Finland	Oct 09	8.7
France	Oct 09	10.1
Germany	Oct 09	7.5
Greece	2009 Q2	9.2
Hungary	Oct 09	9.9
Ireland	Oct 09	12.8
Italy	Oct 09	8.0
Latvia	Oct 09	20.9
Lithuania	2009 Q2	13.8
Luxembourg	Oct 09	6.6
Malta	Oct 09	7.0
Netherlands	Oct 09	3.7
Poland	Oct 09	8.4
Portugal	Oct 09	10.2
Romania	2009 Q2	6.4
Slovak Republic	Oct 09	12.2
Slovenia	Oct 09	6.2
Spain	Oct 09	19.3
Sweden	Oct 09	8.8
United Kingdom [2]	Aug 09	7.8
Total EU [3]	Oct 09	9.3
Eurozone [3]	Oct 09	9.8
As published by the Office for National Statistics		
United Kingdom [2]	Aug-Oct 09	7.9

Sources:
EUROSTAT, ONS-Labour Force Survey

[1] Unemployment rates published by EUROSTAT for most EU countries (but not for the UK), are calculated by extrapolating from the most recent LFS data using monthly registered unemployment data. A standard population basis (15-74) is used by EUROSTAT except for Spain and the UK (16-74).

[2] The unemployment rate for the UK published by EUROSTAT is based on the population aged 16-74 whilst the unemployment rate for the UK published by the Office for National Statistics is based on those aged 16 and over. There are other minor definitional differences.

[3] The "Total EU" series consist of all 27 EU countries. The Eurozone series consist of the following EU countries: Austria, Belgium, Cyprus, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Portugal, Slovak Republic, Slovenia and Spain.

Energy: National Policy

Question

Asked by ***Lord Jenkin of Roding***

To ask Her Majesty's Government when they will table the Motion or Motions for debating the six draft energy national policy statements in Grand Committee. [HL897]

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): The relevant scrutiny period for parliamentary resolutions or recommendations on the suite of draft energy national policy statements will end on 6 May 2010. The scheduling of business is a matter for the usual channels; and in accordance with the procedure agreed by the House on 15 December 2009, time will be made available in the Grand Committee to debate the six national policy statements currently before the House before the scrutiny period expires. Once dates are agreed, the relevant Motions will be tabled.

Energy: Renewables

Question

Asked by ***Lord Hylton***

To ask Her Majesty's Government what plans they have for collection and distribution grids for wave power, bio-gas and electricity generated from bio-mass. [HL576]

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): The Government are taking steps through the Transmission Access Review to ensure that new renewable sources of energy can get access to the electricity grid. The review aims to implement a new model for access by the summer of 2010.

On 2 December 2009, the Government published their vision for smart grids. Smarter networks will make it easier and quicker to bring new renewable generation onto the grid. An industry working group, the Electricity Networks Strategy Group which is co-chaired by officials from DECC and Ofgem, will publish a route map for smart grids in spring 2010.

The Government will shortly issue guidance for producers of biogas, addressing legal, technical and practical requirements. The Government propose to review the licence arrangements for connection of biomethane plant to the gas network in 2010.

Food: Nano-capsules

Question

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

To ask Her Majesty's Government whether food manufacturers must obtain clearance if they wish to incorporate nano-capsules into food. [HL709]

Baroness Thornton: There is no specific legislation applying to "nano-capsules". New food ingredients are regulated under European legislation (Regulation (EC) No. 258/97 on novel foods and food ingredients), which also applies to existing foods and ingredients that have undergone a new process that changes their properties. According to this regulation, new substances must undergo an approval process before they can be marketed in the European Union and this would apply to novel nanomaterials.

Separate legislation applies to substances added to food for technological purposes, such as food additives. The approvals for food additives do not currently distinguish between different particle sizes of the same substance but this will change when updated legislation (Regulation (EC) No 1333/2008 on food improvement agents) comes into effect on 20 January 2010. Under the new regulation a significant change in the particle size of a food additive, for example through nanotechnology, will require a new evaluation and authorisation.

Government Departments: Bonuses

Questions

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

To ask Her Majesty's Government for each of the last three years for which figures are available, how many people were eligible for performance bonuses and special bonuses in HM Treasury and its agencies, by civil service band; how many people received each type of bonus, by civil service band; what the average payment was for each type of bonus, by civil service band; and what the maximum payment was for each type of bonus, by civil service band. [HL2]

The Financial Services Secretary to the Treasury (Lord Myners): I refer the noble Lord to the Answer given to him by my noble friend, the Leader of the House of Lords, the right honourable the Baroness Royall of Blaisdon, on 16 December 2009 (*Official Report*, col. *WA 240*). HM Treasury and its agencies operate a similar pay and performance system.

The tables below give the information requested, where available, in respect of HM Treasury, the UK Debt Management Office and the Office of Government Commerce, for performance awards and special performance awards paid in the past three complete years for which figures are available. The remaining information is not available within the disproportionate cost threshold.

HM Treasury

2008-09 Performance awards

Grade	*Staff eligible*	*Number of awards*	*Average payment (£)*	*Highest payment (£)*
Non-SCS	1,110	401	1,187	2,400
SCS	111	81	8,030	20,000

2008-09 Special performance awards

Grade	*Staff eligible*	*Number of awards*	*Average payment (£)*	*Highest payment (£)*
Non-SCS	[1]1,134	487	330	9,000
SCS	84	5	1,070	2,500

(1) In addition, one award was made to a member of staff on secondment to a private sector organisation that subsequently reimbursed the department.

2007-08 Performance awards

Grade	*Staff eligible*	*Number of awards*	*Average payment (£)*	*Highest payment (£)*
Non-SCS	1,005	379	3,172	6,950
SCS	107	82	7,130	18,000

2007-08 Special performance awards

Grade	Staff eligible	Number of awards	Average payment (£)	Highest payment (£)
All grades	[2]1,111	382	463	9,000

(2) In addition, one award was made to a member of staff on secondment to a private sector organisation that subsequently reimbursed the department.

2006-07 Performance awards

Grade	Staff eligible	Number of awards	Average payment (£)	Highest payment (£)
Non-SCS	1,077	368	1,119	3,400
SCS	106	73	7,351	14,600

2006-07 Special performance awards—(not available within the disproportionate costs threshold).

UK Debt Management Office (DMO)

The DMO has only one member of staff at Senior Civil Service (SCS) grade. Remuneration details for the chief executive of the DMO are given in its annual report and accounts, copies of which are available in the Library of the House. Details of performance awards have been published in HM Treasury's resource accounts for 2007-08 and 2008-09. The table below gives the information requested, where available, for non-SCS grades.

DMO	Staff eligible	Number of awards	Average payment (£)	Highest payment (£)
2008-09 Performance awards	70	66	3,121	12,760
2008-09 Special performance awards [3]	87	38	272	500
2007-08 Performance awards	73	68	2,622	11,977
2006-07 Performance awards	73	68	2,571	11,182

(3) Special performance awards were introduced in 2008.

Office of Government Commerce (OGC)

The tables below give the information requested, where available, for OGC performance awards. Data on special performance awards prior to 2008-09 is not available within the disproportionate costs threshold.

2008-09 Performance awards

Grade	Staff eligible	Number of awards	Average payment (£)	Highest payment (£)
Non-SCS	216	73	1,839	4,100
SCS	26	16	12,055	23,200

2008-09 Special performance awards

Grade	Staff eligible	Number of awards	Average payment (£)	Highest payment (£)
Non-SCS	213	70	286	600

2007-08 Performance awards

Grade	Staff eligible	Number of awards	Average payment (C)	Highest payment (E)
Non-SCS	270	163	714	1,600
SCS	25	19	10,263	17,726

2006-07 Performance awards

Grade	Staff eligible	Number of awards	Average payment (£)	Highest payment (E)
Non-SCS	315	218	897	2,325
SCS	35	17	10,162	17,425

Asked by ***Baroness Northover***

To ask Her Majesty's Government for each of the past three years for which figures are available, how many people were eligible for performance bonuses and special bonuses in the Foreign and Commonwealth Office and its agencies, by civil service band; how many people received each type of bonus, by Civil Service band; what the average payment was for each type of bonus, by Civil Service band; and what the maximum payment was for each type of bonus, by Civil Service band. [HL44]

Lord Brett: An element of the Foreign and Commonwealth Office's overall pay award is allocated to non-consolidated variable pay related to performance. These payments are used to drive high performance and form part of the pay award for members of staff who demonstrate exceptional performance, for example by exceeding targets set or meeting challenging objectives.

Non-consolidated variable pay awards are funded from within existing pay bill controls, and have to be re-earned each year against pre-determined targets and, as such, do not add to future pay bill costs. The percentage of the pay bill set aside for performance-related awards for staff in the SCS is based on recommendations from the independent Senior Salaries Review Body.

The table below details how many people were eligible for and received a non-consolidated variable pay award and the average and the maximum payment for a non-consolidated variable pay award, by Civil Service band, awarded under the Foreign and Commonwealth Office standard pay and performance management process for the past three years of published accounts. The years relate to when the payment was made. The performance year is the 12 months prior.

	2006-07		2007-08		2008-09	
	SCS	Non-SCS	SCS	Non-SCS	SCS	Non-SCS
Number of staff eligible for performance-pay award 434	434	5,896	420	5,780	413	5,846
Number of staff who received a performance-pay award	331	4,573	343	4,528	283	4,423

	2006-07		2007-08		2008-09	
	SCS	Non-SCS	SCS	Non-SCS	SCS	Non-SCS
Average value of performance-pay award	6,121	957	6,266	953	8,420	1,164
The maximum payment for a performance-pay award	25,500	4,665	15,000	2,500	20,000	3,315

In addition, an individual employed on a SCS non-standard form of contract, which links a higher than normal percentage of their pay to delivery-based objectives, received a non-consolidated award of £20,000 in 2007 for their performance in 2006-07 and £30,000 in 2008 for their performance in 2007-08.

Government: Office Equipment

Question

Asked by ***Lord Bates***

To ask Her Majesty's Government further to the Written Answer by the Parliamentary Under-Secretary of State for Communities and Local Government, Barbara Follett, on 9 December 2009 (*Official Report*, House of Commons, col. 390W), what was the average purchase price, excluding value added tax, of a 500-sheet ream of white A4 80 gsm photocopier paper paid by the Department for Children, Schools and Families and each of its agencies in the latest period for which figures are available. [HL996]

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): The average price of a 500-sheet ream of white A4 80gsm photocopier paper paid for by Department for Children, Schools and Families (DCSF) was £2.18 excluding VAT in the latest period available. Agencies and non-departmental public bodies have their own contractual arrangements for stationery which DCSF does not have access to and therefore cannot provide a response of their behalf.

The data have been provided by the department's supplier for stationery, Banner Business.

Health: Dentistry

Question

Asked by ***Earl Baldwin of Bewdley***

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 16 December 2009 (*WA 239*), how closely the number of general anaesthetics required by children for tooth extractions in a given area correlates with the level of dental decay among children in that area; and what other factors may play a part in the number of extractions. [HL981]

Baroness Thornton: There is a close correlation. Since 2002, general anaesthetics for dental treatment have taken place only in a hospital setting. The following table compares levels of tooth decay with the number of finished consultant episodes where the main operation was a tooth extraction for children aged five and under in 2005-06 in the West Midlands, where the water is fluoridated, and in the north-west where only a very small proportion of the population drink fluoridated water. A few extractions may result from trauma, but the great majority are due to dental decay.

Strategic Health Authority	*Number of Extractions*	*Decayed, missing and filled teeth**
West Midlands	230	1.05
North West	1,433	3.01

Note:

* Average number of decayed, missing and filled teeth derived from the 2005-06 survey of five-year-olds conducted within the National Health Service under the auspices of the British Association for the Study of Community Dentistry (BASCD) Dental Epidemiology Programme.

Higher Education: Infonexus College

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government when Infonexus College London was accredited as a college of education; by which UK Border Agency accreditation agency; how many overseas students in the past three years have been granted visas to study there; from which countries; and what courses it offers that would not be available to those students in their home countries. [HL107]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): Infonexus College London was accredited by the Accreditation Service for International Colleges, ASIC, on 31 July 2009.

Information pertaining to overseas students studying at individual colleges cannot be released as it is commercially sensitive and would also constitute a breach of our obligations under the Data Protection Act.

The UK Border Agency does not hold information on courses that Infonexus College London offers that would not be available to those students in their home countries.

Higher Education: Overseas Students

Question

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

To ask Her Majesty's Government how many sponsors of migrant students have been removed from the register of sponsors, the register of education and training providers, and any predecessor lists, in each year since 1997; and for what reasons. [HL420]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): Fourteen sponsors of migrant students have been removed from the register of sponsors since 31 March 2009. Of these, six had no accreditation, one entered into liquidation and seven failed to meet their sponsor obligations.

There were 14,838 institutions on the DIUS register of education and training providers when it closed on 31 March 2009. Information on the number of education and training providers who had been removed from this register is not available.

Immigration: Deportation

Questions

Asked by ***Baroness Warsi***

To ask Her Majesty's Government how long it takes on average to deport a failed asylum seeker. [HL370]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): The time taken to remove a failed asylum seeker varies greatly and so overall averages can be misleading.

The 2008 National Audit Office (NAO) report identified average times to remove different types of failed asylum seekers as: 79 days for those in the detained fast track; 250 days for removing forcibly those not detained throughout the period of their claim; and 300 days for voluntary returns.

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

To ask Her Majesty's Government what were the costs of legal proceedings relating to the deportation of foreign nationals on the ground of national security in each year since 2001. [HL789]

Lord West of Spithead: The information requested is not centrally collated and could only be obtained by examination of individual case files which would incur a disproportionate cost.

Immigration: Detention Centres

Question

Asked by ***Lord Tebbit***

To ask Her Majesty's Government how many persons residing in immigration detention centres are not free to leave the United Kingdom. [HL929]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): Individuals held in immigration removal centres are free to leave the United Kingdom.

Mental Health

Question

Asked by ***Lord Jones of Cheltenham***

To ask Her Majesty's Government what measures are planned to improve services for (a) children with serious emotional disturbance, and (b) adults with mental health illnesses. [HL1002]

Baroness Thornton: *New Horizons: A shared vision for mental health*, published on 7 December 2009, outlined a cross-government programme of action with the twin aims of improving the mental health and well-being of the population and improving the quality and accessibility of services for people with poor mental health. It lists 120 different actions for government, the wider public sector and the professions.

New Horizons sets out the expectation that services to treat and care for people with mental health problems will be accessible to everyone who needs them. It highlights that people achieve the most effective recovery if their mental ill-health is identified, and treated, at an early stage. *New Horizons* has been developed in collaboration with strategic health authorities, is consistent with their regional visions for mental health, and does not set out to be prescriptive.

The Government published *Keeping Children and Young People in Mind: The Government's full response to the independent review of CAMHS (Child and Adolescent Mental Health Services)* on 7 January 2010.

The response sets out:

the Government's commitment for high-quality services that all children and young people will receive;

a description of the effective services we expect all local areas to be working towards; and

a package of support from the Government to help local areas deliver these effective services.

Mobile Phones: Prisoners

Question

Asked by ***Lord Kilclooney***

To ask Her Majesty's Government how many mobile phones were taken from prisoners in each prison in Northern Ireland during 2009. [HL1131]

Baroness Royall of Blaisdon: The number of mobile phones confiscated in each prison in 2009 was:

Maghaberry 26;

Magilligan 37; and

Hydebank Wood 6.

NHS: Strategic Service Partnerships

Question

Asked by ***Lord Warner***

To ask Her Majesty's Government whether the National Health Service uses strategic-service partnerships similar to those used by local authorities; whether they have considered the Audit Commission's 2008 evaluation of those partnerships; and whether in pursuing greater efficiency in the NHS following the Pre-Budget Report they will recommend that model to NHS trusts. [HL974]

Baroness Thornton: How National Health Service organisations deliver priorities, is set out in the NHS Operating Framework. The NHS Operating Framework for 2010-11 was published on 16 December 2009 and sets out the need for NHS organisations to work with local partners in delivering priorities and the challenges that need to be addressed following the Pre-Budget Report. A copy of the NHS Operating Framework for 2010-11 has already been placed in the Library.

Northern Ireland Human Rights Commission: Taxis

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government how much the Northern Ireland Human Rights Commission spent on taxis in 2009. [HL950]

Baroness Royall of Blaisdon: The Northern Ireland Human Rights Commission paid £3,354 in respect of taxis for commissioners and staff in the period 1 January to 31 December 2009.

Northern Ireland: Human Rights Commission

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government further to the Written Answer by Baroness Royall of Blaisdon on 15 December 2009 (*WA 213*), whether the objective published in the current business plan of the Northern Ireland Human Rights Commission (NIHRC) to work to secure the enactment of legislation reflecting NIHRC's advice to Government on a possible bill of rights for Northern Ireland is consistent with NIHRC's statutory functions. [HL1062]

Baroness Royall of Blaisdon: I have nothing further to add to my Answer of 15 December 2009 (*Official Report*, col. *WA 213*).

Rwanda

Questions

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

To ask Her Majesty's Government what action they and the Commonwealth are taking to ensure that the government of Rwanda extradite Laurent Nkunda to stand trial at The Hague for alleged war crimes and crimes against humanity committed in Kiwanja and Rutshuru. [HL972]

Lord Brett: Allegations of serious crimes committed in the Democratic Republic of Congo since July 2002 are currently being investigated by the International Criminal Court (ICC). The Court is an independent, judicial institution and decisions on indictments and arrest warrants are a matter for the Prosecutor and the Pre-Trial Chamber. At this time, no warrant has been issued by the ICC for Laurent Nkunda.

Asked by ***Lord Tebbit***

To ask Her Majesty's Government, further to the Written Answer by Baroness Kinnock of Holyhead on 14 December 2009 (*WA 175*), when the admission of Rwanda to the Commonwealth was debated or approved by either House of Parliament. [HL1026]

Lord Brett: Further to the answer I gave in the House of Lords on 2 December 2009, and the written response I gave on 14 December (HL542), the 2007 Commonwealth Heads of Government Meeting in Kampala saw a review of the membership criteria and the condition of a "constitutional link" was replaced by a "close link" to an existing Commonwealth member state.

The UK has supported Rwanda's bid to join the Commonwealth from this time onwards. This matter has been discussed publicly since this time. It is not the practice to ratify such decisions made by the Commonwealth or Member States in national parliaments—including that of the UK.

The decision on new applications to join is taken by all the Commonwealth Heads of Government. Commonwealth Heads of Government voted unanimously to allow Rwanda to join the organisation in Trinidad in November 2009.

Universities: Museums and Galleries

Question

Asked by ***Lord Smith of Finsbury***

To ask Her Majesty's Government when they expect the review of funding for university museums and galleries led by Sir Muir Russell to be completed; when they expect a report and their response to be published; and what discussions Sir Muir Russell intends to undertake in the course of his review with directors of university museums. [HL1087]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): This review has been commissioned by the Higher Education Funding Council for England (HEFCE). As part of the review process, all institutions in receipt of this funding were asked for detailed submissions supporting their case for continued funding. In addition, Sir Muir will discuss their particular circumstances with the institutions concerned. HEFCE expects to receive the reviews findings in February. The report and matters arising from it are currently expected to be discussed by the HEFCE board in April. The report and HEFCE's response will be published after the board's consideration.

Tuesday 12 January 2010

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