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House of Lords

Wednesday, 20 January 2010.

3 pm

Prayers—read by the Lord Bishop of Southwark.

Bosnia and Herzegovina
Question

3.06 pm

Asked By ***Lord Ashdown of Norton-sub-Hamdon***

To ask Her Majesty's Government what is their assessment of the present situation in Bosnia and Herzegovina.

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): My Lords, we remain deeply concerned by the lack of progress on reform in Bosnia and Herzegovina and by recent challenges to the authority of the high representative and to the Dayton peace agreement. We are particularly concerned by positions taken in December by the Republika Srpska Government. We strongly support the Dayton agreement and the authority of the high representative and are engaging intensively with the Peace Implementation Council and European Union partners to address concerns about the current situation.

Lord Ashdown of Norton-sub-Hamdon: My Lords, in warmly thanking the Minister for that comprehensive Answer, may I ask her to confirm three brief statements? The first is that the British Government and the European Union will do whatever is necessary to preserve the territorial integrity of Bosnia and Herzegovina, and it would be well if the Prime Minister of Republika Srpska understood that. The second is that Bosnia cannot fulfil its progress towards Europe unless it increases the functionality of the state, and all politicians in Bosnia would be wise to recognise that. The last is that this Government will provide our new European Union Foreign Minister—the noble Baroness, Lady Ashton, of this House—with all the support she needs to preserve the territorial integrity of Bosnia and to enable the people of that country to make the changes necessary for Bosnia eventually to be a full member of the European Union.

Baroness Kinnock of Holyhead: My Lords, I pay tribute to the authority and expertise that the noble Lord brings to this subject. I can assure him that the UK and the European Union are fully committed to maintaining the territorial integrity of Bosnia and Herzegovina. Bosnian politicians need to focus on European integration and not on separation and nationalism. Urgent reforms are needed to make the Bosnian state more functional, as the noble Lord says, and to prepare it for the challenges of the EU integration process. The recent ruling of the European Court of Human Rights underlined the importance of constitutional reform in Bosnia and Herzegovina. We welcome the appointment of the noble Baroness, Lady Ashton, and indeed the prospect of her engagement in Bosnia and Herzegovina, and we will increasingly support the high level of engagement that we need to see. The need for implementation of the Lisbon treaty could not be clearer than in Bosnia and Herzegovina. The need for stronger, more focused and more co-ordinated European policy is what the noble Lord, Lord Ashdown, is rightly calling for.

Lord Howell of Guildford: My Lords, the warnings implicit in the Question of the noble Lord, Lord Ashdown, are very well timed indeed. Does the Minister agree that the politics of Bosnia-Herzegovina are extremely negative, with the actions on both the Muslim side and the Republika Srpska side getting very aggressive and antagonistic? It is a very bleak situation and a very poor country, with 25 per cent of the people unemployed. Will she reassure us that, through the European Union and through our own efforts, we will do everything possible to preserve the integrity of this difficult and struggling nation? Has she had any news on reports that, in the north-east of Bosnia-Herzegovina, substantial camps of Muslim extremists and Islamic terrorists have been forming? There have been comments on this in the newspapers and the threat to our own security here in Europe and here in the UK could be very serious indeed.

Baroness Kinnock of Holyhead: I have read about the reports the noble Lord mentions but I have not had substantial confirmation that that is the case. I shall happily look into the matter and respond to his request. Things are not going well in Bosnia-Herzegovina. There has been little progress over the past year on the key reforms that would allow European integration, which is the greatest incentive we have to draw them into a process of constitutional and other reform. As I said in my previous answer, this is echoed in the latest Commission progress reports. The Foreign Secretary visited Bosnia-Herzegovina in November and I visited in July. The UK Government are fully and strongly supporting the high representative in the efforts that are being made to bring about more stable systems in Bosnia-Herzegovina.

Lord Hylton: My Lords, I thank the noble Baroness for what she said about territorial integrity. What efforts are being made to convince all Bosnians that they are only likely to accede to the EU as one state and, more generally, convince them of the benefits of accession?

Baroness Kinnock of Holyhead: My Lords, they are well aware of the benefits of accession to the European Union. As I said, we are forcefully following with the European Union a process to ensure that they meet the conditions-based response that we expect from them. Quite rightly, strict conditions need to be met before European integration can take place and we hope that that will be the incentive to make possible further movement. The most important thing is that we have strong and united international support for the efforts that need to be made in Bosnia at this time.

Lord Grenfell: My Lords, does my noble friend agree that one of the root problems is the difficulty in creating social cohesion in Bosnia-Herzegovina? Has

[LORD GRENFELL]
her attention been drawn to a recent UNDP report, entitled *The Ties that Bind*, on the question of social cohesion, which emphasises the difficulties of creating social cohesion in a country in which family ties form such a strong element in civil society? These family ties tend to lead to cronyism, clientelism and other difficulties. Will she ask her friends in the Government to study this report with care? It is a very good one and suggests ways in which we may be able to help them overcome that problem.

Baroness Kinnock of Holyhead: I thank my noble friend for that information; I am not aware of the report but I can assure him that we will look into it. Anything which contributes to the need to bring the social cohesion he mentions closer to the people of Bosnia-Herzegovina is welcome.

Lord Wallace of Saltaire: My Lords, the leader of Republika Srpska is threatening to hold a referendum on independence, which would clearly be disastrous for the future cohesion of Bosnia and might well lead to a resurgence of conflict. What are Her Majesty's Government doing, with other interested parties, to discourage Republika Srpska from moving in that direction?

Baroness Kinnock of Holyhead: We are making every effort to impress on Republika Srpska and its leadership that this will not support or encourage the international community to work as closely as we want with Bosnia-Herzegovina. We are disappointed by the lack of progress and the UK will continue to work with all the leaders in Bosnia-Herzegovina and encourage them to work constructively together towards the reform processes that we need to see in place. I emphasise that this means a rigorous application of the conditions-based approach to EU integration and enlargement throughout the western Balkans. That applies to Bosnia-Herzegovina and to any other country in the western Balkans.

Climate Change: Carbon Dioxide Emissions

Question

3.14 pm

Asked By ***Lord Lea of Crondall***

To ask Her Majesty's Government whether they have investigated whether increased expenditure on contraceptive services globally would produce a greater reduction of carbon dioxide emissions than many green technologies.

Lord Brett: My Lords, an individual's contribution to greenhouse gas emissions depends on the goods and services consumed over their lifetime. Countries with the highest population growth are among the poorest in the world. However, they also have the lowest consumption. Notwithstanding that, it is important for the achievement of the millennium development goals to expand contraception services to meet the unmet demand for family planning. Further research is needed to assess the long-term impact of population growth on carbon dioxide emissions, taking into account economic growth.

Lord Lea of Crondall: My Lords, I thank my noble friend for the spirit of that reply. Are not highly desirable green technologies such as carbon capture being subsidised to the tune of up to 80 per cent? They have their place, but will the Government publish their methodology for making like-for-like comparisons between the benefits of each of those programmes and meeting demand for contraceptive services? Secondly, is it not cowardice on the part of the industrial democracies post-Copenhagen to refuse to put a public spotlight on this critical agenda item? Is that not very short-sighted and, indeed, unsustainable?

Lord Brett: I am not sure that it is cowardice, but it might be arrogance to suggest that we should point the finger and say to other countries that we are not all in this together. For example, Uganda has one of the highest fertility rates in Africa, but in less than half a year the average UK citizen will be responsible for more carbon emissions than the average Ugandan in the whole of their lifetime. Forty-one countries have identified population expansion as a major issue. They include Uganda, which has made a programme looking at reproductive health a priority. We believe that the way forward is to look at reproductive health. We estimate that, if the family planning needs of 215 million women in the developing world were met, unintended pregnancies would be averted to the extent of some 53 million. That seems a more ethical approach. I do not think that we are yet in a position to make the calculation that my noble friend wishes in relation to the different programmes.

Lord Lawson of Blaby: What is the Government's view of evidence that has recently come to light of seriously unprofessional conduct by the chairman of the Intergovernmental Panel on Climate Change, Mr Pachauri, and of the worrying conflict of interests between his IPCC responsibilities and his business activities?

Lord Brett: I am afraid that I consider that to be quite a long way from the Question on the Order Paper. The noble Lord seems to be becoming on climate change what the noble Lord, Lord Pearson of Rannoch, has become on Europe.

Baroness Tonge: My Lords, I am sure that the Minister will agree that family planning commodities are essential to curb population growth, but they are also essential—particularly condoms—to curb the spread of AIDS. One problem in recent years is that money for reproductive health services generally has been diverted to the AIDS pandemic, to deal with antiretroviral drugs. If you look at DfID's budget reports for each year, you find that everything is under confused and confusing headings, so that it is almost impossible to find out how much DfID is spending on contraceptive supplies. Will the Minister please clarify these budget headings so that we can track how much money is being spent on contraception worldwide?

Lord Brett: My Lords, the noble Baroness seeks relief from her confusion. I shall seek that information and write to her on it.

Lord Winston: My Lords, are we not in danger here of peddling an urban myth? The evidence shows clearly that contraceptive services do not decrease the population in the undeveloped world—far from it. That is quite clearly shown from the WHO's own efforts. What changes population growth are better hygiene, better housing, better education and better healthcare.

Lord Brett: I could pay no greater compliment to the noble Lord than to agree totally with him. The Department for International Development takes a holistic approach across a whole range of poverty reduction measures, including sanitation and water provision. All meet the point made by the noble Lord, with which I totally agree.

Baroness O'Neill of Bengarve: Does the Minister agree that this is a no-brainer? Contraceptive services are good for women, good for their children, good for countries and, if we look at the projections for greenhouse gas emissions, good for the world climate.

Lord Brett: I am not sure that I would use the term "no-brainer" in your Lordships' House, but the whole question of how we deal with reproductive health is certainly important. We are a major player in the production of contraceptives worldwide and give considerable assistance, so there is no either/or. In seeking to deal with climate change, we must look at all the factors and impacts, which are different in different countries and regions. I remind people that, at the end of the day, the developing world wishes to develop. We must find space for it to do that. We cannot condemn it to its current standards of living.

Baroness Rawlings: Does the Minister agree that we should tread sensitively in this area? What action have Her Majesty's Government taken to assist the developing world in decoupling economic growth from carbon emissions? Have they made any effort to reform the ECGD to prevent it from supporting the development of dirty energy projects in these parts of the world?

Lord Brett: As I said in answer to an earlier question, it is a matter of taking forward—through persuasion and co-operation regionally, nationally and internationally—those policies from Copenhagen that will be acceptable to those countries in that state of development and meet the world target. In those senses, that debate continues. The noble Baroness makes valid points. I do not have an answer to the ECGD question in my brief, but I will seek one and write to her with it.

Foreign and Commonwealth Office

Question

3.21 pm

Asked By ***Lord Wallace of Saltaire***

To ask Her Majesty's Government what are the implications of the reductions in the Foreign and Commonwealth Office's budget for the United Kingdom's ability to represent national interests overseas.

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): My Lords, as a result of exchange rate movements, the FCO faces a shortfall in its 2009-10 budget of an estimated £110 million. We estimate this shortfall will increase slightly in 2010-11. In addition, international peacekeeping costs, UK subscriptions to international organisations and the FCO's security costs have risen.

Although the FCO has pursued a vigorous efficiencies programme, these budget constraints have led to staff redundancies, cuts to travel and training, and reduced programme funding including our work on counterterrorism and climate change.

Lord Wallace of Saltaire: I thank the Minister for that reply. From the figures, it looks to me to be about a 20 per cent cut in the effective resources available to the FCO since the Treasury removed the overseas price mechanism which allowed it to compensate for the fall in sterling.

Can the Minister assure us that this has not made it impossible for the FCO to operate in the number of countries in which we need to operate? What does the FCO intend to do? Will it cut some major functions, such as consular support for people in developed democracies, or are we faced with having to put much more effort into making the European External Action Service work simply because we cannot do a lot of these things on our own in many UN member states?

Baroness Kinnock of Holyhead: The noble Lord clearly makes some good points. We must look at every aspect of the work of the Foreign and Commonwealth Office to ensure that we can make the cuts where possible, but it is not always easy. We have had staff redundancies in Argentina, Japan and across the United States. Counternarcotics programmes in Afghanistan, capacity building to help conflict prevention in Africa, and counterterrorism and counter-radicalisation in Pakistan have all been cut; the list goes on. However, we are extremely conscious of the need for the FCO to continue its essential work as a global player, taking into account the enormous influence we have, and need to have, across the world.

The European External Action Service issue will clearly impact on all work of the Foreign and Commonwealth Office. It will make the EU's foreign policy more effective. However, I assure the House that we have no plans for the EEAS to replace our global network of embassies and diplomats, which remain an important asset for this country that we should and must maintain. The Lisbon treaty makes it clear that the EEAS shall work in co-operation with the Diplomatic Services of member states.

Lord Howell of Guildford: My Lords, aside from the falling sterling problem, which has hit the Foreign Office very hard, is the Minister sure that the Government have the balance right between the departments? Does she agree with her immediate predecessor, the noble Lord, Lord Malloch-Brown, that at a time when Britain's interests are so global, the budget for our overseas representation has been steadily cut? That sounds crazy. Does she agree with him that, if things go on as

[Lord Howell of Guildford]
they are, the Foreign Office will be reduced to landlord and events organiser for other parts of government? That seems a very dangerous trend. Is the noble Lord, Lord Malloch-Brown, who should have full experience of these matters, identifying a very serious problem?

Baroness Kinnock of Holyhead: None of us working in the Foreign and Commonwealth Office would disagree with the fact that we are in a time of a great pressure, not least because of the effects of the currency exchange rates on funding, and the effects of having to pay our subscription to the United Nations and the European Union in different currencies. Indeed, we work in about 120 currencies, which does create its problems. The FCO is adapting to reflect modern Britain and its place in the world. As my noble friend Lord Malloch-Brown, said, we are shifting in dangerous ways, and often to dangerous places, but we must maintain the United Kingdom's priorities. I can assure the noble Lord that we will continue to do that in a modern, cost-effective way.

Lord Acton: My Lords, did my noble friend say that counterterrorism in Pakistan has been cut? If so, is that really wise? Will she consider looking at that again?

Baroness Kinnock of Holyhead: It is a fact that counterterrorism and counter-radicalisation projects in Pakistan and elsewhere have been subject to the cuts that the Foreign Office has been obliged to make. I listed others—on climate change and delivering key objectives on the Middle East, North Africa and the Balkans. I say these things to assure the House that none of this is done easily or lightly. It is an extremely difficult set of decisions that have to be made at a time when we are under such financial pressure.

Lord Hannay of Chiswick: Does the Minister not agree that her first Answer demonstrated that the Foreign and Commonwealth Office is subject to a number of cuts, exogenous in their origin, which do not apply to domestic departments? Would not it therefore make more sense if the Treasury, which seems to have a singular unwillingness ever to answer questions about the resources allocated to the Foreign Office, were to take that into account when dealing with the matters going forward? Does she not agree that a Government who say that their watchword is delivery are not going to get much successful delivery if the number of deliverers is constantly reduced?

Baroness Kinnock of Holyhead: I share the noble Lord's concern about the effects of these cuts, which he will understand very well. The FCO's resource budget is, in fact, one of the smallest in Whitehall. We receive £2 billion, of which more than £1.1 billion is ring-fenced for the British Council and the BBC World Service. Then there is peacekeeping and subscriptions to international organisations, as well. Only £830 million is discretionary spend, and that has to include our contribution to UKTI.

Lord Howe of Aberavon: Is the Minister aware that, historically, Foreign Ministers of other countries have always been ready to declare the effectiveness of our Foreign Office and the distinguished quality thereof, which they always acknowledge, particularly the French, as being second only to their own? Is it not a fact that the management of major programmes such as the DfID programme and others referred to depend on the effectiveness, quality and professionalism of the Diplomatic Service? Is it not crucial that that should not be further jeopardised, otherwise other parts of the programme will continue to be badly managed?

Baroness Kinnock of Holyhead: I thank the noble and learned Lord, and I echo much of what he said about the importance of the FCO being Britain's voice overseas, where we protect and promote British values and make the international system work better for UK interests. The FCO supports the UK economy, saves money for the UK and helps Brits abroad; on average, 38,000 are helped and 75,000 inquiries are made. In our embassies, we also serve the needs of other departments of the United Kingdom, including on visas and other issues.

Baroness Falkner of Margravine: My Lords—

Lord Davies of Oldham: I am sorry, my Lords, but we will have to move on.

Banks

Question

3.29 pm

Asked By ***Lord Clinton-Davis***

To ask Her Majesty's Government whether they have any proposals to replicate in the United Kingdom the actions proposed by President Obama concerning the banks.

The Financial Services Secretary to the Treasury (Lord Myners): The United States has announced a levy to recoup $117 billion that it expects to lose from interventions under the troubled asset relief programme. We believe that UK losses from banking sector interventions will be minimal at worst. The need for a similar levy therefore does not apply. The UK is, however, leading a global debate on how to ensure that banks, not taxpayers, support the financial sector in respect of any future emergencies.

Lord Clinton-Davis: I thank my noble friend for that Answer. In his view, will shareholders in banks and the customers of those banks have to continue payment of what President Obama has described as "obscene bonuses"? In particular, we are being urged by the United States Treasury Secretary to take similar action. How will my noble friend reply to that request?

Lord Myners: My noble friend raises an important point. The bank payroll tax, which we announced on 9 December, is designed to bear down on bonus practice. It is clearly having an impact: JP Morgan Chase and Credit Suisse, among other banks, have said that the UK Government's action here has led them to revisit the size of their bonus declaration. However, other banks are clearly going to pass this cost on to their shareholders. The shareholders of our major banks—and, importantly, as my noble friend says, the customers—will take a very dim view of practices that pay substantial bonuses that are not necessarily the product of talent

or hard work and, in so doing, impair the capital base of the bank, diminish its ability to support the British economy and impair the brand value of the institution. It would not surprise me if customers took their business away from banks that paid bonuses unwisely.

Lord Forsyth of Drumlean: What representations, if any, have the Government made to ensure that British banks, like the Royal Bank, in which the taxpayer has a substantial interest, will not have to pay this levy in respect of their subsidiaries in the United States? After all, they have not benefited from any of these TARP funds.

Lord Myners: The UK bank payroll tax applies to American, European and other banks operating here in the United Kingdom. The US fee applies to United States banks globally and to foreign banks operating in the United States through a subsidiary rather than a branch.

I am afraid that the noble Lord, Lord Forsyth of Drumlean, for whom I have considerable respect, is again missing the point that government interventions by, in this case, the American Government are limited not to the recipients of funds but to supporting the economy. In fact, the interventions that the American Government are reclaiming money on are largely for the insurance industry and the motor industry rather than for banks. The noble Lord has perhaps misunderstood the thinking behind the American Government's policy, as he so often misunderstands the thinking behind ours.

Lord Newby: Does the Minister agree that there is a widespread view that the one-off bonus tax is an inadequate response to the level of support that the banks in general have received from the Government in the past 18 months? Will the Government now consider a profits tax on the banking sector in return for both the explicit and implicit guarantees that the banks have, and will continue to receive, from the Government?

Lord Myners: The bank payroll tax is not an isolated package, but is part of a co-ordinated programme of action around capitalisation, liquidity management and enhanced governance as a result of the Walker report and other actions that we have taken to improve the strength of the banking system. The G20 policy principles and the FSA's code on reward also fit into the thinking behind this particular tax to bear down on what we regard as unreasonable behaviour. Contemplation of a higher rate of taxation for one industry alone would almost certainly be in contravention of European human rights legislation and would distort the flows of capital. But, importantly, the issue of a levy or other resolution method is high on the agenda for a seminar that I will be chairing at No. 11 next Monday on how we get the banking sector to internalise the cost of failure and no longer rely on the taxpayer.

Lord Howarth of Newport: Will my noble friend share with the House the Government's thinking about how to develop a co-ordinated, international response to ensure that the banks and wider financial services industry globally do not land us in another financial catastrophe in the course of the next economic cycle?

Lord Myners: The thinking behind resolution mechanisms, contingent capital and levies is very much on the basis that to be effective there must be global co-ordination. That is why my right honourable friend the Prime Minister put that on the agenda at the G20 Finance Ministers meeting in November in St Andrews and why we are pressing for continued work in this area in anticipation of the IMF spring meeting, so that we get global co-ordination around a response mechanism to make the world's banking system more robust and more able to cope in the future with its own problems.

Baroness Noakes: My Lords, the Minister talked about leading global discussions. Can he confirm that those discussions will involve all the countries which would benefit if the actions by some of them drove financial business away from the centres where it now takes place?

Lord Myners: The work to which the noble Baroness refers is taking place through the IMF and the G20. The seminar that we are holding next week is largely focused on the work of the G7 and international support agencies. We absolutely recognise that a commercially successful, profitable, responsible banking and financial services sector is an important national asset that we will cherish, protect and ensure grows in a way that supports broader economic interests in the future.

Cluster Munitions (Prohibitions) Bill [HL]

Report

3.37 pm

Report received.

Video Recordings Bill

Third Reading

3.38 pm

Bill passed.

Security and Counterterrorism

Statement

3.38 pm

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My Lords, with the leave of the House, I shall repeat a Statement made in the other place by my right honourable friend the Prime Minister. The Statement is as follows.

"With permission, I should like to update the House on the measures that we are taking to enhance our security and our protection against terrorism. Yesterday, at a regular meeting of our National Security Committee, Ministers and I received the latest intelligence and information from the chiefs of our security and intelligence agencies, the head of the UK Border Agency, the country's senior counterterrorism officials and police officers, and the Chief of the Defence Staff. Also yesterday I spoke to President Obama about our security measures.

[Baroness Royall of Blaisdon]

The failed attack over Detroit on Christmas Day signalled the first operation mounted outside Arabia by al-Qaeda in the Arabian Peninsula, the Yemen-based organisation with close links to the al-Qaeda core in Pakistan. We know that a number of terrorist cells are actively trying to attack Britain and other countries. Earlier this month, the Home Secretary and the Transport Secretary made Statements to Parliament setting out the urgent steps that we are taking to enhance aviation security, including new regulations for transit passengers. Today, following the advice that the Government have received, I want to announce further measures to strengthen the protection of our borders, maximise aviation security, and enhance intelligence co-ordination at home and abroad.

Earlier today, I paid tribute to those members of our Armed Forces who most recently gave their lives in the service of the security of our country in Afghanistan. The action that we are taking to counter terrorism at its source in the Afghanistan-Pakistan region and elsewhere is a central part of our wider counterterrorist strategy. All our actions, which we will update regularly, are founded on what is and must be the first and most important duty of government: the protection and security of the British people.

Although the UK's borders are already among the strongest in the world, I now want to set out how we will further strengthen our protection against would-be terrorists: first, by extending our Home Office watch list; and secondly, in partnership with security agencies abroad, by improving the sharing of information on individuals of concern. I can announce today that, as well as extending our watch list, we intend for the first time to use it as the basis for two new lists: first, a no-fly list; and secondly, a larger list of those who should be subject to special measures, including enhanced screening prior to boarding flights bound for the UK. We will use the new technology that we have introduced and our partnerships with police and agencies in other countries to stop those who pose the greatest risk from travelling to this country. Over the coming months we will go further in taking action against people before they even board a plane to the UK.

Our e-Borders scheme is a vital component of our strategy to strengthen and modernise the UK's border controls. It has already achieved significant success, enabling nearly 5,000 arrests for crimes that include murder, rape and assault. As a result of the £1.2 billion investment that we are making, we will by the end of this year be able to check all passengers travelling from other countries to all major airports and ports in the UK, whether they are in transit or the UK is their final destination, by checking against the watch list 24 hours prior to travel and then taking appropriate action. The e-Borders system will give us a better picture than ever of people coming into and out of our country.

Today my right honourable friend the Home Secretary is meeting his European counterparts to push for swift agreement at EU level on the ability to collect and process data on passenger records, including on travel within the EU; and to enforce the European Commission's recent approval of the transmission of advance passenger information to our e-Borders system by carriers based in other member states.

As the Detroit bomber highlighted, we also need—and are sponsoring—research on the most sophisticated devices, capable of identifying potential explosives anywhere on the body. As President Obama and I discussed, greater security in our airports, with the new body scanners introduced from next week, an increase in explosive trace testing and the use of dogs, must be matched by demanding greater guarantees about security in those international airports from which there are flights into our country. I can today inform the House that we have agreed with Yemenia Airways, pending enhanced security, that it suspends its direct flights to the UK from Yemen with immediate effect. We are working closely with the Yemeni Government to agree what security measures need to be put in place before flights are resumed. Aviation security officials are at present looking at this. I hope that flights can be resumed soon, but the security of our citizens must be our priority.

We will also work with our partners in the International Civil Aviation Organisation, the EU and the G8 to promote enhancements to the international aviation security regime, including stronger security arrangements in airports and greater sharing of information. My right honourable friend the Home Secretary will be discussing initial proposals with European and US counterparts this week. We will also offer increased assistance to countries whose weaknesses in aviation security may present a wider threat to the international community, including to the UK.

It is because we fully recognise the global nature of the terrorist threat that we face today that our response must also be truly global. Plots against the UK and our interests originate in various parts of the globe. Some of the intelligence that we need in order to protect our people against attacks will be here in Britain; some will be held by our international partners and passed to us, just as we help them with our information about the threats that they face; and some information will come from the most unstable parts of the world. So, in tackling these threats to life and our way of life, our security services—to whom I pay tribute—need to be able seamlessly to track and disrupt terrorist activity and movements, whether within the UK or beyond. This requires ever closer working between our agencies themselves, and with our international partners.

I can announce that, as part of the work, I have asked the Cabinet Secretary to lead on intelligence co-ordination. Our three intelligence agencies have already begun to set up joint investigating and targeting teams to address potential threats upstream, long before the individuals concerned might reach our shores, ensuring that at all times we continue to deliver improvements in the way we collect, share and use intelligence, and building on previous reforms, including the Joint Terrorism Analysis Centre set up in 2003, the Office for Security and Counter-Terrorism and the National Security Secretariat in 2007.

In addition to all those measures to protect British lives at home and in the air, we are tackling the problem of global international terrorism at its source. I have said before that Yemen is both an incubator and a potential safe haven for terrorism, and, along with

Somalia, is the most significant after the Pakistan-Afghanistan border areas. We and our allies are clear that the crucible of terrorism on the Afghan-Pakistan border remains the No. 1 security threat to the West. But at the same time we must recognise that al-Qaeda's affiliates and allies, pushed out of Afghanistan and under increasing pressure in Pakistan, are seeking to exploit other areas with weak governance, such as parts of Yemen, Somalia and the Sahel.

In Yemen, we have been at the forefront of the international effort for some time, assisting the Government through intelligence support and through support for their coastguard and for the training of counterterror personnel. We are also helping to tackle some of the root causes of terrorism by supporting political, economic and social reform. By next year, our commitments will total some £100 million, making the UK one of the leading donors. We are also increasing our capacity-building in Somalia, working with the transitional Government and the African Union.

As with all aspects of the fight against terrorism, this new threat can be met only through enhanced co-operation, so we will now work more closely with allies in the region to pool efforts, resources and expertise. Next week, here in London, alongside our conference on Afghanistan, we will be hosting a special meeting to strengthen international support for Yemen in its efforts against al-Qaeda, to help the Government of Yemen advance their internal reforms and to increase capacity-building and development assistance in a way that directly addresses poverty and grievances which can fuel insecurity and extremism.

Since 2001, we have reformed domestic defences against the terrorist threat, trebled our domestic security budget, doubled the staff in our security services and reformed our security structures to bring greater co-ordination across government. We have responded to the changing nature of the threat by bringing in new powers and new terrorism-related offences. Nearly 230 people have been convicted of terrorist or terrorist-related offences since 2001. Today's announcements demonstrate that we will continue to be vigilant, adapting our response to changing terrorist techniques".

I commend this Statement to the House.

3.47 pm

Lord Strathclyde: My Lords, I thank the noble Baroness the Leader of the House for repeating the Statement made earlier by the Prime Minister. Finding the right balance between ancient liberties and security is a delicate matter and something that I think this House has been rather better at than another place. If I may say so, it has certainly been better than the Government, whose security policy has been consistently reactive, and all too often over-reactive. One only has to think of the example of 42-day detention without trial. Thank goodness that old dog has not been let loose again. I hope the noble Baroness will confirm that she sees no need for it.

I said that the Government had too often been reactive and had played catch-up. That is surely the case in respect of militant radicalisation of Muslim youth. For too long the Prime Minister dithered about proscribing Islam4UK, which we on this side repeatedly asked to be banned. Now he has acted. Will the Government now ban Hizb ut-Tahrir? Does the noble Baroness share my concern that the United Kingdom is now widely seen by other countries as a base for radicalisation?

University freedom is vital, but can the noble Baroness tell the House what appraisal the Government have made of radical activity on FE campuses? Could not more be done to help those in Muslim communities combating those threatening a British way of life that most British Muslims hold dear? Could we not ensure that every woman and child in immigrant families is fully educated in the British language and our way of life? Must we not be rigorous in shutting out from any kind of taxpayer funding bodies that do not accept the pluralism of our way of life and ways of faith as a permanent British reality?

The Government intend to react to the Detroit bomber by imposing full-body scans at all airports. We support all action that is necessary and proportionate; we accept the security advice. However, will the noble Baroness tell the House four things: the timescale for this, the cost, the number of ports and airports involved, and the anticipated impact on travel times? How will this be required of countries of provenance? Is not the brutal reality that the terrorist target is as much the plane flying towards the UK or the US as that flying out?

The Statement seemed to say that by December, with 24 hours' notice, we will be able to prevent anyone boarding a flight to the UK from anywhere in the world. Is that what was meant? If not, precisely what was meant? This might be an ideal, but how will it be imposed? For example, has every EU country signed up to full-body scanning, or laborious body searches, at every international airport? If so, on what timetable?

Mass murder is possible—as seen tragically in Madrid and here on 7/7—on other modes of transport, or indeed on none. Is not the abiding overall need not for general measures, helpful though they may be, but for targeted measures, proper profiling and layered security? Questioning mothers taking pictures of their children in Whitehall, holding the DNA of innocent people or detaining, for example, a suspicious-looking character like the noble Lord, Lord West—as I read in the *Daily Mail* the other day—makes a mockery of targeted security policy and undermines consent. Therefore I welcome the targeted measures in the Statement: for example, the announcement of the extension of the Home Office watch list. I also particularly welcome the action on a no-fly list. This is something that my noble friend Lady Neville-Jones has been advocating for some time, and for which she asked the Secretary of State for Transport when he made his Statement last week. I and my noble friend welcome the fact that this has been taken up, however belatedly. Will the noble Baroness also tell the House what is being done, in the light of this episode, to improve targeting of potential terrorists, for example by enhancing the training of security staff at airports to identify risk factors?

I also welcome the tentative moves towards improved co-ordination within government. This has long been necessary. However, will the noble Baroness go further and take up the comprehensive proposals for a national

[LORD STRATHCLYDE]
security strategy—including on this particular point of intelligence co-ordination—set out in the outstanding report by my noble friend Lady Neville-Jones, published last week? Rather than a Cabinet committee, do we not need a proper national security council, with a national security adviser, at the heart of government, which can address these issues in the round?

On Yemen, too, we are at last seeing concrete action. Will the noble Baroness assure the House that it does not include deployment of troops or military advisers? As well as Yemen, the Statement picked out Somalia and the Sahel. Will the noble Baroness tell the House which Sahel nations she sees as particular threats, and what action is being taken there?

Ever since we had regime change in London and Washington and the phrase "war on terror" was banned, there has been an occasional whiff of doubt beyond these shores about our resolve to confront and crush terrorism. No one who thinks for a moment of the courage and sacrifice of our forces in Afghanistan could doubt our national resolve. We will never forget our gratitude to them. However, this will be a long and sometimes dark road. The Government must give convincing leadership on the threat that we face at home. I assure the noble Baroness that, so long as that resolve endures and sacrifices are needed, the Government will have our support—and I am sure that another party in government will receive no less support from her.

3.54 pm

Lord McNally: My Lords, I can probably shorten my intervention by not following the noble Lord, Lord Strathclyde, in saying which ideas we thought of first or which we would do better. However, I will follow on from his final comment. It is very important in this area that we show as much cross-party resolve as possible in facing these threats. We support the central theme of the Statement that the first priority is the protection and security of the British people.

There are some points on which I should like clarification. Are the Government still pondering the question of intercept evidence in this area or do they now believe that it is not possible within our legal system? Profiling is a very delicate area because, to put it bluntly, the kind of people whom we are looking for will come up in certain profiles, which will then arouse questions of racialism or of picking out particular nationalities. It is very difficult to know how to square that circle in terms of effective profiling. On the question of body scanners, again, will we run into trouble with certain individuals claiming that it is against religious or cultural taboos to allow themselves to be submitted to such scanners? Also, how much confidence do the Government now have in control orders in these areas?

Following on from the point made by the noble Lord, Lord Strathclyde, I think that there is now enough evidence, real and circumstantial, to raise concerns about radicalisation in our universities and other institutions of further education. How much consultation is now taking place with the university authorities so that intellectual freedom, which is important in our universities, is matched with the reality of such radicalisation? Are we in contact with the university authorities and are they being co-operative?

The Statement referred to 2001, so there have been about nine years of various developments in these policies, yet we are still talking about greater sharing of information. Even more worrying, the Cabinet Secretary now has to look at intelligence co-ordination between our three intelligence agencies. I should have thought that, if evidence arose of non-co-operation on information between our intelligence agencies, that should be a sackable offence, if not a prosecutable one. There should be no hoarding of information by the agencies if they are to be effective.

It is welcome that we are making support available to Yemen but, again, we must learn some of the lessons of history. This is an extremely complex society and in the past both we and the United States have gone into such societies, created problems and alienated local communities. It is important that we are very well informed about whom we are supporting and with what objectives.

Finally, during Questions we heard the extraordinary statement that the FCO is cutting activity in counterterrorism and radicalisation. If we have a Statement from the Prime Minister about how we are making much more effort in these areas and then a statement from the Foreign Office Minister saying that Treasury-imposed cuts are cutting activity in the very areas that the Prime Minister's Statement is about, is that not evidence that there is a hole in the bucket?

3.59 pm

Baroness Royall of Blaisdon: My Lords, I am grateful to both noble Lords for their general welcome for the Statement that I repeated. They are both right that these issues are of such extreme importance to our country that it is vital that we work on a cross-party basis for the security of our nation and people. Of course I completely agree with the noble Lord, Lord Strathclyde, that we have to maintain the balance between rights of the individual and the need to protect society as a whole. That is what this Statement is about and what we as a Government have been doing over the past 12 years.

On the radicalisation of Muslim youth, the noble Lord, Lord Strathclyde, contended that we have somehow been dithering about the proscription of certain organisations. We were not dithering about the proscription of an organisation a couple of weeks ago. We have to ensure all the time that the proper criteria are met. The proper criteria were met at that time and we proscribed the organisation. The organisation Hizb ut-Tahrir does not meet the criteria for proscription so it has not yet been proscribed. Should it do so, it will be proscribed.

Both noble Lords spoke of the importance of university and FE campuses. There is no evidence that universities are hotbeds of radicalisation and, as the noble Lord said, it is very important that the values of openness, intellectual scrutiny, freedom of debate and tolerance promoted in higher education are allowed to flourish. That is a good way of challenging extremism. However, we know and recognise that a small minority of people who support violent extremism have sought to influence and recruit young people through targeting universities. We are therefore working with universities, and have been doing so for some time, but there is much more to

be done. I assure noble Lords that we have a good relationship with vice-chancellors and those in charge of FE establishments to ensure that proper measures are taken. We will continue to work on that issue.

The noble Lord, Lord Strathclyde, referred to the importance of people who want to live in this country speaking English—man, woman and child. That is precisely why spoken English is now an important part of our citizenship process.

I turn to airline security measures. The first body scanners will be in service at Heathrow within a few weeks. Because Heathrow is our major hub airport, it is important that we work on it first. Privacy concerns were raised, which we understand. That is why it is vital that staff are properly trained and managed. The Department for Transport is drawing up a code of practice to ensure that privacy and legal concerns are taken into account. We are also working with our European counterparts on these issues.

In relation to passenger profiling, we are working with BAA, which has started to train airport security staff in behaviour analysis techniques to help them to spot passengers acting unusually and to target them for additional search. That is not really profiling but training people to spot how people behave. It looks a promising way forward, but it is not yet a proven technique for counterterrorism operations.

The noble Lord, Lord Strathclyde, rightly pointed out that there is a terrorism threat from incoming planes. More than 5,000 flights a week come into our country, which makes it vital for us to work with other countries. That is what we do, by sending people from the Department for Transport to work with officials on the ground. Furthermore, our e-Borders programme is very effective. By the end of this year, it aims to cover 95 per cent of passenger and crew movements into and out of the UK. That is already making a profound difference. To date, e-Borders has checked 142 million passengers and led to around 5,000 arrests. That is a splendid move forward and I am pleased that the noble Lord is in agreement with the extension of the watch lists and the no-fly lists.

It is wrong to say that nations are a threat, but al-Qaeda in the Maghreb is present across the region of the southern Sahel and it does not respect borders. Sadly, it is present throughout the region, as I said.

The noble Lord, Lord Strathclyde, spoke of the policy introduced at the beginning of this week by the noble Baroness, Lady Neville-Jones. Many of the initiatives proposed by the Official Opposition are built on ideas that are already in place. Noble Lords speak of the need for a national security council, but we already have NCIS. Yes, it is a Cabinet committee and not a council—council, committee, whatever—but it is a very effective way of bringing together all the people involved in security. We have a national security strategy and the National Security Secretariat, so we are already acting on many of the issues raised by the noble Baroness earlier in the week.

The noble Lord, Lord McNally, spoke of the need for co-operation between agencies and expressed concern and amazement that the Cabinet Secretary was now involved in that. We are confident that there is already excellent operational co-operation between our intelligence agencies. The Cabinet Secretary's review is an exercise to ensure that we are doing as much as possible and that national security is kept under careful and constant review in the light of recent events.

On control orders, we were disappointed by the judgment handed down earlier in the week and will be appealing in the strongest possible terms. The noble Lord, Lord McNally, raised the issue of intercept evidence, but as noble Lords will already know the committee of the privy counsellors agreed that the Chilcot test had not been met and is looking at other ways forward.

The noble Lord, understandably and rightly, spoke of the seeming disparity between the Statement and the Answer to a Question posed earlier today about counterterrorism expenditure in Pakistan. No budget can be exempt from scrutiny. Our counterterrorism work in Pakistan is of the utmost importance and includes building the capacity of Pakistani counterterrorism capabilities and giving wider support to the Government of Pakistan's counterterrorism efforts. This work is always under review. Some projects have not met the required threshold following the FCO's reduced budget because of exchange rate charges. However, I can assure noble Lords that we will continue to work in that area.

Finally, this Government, like all Governments, will continue to take no chances when it comes to the protection of the UK. I know that all of us in this Chamber agree that that is the right way forward.

4.09 pm

Baroness Symons of Vernham Dean: My Lords, perhaps I may press my noble friend a little further on that last point, which was also the final point that the noble Lord, Lord McNally, raised, because it goes to the heart of the issue. The Statement is unequivocal on what the Prime Minister says is the first and most important duty of the Government—the protection and security of the British people. That is an unequivocal statement. I and, I am sure, many others in the House heard my noble friend Lady Kinnock in terms, I fear, of some concern answering the Question earlier this afternoon from the noble Lord, Lord Wallace of Saltaire. She said quite clearly that the counterterrorism budget had been cut—not that specific bits had been taken out and other bits put in, but that the counterterrorism budget itself in the Foreign Office as it pertains to Pakistan had been cut. The noble Lord, Lord Hannay, made the point that perhaps there should therefore be more support from the Treasury to make up the shortfall of £100 million as a result of the changes in the exchange rate. Will my noble friend take this point back, because, frankly, the Statement and what my noble friend Lady Kinnock said do not add up to a coherent point of view? Some of us think that there should be ring-fencing of the counterterrorism budget. We can ring-fence other budgets. Surely the budget that affects the protection and security of the British people should be the first to be ring-fenced, not an afterthought.

Baroness Royall of Blaisdon: My Lords, I well understand the concern expressed by my noble friend and other noble Lords and I confess to my surprise

[Baroness Royall of Blaisdon]
earlier also. As I understand it, the counterterrorism expenditure, or funding, in the Home Office is ring-fenced. If it can be ring-fenced in one department, perhaps it could be ring-fenced in another. I really do not know. I cannot make a commitment on behalf of the Government, but I will certainly take that point back and take back the fact that counterterrorism is clearly a priority for the Government. We understand that the Treasury is under enormous pressure at the moment, but perhaps it could do something vis-à-vis the exchange rate.

Lord Carlile of Berriew: My Lords, in broadly welcoming the important Statement that has been made today, in relation to the use of the e-Borders system to check against the enhanced watch list, may I ask the noble Baroness to assure the House that it will be possible to use the e-Borders system effectively where passengers book their tickets less than 24 hours before travel? Will the Government also take steps to ensure that it is no longer possible to purchase travel tickets to and from this country with cash shortly before travel? Finally, will the noble Baroness assure the House that the reference in the Statement to major airports covers every air and sea port to and from which what one might call scheduled travel is possible?

Baroness Royall of Blaisdon: My Lords, at the moment the limit is 24 hours. I will come back to the noble Lord on whether that can be extended. It takes some time to exchange information, but I will come back to him. It seems a sensible way forward not to be able to purchase tickets with cash. Again, I will have to come back to the noble Lord.

Lord Strathclyde: Some people only have cash.

Baroness Royall of Blaisdon: The noble Lord opposite rightly says that some people only have cash or credit cards. These things have to be looked at in a balanced way, but that has to be considered. On the ports and airports that will be covered, our target for the end of next year is 95 per cent of all movements into and out of the UK. The additional 5 per cent represents a very small number of non-commercial flights and some maritime routes; the vast majority will be covered.

Baroness Manningham-Buller: Can the Leader of the House confirm that since 9/11 the principle guiding the exchange of intelligence has been the need to share, not the need to know? I am surprised by the implication in the Statement that that is not happening at a very advanced level. I am two-and-a-half years out of date, but the exchange of intelligence between the various intelligence agencies, the police in the UK and the British Government was at a level I had never seen before and was extremely detailed. Nothing was horded or hidden from the people in the UK machinery who needed to have that information.

However, I shall add one caveat. Not all that information can be shared with everybody in the world. We are dealing with other countries that have different legal standards, different human rights standards and different abilities to protect that information and its source. Therefore, while it will always be the case that we will wish to communicate to other nations information on threats to the lives of their citizens, it has to be done with great care if we are not to jeopardise the sources of intelligence and damage our own counterterrorism effort. I wish this House not to believe that the exchange of intelligence can happen in a routine whirlpool around anybody in the world with whom we are talking. That is too dangerous. I believe that the Leader of the House will confirm that.

Baroness Royall of Blaisdon: I completely agree with everything that the noble Baroness said. I reassure her that nothing has changed since she held her position. The principle is still the need to share, not the need to know, and it is happening at a very advanced level.

Lord Marlesford: My Lords, does the noble Baroness agree that at a time when, as the Prime Minister constantly reminds us, we are asking our military personnel to lay down their lives so that terrorism is kept off the streets of Britain, it would be inexcusable if any weapon at home against terrorism were not to be fully used? Does she further agree that profiling is a most important weapon against terrorism and that it has many different aspects and techniques? The answer must be to make the fullest use of it, but not to talk about it.

Baroness Royall of Blaisdon: Now there is a conundrum, my Lords. It depends on how one defines profiling. The sort of thing that I was talking about earlier—looking at how people behave—might be called profiling by some people. It is one of a number of techniques. As the noble Lord said, especially at a time when we are asking people to lay down their lives for us, but at any time when we are under threat, any Government have to look at all the tools available to them, if I may put it like that, and use whatever is necessary to secure the safety of the people of this country.

Lord Hylton: Can the noble Baroness give us fuller information about the basis on which the no-fly list will be compiled? Will it include people with convictions and, possibly, people who are merely under suspicion? Will there be an appeal procedure against listing? I say that because mistakes, which will almost certainly occur, could be very unfair and onerous. The more information the noble Baroness can give us on this, the better.

Baroness Royall of Blaisdon: My Lords, there are two issues here. First, having a no-fly list is a new proposal. It is urgent, but work is ongoing on the issues that the noble Lord mentioned. Secondly, it would not be appropriate to bring some of this information into the wider field because some of these things have to be kept within security circles for security reasons. I am sure the noble Lord understands that.

Baroness Falkner of Margravine: My Lords, the noble Baroness's response that it is not appropriate is rather alarming. Will members of the public who are denied access to planes know the basis on which they have been denied access? With regard to the point made by the noble Lord, Lord Hylton, will they be able to have their names removed from the list should it be proved that there had been a mistake? In the US,

nearly 5,000 people are on the no-fly list. In the early days, the most frequent name on the list was Williams, which might provoke some problems in this country.

Finally, will the noble Baroness tell us about Hizb ut-Tahrir not meeting the criteria for proscription? What are the criteria for the proscription of certain organisations? Will she lay a paper in the Library to that effect?

Baroness Royall of Blaisdon: My Lords, the noble Baroness should not be alarmed by what I said earlier. These issues are still being worked on. If it is possible to provide information at a later date, we will of course do so. I note the points that have been made about appeal and so on. I cannot give any further information on the criteria for proscription.

Lord Brooke of Sutton Mandeville: My Lords, 20 years ago in Northern Ireland, 45 per cent of those who were charged with terrorist offences had created no prior terrorist traces. Does the Leader of the House feel able to say what comparable statistic applies today for the United Kingdom as a whole?

Baroness Royall of Blaisdon: My Lords, I am afraid that I do not have that information with me, but I will certainly seek it and provide it to the noble Lord if at all possible.

Baroness Tonge: My Lords, will the Minister answer really quite a simple question? What rays are to be used in the body scanners? If they are X-rays, which I think they probably are, is there not the danger of irradiation and a health hazard to frequent travellers?

Baroness Royall of Blaisdon: My Lords, that is a very important question. We have looked at these issues to ensure that whatever rays are used could not be harmful to either adults or children. I do not know exactly what rays are to be used; I will come back to the noble Baroness. I am assured that they are not harmful, whatever rays are used.

Earl Attlee: My Lords, the Leader of the House mentioned several states that could be harbouring terrorists. We have successfully denied Afghanistan and Pakistan to al-Qaeda, so where will it operate from next? Which failed state will it colonise? What will we do about it, and how will we avoid the perils outlined by the noble Lord, Lord McNally?

Baroness Royall of Blaisdon: My Lords, as is clear from the Statement, in addition to Afghanistan and Pakistan, the countries about which we have concerns at the moment are Yemen and Somalia. Apart from working with those countries' authorities on capacity-building, counterterrorism and so on, we are, as the Statement says, working with them to develop them and to help them socially and economically so that the people who are living in grinding poverty are not attracted by radicalism and al-Qaeda; they are not looking to other ways to get out of their poverty. We are trying to deal with these things at the grass roots before they become a problem.

Lord Monson: My Lords, as the noble Lord, Lord Carlile, said, some individuals for one reason or another do not possess a credit or debit card and are therefore obliged to pay cash for their airline tickets, and it would be wrong to prevent such individuals from flying altogether. However, does the noble Baroness agree that, if someone pays cash for their tickets, they should be subjected to the most rigorous scrutiny, particularly if the ticket that they have bought is one way.

Baroness Royall of Blaisdon: My Lords, the noble Lord is right that some people might not have access to a credit card and therefore might need to use cash, but those are precisely the sorts of individuals at whom we would look very carefully, perhaps more carefully than those with a credit card, because they might well be suspect in some way, just like those passengers who get on to a long-distance flight with no luggage.

Lord Jopling: My Lords, in the latter months of last year, the Government told us that there was no evidence that money raised from piracy in the seas around Somalia was getting into the hands of terrorists. I think that she would probably agree that, knowing the amount of money which is passing to those people who conduct piracy, it would be slightly surprising if some of it was not going towards terrorism. Is there any up-to-date information that that money paid in ransoms is going, as one might expect, to terrorists?

Baroness Royall of Blaisdon: My Lords, as I understand it, there is still no evidence to date to suggest that money from piracy or ransoms is funding terrorism, but it is a matter about which we remain concerned and vigilant.

Baroness Park of Monmouth: My Lords, does the Leader of the House agree that at this time it is vital for us to use every resource we have, one of which is the skill and knowledge that should be in the Foreign Office? I wonder how many Arabists we still have and how we propose to know and identify the threats against which we are working if we have no means of doing so. We will essentially be blind if the FCO is cut any further.

Baroness Royall of Blaisdon: My Lords, the noble Baroness is right that we have to use every person and tool available to us. Of course, the personnel in the Foreign Office are of great benefit to the Government and the people of this country. I recognise the concern expressed by the noble Baroness about further cuts. However, I am sure that this and any other Government will be vigilant and will ensure that the requisite people in the Foreign Office remain so that they can work on many other issues, but precisely on the terrorism threat.

Lord Mackay of Clashfern: My Lords, I have a little difficulty in understanding the relationship between the noble Baroness's answer to the noble Baroness, Lady Manningham-Buller, and the Prime Minister's statement about a remit to the Cabinet Secretary. How do those two fit together?

Baroness Royall of Blaisdon: My Lords, as the noble Baroness said, there has been intense and very good co-operation between the services over a long period of time. These things need to be formalised, which is why the Cabinet Secretary has stepped in. But it does not point in any way to a lack of co-ordination between the services.

Digital Economy Bill [HL]

Committee (4th Day)

4.28 pm

Clause 8 : Contents of initial obligations code

Amendment 116A

Moved by ***Lord Whitty***

116A: Clause 8, page 11, line 1, leave out from "OFCOM" to end of line 3 and insert "has, under the code, the functions of administering and enforcing internet service provider and copyright owner compliance with the code"

Lord Whitty: My Lords, Amendment 116A is essentially a probing amendment which raises an important issue; namely, to understand what the Government mean by reference to "or another person"—that presumably means an organisation—which may be "administering and enforcing" the code. For the notification process to work, it has to have the credibility that the administering and enforcing authorities will ensure full compliance by the ISPs and the rights holders; otherwise there is a further risk of losing public support.

The subsection seems to envisage that Ofcom would allocate its duties to another organisation. That raises my suspicions. We already have a situation where the code may be drawn up in the first place by the industry and only approved by Ofcom. Surely it is the responsibility of the statutory agency to ensure that the terms of the code are complied with not only by the ISPs—that is clear—but by the rights holders. If the rights holders behave as some of them or their representatives have done under present law in terms of threatening people for file sharing then there will need to be some sanction against these rights holders, at least so that they do not pursue their case further under the code and these provisions.

4.30 pm

I am therefore not clear why anyone other than Ofcom should have the responsibility for carrying out the administration and enforcement of the code. It is possible to envisage a desire to subcontract the formal administration in terms of writing the letters and performing the administration in the strict sense, but surely enforcement must be the responsibility of the statutory agency. In several of the fields that it covers, I have quite a respect for Ofcom. Much of that respect concerns the statutory duties placed on it to act in the interests of consumers and citizens and to take into account issues such as human rights and data protection. It is therefore an appropriate body to allay all the anxieties that I and others have expressed about how this notification process and the subsequent sanctions process are likely to work.

If anyone other than Ofcom will do it, will it do so under the auspices of Ofcom? Will all Ofcom's duties still apply? Will Ofcom ultimately be responsible? If it is anything less than that, we will need a statutory base for this alternative body. I would much rather see the whole process of administration and enforcement rest with Ofcom itself. As I said, I can see a narrow part of the administration being devolved somewhere else under subcontract. However, Ofcom should still be responsible. Surely it must be responsible for the enforcement. That enforcement relates to the ISPs, to which this part of the legislation relates, and to the rights holders themselves, over which, before this legislation is passed, Ofcom has no jurisdiction. I think that the Government have made it clear that they would expect Ofcom to have some oversight over the behaviour of the rights holders as well as the ISPs in this respect.

So my key question is: why do the Government envisage a body other than Ofcom carrying this out? If it does carry out the enforcement, I would be strongly opposed. If any other body is involved in the process at all, will it be covered by the statutory constraints on Ofcom, or will we need to legislate separately to ensure that it meets the same criteria in terms of various protections for consumers and for others against whom the sanctions might ultimately operate? I beg to move.

Lord Howard of Rising: I agree with the noble Lord, Lord Whitty; many of his comments are very sensible. It is surprising the extent to which these provisions allow for the establishment of a separate, semi-independent body to administer and enforce the code plus adjudicate in the matter of copyright disputes. All this is apparently separate from and in addition to the tribunal process. As I said earlier in these debates, we on these Benches are unconvinced about the benefits of such a body. We are certainly unconvinced that such a body should take on a quasi-judicial role. A separate body would appear to remove accountability from the process. If it remains with Ofcom, at least the Secretary of State will be ultimately responsible. A separate body would remove even that weak link. I am also extremely concerned at the idea that a body with no electoral or judicial accountability will be able to decide on administrative penalties of the scale mentioned in the Bill. What kind of powers does the Minister envisage this body having to resolve copyright disputes? Why would it be able to handle such disputes—or even the administration of the code—better than Ofcom? I also look forward to hearing the Minister's response to the question of the noble Lord, Lord Whitty, about whether such a body would have the same disciplines upon it as Ofcom.

Lord Mackay of Clashfern: My Lords, what kind of resources will this body have? The Minister will remember that, in answer to the proposal of the noble Lord, Lord Gordon of Strathblane—that competition matters in this area should be given to Ofcom—it was said that Ofcom would need resources to deal with such matters, including lawyers, economists and so on. What about this body and its requirements?

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): My Lords, this hare is gaining more legs as it progresses round the Chamber.

The effect of the amendment would be to remove the ability of Ofcom to set up another body to administer and enforce compliance with the initial obligations code. It would require Ofcom—and no other body—to take on that role. I am sure that Ofcom appreciates the great faith that it inspires in noble Lords—although sometimes Her Majesty's Opposition have rather less faith in quangos—and, indeed, Ofcom is an estimable organisation. However, our admiration should not lead us to restrict it in the way that is proposed. It is entirely reasonable for Ofcom to organise the administration and enforcement of the initial obligations code, for which it remains responsible, in the way that is most efficient and effective. For organisational, financial or other reasons it may prefer to set up a body which is, I stress, independent of internet service providers and copyright owners to carry out this function rather than be directly involved as Ofcom.

As Ofcom is the body that will continue to have the obligations, powers and duties of a regulator under the Bill, I do not see what is to be gained by insisting on its direct involvement and restricting its freedom of manoeuvre in the way proposed in the amendment. Certainly such a restriction is unlikely to be welcomed by Ofcom.

Two separate points were made. My noble friend Lord Whitty asked whether the organisation would act under the auspices of Ofcom—yes, it will; I can give that assurance—and the noble Lord, Lord Howard, referred to copyright disputes. The body will not be involved in copyright disputes, because this is an initial obligations code. It will not be involved in copyright disputes—perish the thought—but simply with the enforcement of the code. At least that is how I have been informed. The noble and learned Lord, Lord Mackay of Clashfern, asked about resources. The answer to that is that if we will the end, we will have to will the means.

This is not necessarily the route that Ofcom will take, but it might find it more effective and efficient, for financial or other reasons, to set up this body. We have not said that it absolutely will; we have just allowed it some flexibility. We have given an assurance that it will still operate under the auspices of Ofcom and be monitored in that way. With the assurances that I have given, I hope the noble Lord will feel able to withdraw the amendment.

Lord Howard of Rising: Proposed new Section 124E(4)(a) refers to,

"including the function of resolving copyright infringement disputes".

I am glad to hear the noble Lord making the odd joke, because I understand that there has been an edict to say that people at the DCMS are not allowed to look for jokes on the internet.

Lord Whitty: I said that this was a probing amendment, so I shall withdraw it, but I am not very satisfied with the answer. Although there are examples of regulators outsourcing administration, I do not know of a situation where a regulator has outsourced enforcement outside its own jurisdiction. I am gratified that the Minister assures me that enforcement will still be under the auspices of Ofcom, in which case the body will not be independent of everybody because it will effectively be an arm's-length version of Ofcom. However, does that also mean that it will have all the statutory duties of Ofcom? If the Minister could point to an analogy in another area of economic regulation, I might be more reassured, but in an area where a new regime is being introduced, the main regulator ought to be dealing directly with enforcement.

Lord Young of Norwood Green: I thank my noble friend for giving way. I am told that the body will have the same statutory duties, but we will clarify it in writing. While I have the opportunity, perhaps I may clarify one point about copyright disputes. Disputes between ISPs and copyright owners, for example, over whether a CIR is code-compliant are not copyright infringement disputes as defined in Clause 8(6). I hope that that is helpful. However, as I have said, I shall clarify my noble friend's question about statutory obligations.

Lord Whitty: In light of that, I beg leave to withdraw the amendment.

Amendment 116A withdrawn.

Amendment 117 not moved.

Amendment 117A

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

117A: Clause 8, page 11, line 4, leave out "sufficiently"

Lord Clement-Jones: My Lords, we have heard that the Committee is not particularly happy with this rather shadowy, possible body which seems to be lurking in the wings. We had rather a similar situation under Clause 7, which contained the right,

"to establish one or more bodies corporate".

Just how many of these shadowy bodies are we going to be threatened with? Is this the revival of something which we thought had had a stake driven through its heart: the digital rights agency? Who knows? It would be useful to have more clarity from the Minister on just what is proposed.

Even more concern is felt about the rather weasel wording of subsection (4)(b) of proposed new Section 124E of the Communications Act 2003, which uses the expression "sufficiently independent". If the Minister was frank and said that Ofcom will in all probable circumstances be responsible for the administration and enforcement of the code, we would be rather more satisfied, but if there is a possibility of this body being created, "sufficiently" seems to be rather important. Who decides what is "sufficiently independent"? Do we not need a rather more objective test? Is it independent or not? For what will it be "sufficiently" independent? Do we have to have to rely on the old test of the length of the Minister's thumb to decide whether independence is sufficient? He may

[Lord Clement-Jones]
have a very short thumb, but his successor may have a long thumb, in which case independence will be defined in a different way. "Sufficiently" is a weasel word and it should not be in the Bill. I beg to move.

Lord De Mauley: Our feelings on this possible extra body have already been made fairly clear, not least in the previous debate and that on Amendment 99, on which my noble friend Lady Buscombe intervened on Monday to such effect that the Minister said that he would take the matter away. Amendment 117A of the noble Lord, Lord Clement-Jones, goes right to the heart of our concerns. Ofcom, by its size, regulatory position and ultimate accountability to government, is, one would hope, immune to industry pressure. A small body, given the task of administering and adjudicating the code, will surely be at risk of being much more susceptible to all sorts of pressure. It also seems to us that it will be less able to assess the accuracy of the information as effectively as Ofcom, and will, furthermore, arguably be open to much more pressure from negative press briefing.

Of course, the Minister might respond that Ofcom will bear ultimate responsibility for the behaviour of the independent body. I am sure that that is technically the case—but, then, what advantage does the body add? Is the Minister implying that Ofcom might be seen as biased, giving rise to a need to establish a separate body in order to give the appearance of impartiality?

4.45 pm

Lord Young of Norwood Green: My Lords, the amendment would ensure that there was a clear separation between any body appointed to administer and enforce the code and the industry parties that will need to abide by the code, with the implication that "sufficient" independence is not, well, sufficient.

I understand the thought behind the amendment, since the independence of any body that is administering and enforcing the code must be clear; I endorse the concern of the noble Lord, Lord De Mauley, about it not being susceptible to undue pressure. However the amendment is not necessary to achieve that result. The noble Lord, Lord Clement-Jones, accused us of being shadowy and weaselly. I have to reject that; I am deeply hurt. In response to his anatomical analogy, we will not be operating by rule of thumb.

However, we need seriously to ensure that any such body is independent enough from the industry parties in order to perform its function properly and without risk of accusations of favour. Removing the word "sufficiently" would actually raise potential difficulties. The question could arise as to whether even Ofcom itself was independent, since it relies for its income on fees collected from industry and its operations within these provisions will be recouped from industry, and that would apply to any body it set up as well. I suggest that the answer to such questions would be that Ofcom, or a body set up by it to administer the code, is independent enough—or "sufficiently independent". The amendment would really not be helpful in the way intended, and I invite the noble Lord to withdraw it.

Lord Lucas: My Lords, when the Minister talks about "sufficiently independent" and bodies set up by Ofcom, that is not what the Bill says. The Bill just refers to "another person". If a body is set up by Ofcom, then we can take it that Ofcom has sufficient control over it, its method of operating and so on, and our respect for Ofcom—whatever that might be—can pass down to the body set up by it.

However, this just refers to a person chosen by Ofcom. "Sufficiently independent" is an odd concept. The idea that the courts should be "sufficiently independent" of the Government, say, would be an odd thing to put in to the structure of a constitution. Where you need independence—and here, you clearly do—should it not be there?

We will come to this again on one of my later amendments, in which I suggest that this body should be a properly constituted tribunal. Why do the Government think that limited independence is sufficient in this case?

Lord Young of Norwood Green: My Lords, I have endeavoured to answer this. We do not see it as limited. We see it as being a body, not just an individual. Yes, we see it coming under the auspices of Ofcom, as we have already said. There is really no more that I can add to that. I hope that my explanation is sufficient for the noble Lord to withdraw his amendment.

Lord Clement-Jones: My Lords, the Minister has used the word "sufficient" in rather a different context, but I am afraid that his reply was insufficient and very much hope that he will reflect on the wording. His response was very much special pleading on behalf of the Bill's draftsmen. I know that the Government are always reluctant to tamper with the peerless drafting of parliamentary counsel. However, in this case, I think that the Minister will recognise on reflection that he is introducing the rule of thumb into this Bill—he used the expression himself. Either this body is independent, or it is not; "sufficiently independent" allows all sorts of coaches and horses to fly through the door. I feel distinctly nervous about this wording, which I have not seen before in a Bill describing the independence of a body. It would be very difficult for anybody to define "sufficiently" in these circumstances.

Lord Gordon of Strathblane: Would the noble Lord agree that it might be perfectly possible for a body to be set up, which in the interests of securing an agreement contained representatives of potentially interested parties, and that therefore the words "sufficiently independent" are exactly appropriate to the task?

Lord Clement-Jones: My Lords, the point was made by the noble Lord, Lord Lucas, that it is a person that we are talking about here. We are not necessarily talking about a body—we are talking about a person who potentially will have certain functions of appeal, and so on. So it is a rather different concept.

I hope that the Minister will reflect on this. I do not see any nods or winks, but I always live in hope. In the mean time, I beg leave to withdraw the amendment.

Amendment 117A withdrawn.

Amendment 118

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

118: Clause 8, page 11, line 7, at end insert—

"( ) that, on appeal, the burden of proof lies with the copyright owner;"

Lord Clement-Jones: My Lords, in moving Amendment 118, I shall speak to Amendments 119, 189 and 190. I hope that the Minister will be instantly sympathetic to at least the first limb of these amendments, which fall into two parts and refer forward to another similar provision later on, in Clause 13. The first relates to the burden of proof, which is faced by a subscriber on the appeal mechanism. It is very important that when these matters come to appeal—and it will, I suppose, be about the evidence that is available—it is absolutely clear that the onus is on the copyright owner to demonstrate that there has been a breach of copyright and that, therefore, enforcement measures are appropriate. That will become increasingly important, particularly if, looking forward, Ofcom decides that the initial obligations code does not provide enough weaponry for the copyright owners and that technical measures will need to be adopted. The burden of proof will become even more important in future, because, after all, the initial obligations code is precisely that—it is the very first step towards enforcement of copyright. It does not seem to me to be at all unreasonable that the copyright owner should be expected to justify the allegations and produce the evidence. This goes right to the heart of the consumer confidence issue in this Bill; it is absolutely appropriate that it should be explicit in the Bill that the copyright owner in the first instance, in these appeals, has to demonstrate that they own the copyright, that there has been an infraction or infringement and that they have the evidence to prove it. All that will, I hope, be common ground between all noble Lords in this debate. I hope that the Minister will accept at least that first limb.

As for the subscriber appeals and their cost, under the draft order, which we discussed in the previous sitting, we talked about the costs of notification. In square brackets, the Government were saying that they thought it would be roughly 75 per cent for the copyright owners and 25 per cent for the ISPs. There is a strong view among the ISPs, which these amendments are designed to advocate, that that goes too far when talking about the cost of subscriber appeals. That split of 75 per cent and 25 per cent is fine with the set-up costs for notifications, and so on, but a case is being made by the mobile operators, which have rather different cost structures and software requirements, as well as more difficult circumstances with their hardware and software, that that is unduly generous to the copyright owners. The better regulation principles of the Cabinet Office require that the costs of regulation on business as a whole should be kept to a minimum, be proportionate to the desired outcome and, according to its six principles of pricing and recovery, embody both that of cost causation and distribution of benefits.

It is true that in these circumstances it is the copyright owners who stand to benefit from these mechanisms. It seems, certainly to those who wish to see this amendment go through, that the order does not currently make a sufficient distinction between the costs of notification, which are a qualifying cost, and the costs of appeals, which are another qualifying cost—they have all been lumped together and apportioned in the way that we have discussed.

The Bill should make it clear that ISPs can recover all their reasonably incurred costs in this respect from copyright owners, or indeed under the order. They have a strong case; they should not be making that extra contribution. I shall be interested to hear what the Minister has to say on the first limb of these amendments and on the second. I beg to move.

Lord Howard of Rising: My Lords, the noble Lord raises some important questions about the appeal process, both the appeal against the initial obligations process and in the case where technical measures are established and imposed.

The burden of proof is a particularly interesting point. It is, after all, very hard to prove a negative. We have already heard that if the subscriber takes certain reasonable steps, it will be considered a defence against further allegations of infringement of copyright. Does that mean that on appeal it is up to the subscriber to prove that he did attempt to protect his subscription? Will the rights-holder have to produce any further evidence than that contained in the original copyright infringement report to uphold the claim against the subscriber?

As ever, we return to the matter of costs. Under the draft SI, the division between the copyright owners and the internet service providers is suggested to be 75 per cent to 25 per cent. How was that figure arrived at? The Explanatory Notes merely suggest that most of the costs should be borne by the copyright owner. The final figure appears to be very much the result of heavy lobbying from both sides. The copyright owners want a 50/50 split while the internet service providers want none of the costs. The Government seem to have made a final decision just to split the difference and have an easy life.

That, of course, is rather different from the suggestions in some of the supporting fact sheets. One suggested that the establishment of the appeal process should be 50/50 and the running costs should be apportioned according to who brought the appeal. Is that idea now discarded?

I have still not quite got my mind around why internet service providers should pay anything. They are providing the communication link but have no knowledge of what goes down that link; indeed, if they knew, that would raise privacy issues. Perhaps the Minister could explain this to the House.

The Earl of Erroll: My Lords, it is important that the subscriber does not have to get into the complicated process of deciding whether or not someone already owns the copyright. I had not realised until I was briefed the other day that copyright is an incredibly tortuous thing when you start to enforce it internationally and you take into account the Berne convention as well as the location of the servers or the people who might be uploading, as we used the word earlier, while the information is being downloaded elsewhere.

[The Earl of Erroll]

On top of that, some subscribers will not have the money to appeal and they will just have to pay up, which will open them up to bullying tactics if we do not accept Amendment 119. It is a strange notion if poor—I mean "poor" not in terms of being bullied but in terms of having no money—subscribers should have to pay the cost of appeals when they need their internet connections in order to connect to government services to receive benefits. We have to have a system in which the subscriber does not pay. It is a further complication and why it will be difficult to make the Bill work in the real world.

5 pm

Lord Young of Norwood Green: My Lords, I will first remark on Amendments 118 and 189, in answer to the noble Lord, Lord Clement-Jones. These amendments aim to make it completely clear that it is the copyright owner who should prove that the infringement of the copyright took place. I absolutely agree that that is where the burden of proof lies. The copyright holder must be able to substantiate that if the whole process is to have real credibility. There is no difference between us in that respect.

I appreciate the intent behind the amendments and certainly agree that it is important that the position of the subscriber is protected. However, we do not think that the amendment is necessary. The point to be remembered is that the copyright owner will have already provided the evidence that will form the basis of the copyright infringement report. It will be for the appeals body, and the First-tier Tribunal where appropriate, to assess that evidence, assuming that there is an appeal, against the counter arguments of the subscriber. It will then decide whether to uphold the appeal or not. That seems perfectly fair to me.

I reassure the noble Earl, Lord Erroll, that we have no intention of making the appeal scenario one in which people cannot afford to appeal. We said in a previous contribution that we intend this to be a modest cost merely to deter what we might describe as frivolous appeals. If the subscriber is successful, the money will be refunded anyway. Certainly, we agree with him that the regime should not deter perfectly innocent subscribers from receiving justice.

Similarly, Amendments 119 and 190 would ensure that the cost of any such appeal was borne solely by the copyright owner. I suggest that it is right to leave decisions on who bears the cost to the statutory instrument that will be issued as a result of Clause 15 of the Bill, which deals with the sharing of costs. A number of noble Lords have referred to this and I was asked to justify the figures. I make a plea to noble Lords not to get bogged down in the debate about 75:25 and whether it should be 60:40 or whatever. It is a working assumption. The proportion is not an exact science—we are not claiming that. We are clear that the costs should be shared and that the bulk of the costs should sit with the copyright owners, but there is merit in hearing the views of industry and others in the consultation.

The argument about why ISPs should bear any cost is threefold. It gives them an incentive to minimise the cost of sending notifications—here I am addressing the concern expressed by the noble Lord, Lord Clement-Jones—it provides incentives to take voluntary measures to reduce online copyright infringement and thereby reduce the number of notifications that an ISP might have to process and it provides incentives to participate in commercial offers under which a bilateral agreement could reduce the number of notifications that they receive.

We do not expect to be involved in costs in relation to mobile operators because we doubt that there will be enough infringements to breach the threshold and to fall inside the scope of this provision. That is our current assessment. The noble Lord shakes his head. If he has any more accurate information, we would be delighted to receive it and to respond accordingly.

The noble Lord, Lord Howard, asked about a subscriber who had taken defensive measures. In the easiest case, if they had taken defensive measures we assume that there would be no more allegations against them. A worst-case scenario might be where they had taken the measures that they had been advised would be sufficient to defend them, applying a range of software, and were able to demonstrate that they had done so, but somebody had still managed to infiltrate their network. We are clearly talking hypothetically, but we have ranged over what is a reasonable defence more than once in Committee and we have tried to give a reasonable assurance on this.

We do not think that the statutory instrument's ability to apportion costs should be constrained where it is deemed fair and appropriate. The draft that we provided shows that we envisage that it might include a contribution from internet service providers. I have given the reasons why. There is a legitimate argument about whether the appeals process should be entirely free to the subscriber, or whether there might be a refundable fee to deter frivolous appeals. As I tried to reassure the noble Earl, Lord Erroll, it would certainly need to be accessible to all, which might well argue for the appeal to the appeals body being free to the subscriber. That is for consideration in light of discussion of Clause 15 and the accompanying draft statutory instrument. In light of those explanations and assurances, I invite the noble Lord to withdraw the amendment.

Lord Lucas: My Lords, my hearing is getting thin, as I thought that the noble Lord referred to prisoners' appeals. I hope that we have not quite reached that point. He did, I am sure, say earlier that the copyright owner would already have provided evidence that they owned the copyright. I cannot see that anywhere in the Bill. It is an important part of this amendment. In other words, the copyright owner must establish that they are entitled to pursue the person under the Bill. Surely it has to be the copyright owner who establishes that. I cannot see it provided for at an earlier stage,

Lord Young of Norwood Green: I think that we indicated that that would be part of the code. I am looking for inspiration from the Box. I said that I thought we had indicated that it would be part of the code; I am getting an affirmatory nod.

Baroness Howe of Idlicote: My Lords, I may have completely misunderstood but I am still a little confused by listening to these exchanges. If there is a slightly

informal appeal process, and let us suppose that the evidence given points to rather more negligence in one direction than the other, will it be possible for whoever is presiding over this appeal process to decide that the cost of whatever is provided should be split rather more towards the person or organisation that had failed to do what was required of them?

Lord Young of Norwood Green: My Lords, we have not described it as a slightly informal appeal process. In fact, we have said the opposite: it will be a formal appeal process. In answer to the question about where the burden of proof lies, maybe I am going too far in responding. Either there is or there is not an infringement. One would not expect someone to be slightly pregnant; they are or they are not. That is, I think, the situation that we would be in. We are not, as we have indicated, expecting the cost of the appeal to be significant. We want to keep it to a minimum. We do not want to deny people the opportunity to appeal. It will be a formal but not—again, I am checking with the Box—judicial process. That should keep costs down.

Lord Clement-Jones: My Lords, I thank the Minister for his response and thank those who entered the lists during this debate. The noble Lord, Lord Howard, made a very interesting contribution, particularly when he said that he thought that the Government might be opting for an easy life. I thought that probably the Minister would not be taking the Digital Economy Bill through the House if he was really after an easy life, but I appreciate the comment.

This is a paradox. The Minister knows full well what the intent is, which is that there needs to be certainty in the way in which this procedure operates. He knows that there is a great danger here. As a lawyer, I know that there is a big difference between the onus of proof being on the copyright owner and having a rebuttable presumption of something in those circumstances. A rebuttable presumption means that, after you have had three notifications of CIRs, it is perfectly possible for the appeals person, or Ofcom, whoever it happens to be, to say, "It appears to us that you have had three of these letters, so show us now why we should not cut you off"—that is, if the technical measures code was in place—rather than saying, "You have had three of these, so let's hear all the evidence again and make sure that I have got it absolutely right that the copyright owner owns the relevant material". Then he goes through all the steps of uploading or downloading, or whatever the subscriber is claimed to have done. If subscribers are to be confident about these two codes—the Minister and the Government are fully aware of the controversy surrounding the Bill in terms of arguments about the freedom of the internet—adding these words about the onus of proof would make a massive difference to public appreciation of the way in which the Bill operates and would instantly demonstrate the fair way in which these two codes are intended to operate.

The Minister may say that this is not a judicial process, but in terms of the consequences it is a quasi-judicial process, because this person or Ofcom will be in a position to adjudicate. They will make a judgment about whether certain measures should be taken. I do not think that we can take refuge behind whether or not this is a judicial procedure; it is quasi-judicial and has all the relevant characteristics. Therefore, using language such as "burden of proof" seems to us to be absolutely fundamental. I do not know whether the Minister has received any notes from the Box, but if he has I would be more than happy to sit down to allow him to speak.

On the second limb—the costs argument—the Minister is on rather more familiar ground. Many of us would not argue with a 25:75 split precisely because of the Minister's arguments about incentives. We should give people the incentive not to have to issue too many notifications, but the boot is entirely on the other foot when we are talking about appeals procedures. We need an incentive for creative copyright owners to make jolly sure that they get their facts right when they start prosecuting subscribers. However, "prosecuting" is the wrong word; I meant to say when they start alleging that subscribers have breached their copyright. That is where the incentive should be and that is why I suggested that we should not follow the pattern set out in the rest of the order but break out that element about subscriber costs in terms of appeals and have a different allocation.

Lord Young of Norwood Green: I am trying to be helpful. We have deliberately said that the 75:25 split is not set in stone. However, I shall take away the noble Lord's point about the appeals procedure. I shall not re-enter the argument about burden of proof because I think that we have rehearsed it sufficiently. We have made it absolutely clear that there will need to be a real evidential base. That will be part of the code and people will have to provide a real evidential base to sustain the fact that there has been a copyright infringement. I referred on a previous occasion to an audit trail. I plead with the noble Lord not to dismiss that lightly. It was a serious attempt in a previous debate to reassure him.

5.15 pm

Lord Clement-Jones: I will not dismiss that assurance from the Minister. However, I will point out that, under the order, you would need different allocations for different costs. At the moment it is done in a blanket way for all qualifying costs. There has to be new language to allow differentials in different areas of qualifying costs. I hope that the Minister will reflect seriously before Report, because burden of proof will be one of the most important issues that we will come back to. In the mean time, I beg leave to withdraw the amendment.

Amendment 118 withdrawn.

Amendment 119 not moved.

Amendment 120

Moved by ***Lord Lucas***

120: Clause 8, page 11, line 8, after "is" insert "a properly constituted tribunal under the Tribunals, Courts and Enforcement Act 2007, and is"

Lord Lucas: My Lords, I shall speak also to Amendment 125. In the context of this part of the Bill, I have a good deal of sympathy with the Government's idea that this should be a non-judicial process. After all, if a subscriber loses, they get tipped into a judicial process in the civil courts. It does not, in this part of the Bill, impose too great a burden on the subscriber to have this as a relatively informal process. However, in the same structure—if the noble Lord wishes, I will table additional amendments later in the Bill—we are looking at what happens if we get into technical measures. Then, the consequences of losing under the appeal arrangements are that you are likely to have your internet connection severed or greatly reduced, which can be an extreme penalty if you run a business from home, as many people do. The process begs to have a properly constituted appeal and indeed a route to pursue beyond that.

We will come back to technical measures. They are quite loosely defined and can have a big impact on a person. If we are talking about taking technical measures against someone who is providing a number of people with their internet connections and who has fallen foul of the process, there can be a knock-on effect. Under those circumstances, the decision should be properly taken, with a clear route of appeal.

I come back to my fondness for another Bill that the Government took through not so long ago, which became the Tribunals, Courts and Enforcement Act. It set up and regulated tribunals so that they became easier to understand and to deal with. Now they function well in many aspects of our society, and consider school appeals, appeals about special educational needs, tenancy disputes and appeals in many other areas. It is an established way of dealing with disputes where the consequence of losing the appeal is substantial. We should offer a potentially very large number of our citizens proper access to justice before we tip them into something like the technical measures that are envisaged in the Bill.

The Minister has persuaded me that the second part of Amendment 125 is inappropriate. There should be a cost to appeal, otherwise everyone will do it and the system will get clogged up. It should be flexibly designed to ensure that the level of appealing is rational. That the appeal mechanism should be just and properly set up is something that we should all aim for. I hope that, if I cannot persuade the Minister, I will be able to persuade my Front Bench of that and come back to it on Report.

I am not at all encouraged by the Minister's reply to the earlier amendment of the noble Lord, Lord Clement-Jones, on the subject of the make-up of this body. If I am accused of doing something by a copyright owner and I find that the quasi-tribunal that I come up against has that copyright owner among its constitution, I am not going to be comforted by the idea that only two out of seven on the constituted tribunal come from that end. I am going to be comforted only if there is proper independence. As I said, this is something that we provide in the context of schools and in many other contexts. Those who are directly affected by the matter in hand are kept clear of the people who take the decision in the appeals process. I really do not think that we should step down from that level of justice just because we are dealing with our children rather than ourselves. I beg to move.

Lord Clement-Jones: My Lords, I just inquire of the Minister whether it would be preferable for him to deal with Amendment 124 at the same time as he speaks to this group. If he has notes that combine the two, I shall be perfectly happy to speak to Amendment 124 at this stage. It seems to me that the proposals for setting up a body are quite similar, but if his notes relate purely to the amendment of the noble Lord, Lord Lucas, I shall wait until we reach the Amendment 124 grouping.

Lord Howard of Rising: I agree with the noble Lord, Lord Clement-Jones, that the amendments are very similar. My noble friend's amendments give us the opportunity to hear a little more about the tribunal. What will happen, for example, if a subscriber or rights holder does not find satisfaction with the appeals process? Will they have the right to a further appeal? Ofcom decisions are subject to judicial review. Would the tribunal's decision be subject to the same process? If so, what about the cost? Judicial review is an expensive process and not within everyone's means.

Lord Young of Norwood Green: My Lords, with permission, I should like to take Amendments 120 and 125 together, as they form a logical whole with regard to the noble Lord's intention. In response to the noble Lord, Lord Clement-Jones, I shall endeavour to do as he suggests. Perhaps I may point out that we have had debates that are very—

Lord Howard of Rising: In case there is any misunderstanding, I think that the noble Lord, Lord Clement-Jones, meant Amendment 124, whereas the Minister referred to Amendment 125.

Lord Young of Norwood Green: I thank the noble Lord. I meant to say Amendment 124.

Lord Clement-Jones: My Lords, if the Minister is intending to make a speech that combines both groups, then I shall make my speech. However, if he is not planning that, then I shall not speak to my amendment at the moment.

Lord Young of Norwood Green: I was simply going to say that I was.

Lord Clement-Jones: I am sorry; I still do not understand what the Minister is trying to tell me. Will he be making a speech that does combine both? If so, I will make a speech.

Noble Lords: Hear, hear.

Lord Clement-Jones: I have never felt so popular, my Lords. I should like to speak to a rather different mechanism but one that is very much in sympathy with that of the noble Lord, Lord Lucas. My Amendment 124 would establish an independent adjudication scheme which subscribers could access at any stage of the process set out in Sections 124A

to 124L of the Communications Act. The aim would be to enable subscribers to access an independent adjudication scheme for a judgment to be made on unlawful file-sharing cases.

Certainly, consumer organisations would like to see the Government establish such an independent adjudication system. It would be connected with Ofcom—at least, it probably would be—and it would have several advantages over the current situation and the Government's proposals. For instance, it would be relatively inexpensive and would give the accused the opportunity to defend himself without incurring large costs. One would hope that if one set up a suitable system, the adjudicator would have an in-depth knowledge of the evidence and that those involved, having examined the evidence from both sides, would be able to question the claims of both sides. Sectoral and technological expertise could and should be integrated easily into the adjudication process.

Subscribers should be able to access this dispute resolution body at any stage after the receipt of a first official notification from ISPs, so it differs considerably from the current scheme. It would adjudicate on the merits of the accusation—or the allegation as we should call it. Those not happy with the outcome could appeal under Clause 8(4) and (6). This would be a preferable way of doing things. The consumer needs a way to have the allegation investigated, as the structure of the notification system seems to assume that the data are right. That returns to the point under an earlier amendment that the technical identification is accurate and by implication the IP account holder is liable. The innocent IP account holder deserves a system whereby he or she will know that once adjudicated the matter is fully resolved and no further action will be taken against him or her in respect of that allegation.

The Earl of Erroll: We are now taking three amendments together, which is very sensible. Having seen at first hand the arguments around Nominet's domain dispute resolution service which had to be revamped about a year ago, it would behove the Minister well to take a look at what happened. There is a lot of suspicion about the genuine independence of some of the people involved in resolving disputes, which is a thorny issue. Perception by the public and trust in the system are everything in dispute resolutions. I prefer the pair of amendments tabled by the noble Lord, Lord Lucas—Amendments 120 and 125—as they would bring in something that is above suspicion and beyond reproach. The second half of Amendment 125 proposes no cost to the subscriber, which makes it accessible. Cost always worries me, otherwise the old blackmail can happen; someone will settle out of court for £2,000 because it will cost £3,000 to go to the tribunal.

Amendment 124 suggests that Ofcom might set it up, but I am worried that it could be set up in such a way that makes it less obvious and transparent that it is an independent body. I would therefore go for Amendments 120 and 125. Something along those lines should definitely be adopted.

Lord Young of Norwood Green: I will take Amendments 120 and 125 together with Amendment 124. Let me make a plea. We have had a number of reiterative debates on issues, and time is precious. We have asked for groupings and sometimes they have been refused. I would hope that we would take lessons that it is not ideal to form groupings of amendments on the Floor of the Committee. I make that plea in the interests of using our time as wisely as possible.

The amendment would establish a first tier—

Lord Glenarthur: On the Minister's remarks about groupings, although I have not been playing a part in this Bill, I had always thought that groupings were informal and that any amendment could be taken in any order that was necessary. I was rather surprised to hear what the Minister has just said.

Lord Clement-Jones: Before the Minister answers, I was trying to be helpful by adding that amendment, so that he would not have to make two speeches and we would save time. I feel slightly hurt by his admonishment.

Lord Young of Norwood Green: The noble Lord protests too much if he is slightly hurt by that. I merely pointed out that we have had many repetitive debates where grouping would have enabled us to debate issues. It was no more than that. There is a grouping procedure. I am grateful for the opportunity to do it now but I wish we had done it previously; no more than that. Please, let us not delay the debate further.

5.30 pm

The amendments would establish a first-tier tribunal as the independent appeals body set up to deal with subscriber appeals about such matters as copyright infringement reports, as opposed to the current intention to set up an independent body under Ofcom's authority, with a first-tier tribunal only being part of the process should obligations to limit internet access be introduced. I say to the noble Lord, Lord Lucas, that we should be dealing with this in Clause 13 and that this proposal seems to us disproportionate.

I do not think that the proposed amendments would be either an improvement or proportionate. It is important to remember that in relation to the initial obligations provisions in the Bill no subscriber will be disadvantaged unless they have legal action taken against them by a copyright owner, in which case they will have the opportunity of defending themselves in court if they consider the case to be unfounded. These are not, therefore, people who might come under the first example of a copyright infringement. We talked about giving a graduated response, and so, as we said, it would be a letter bringing to their attention a copyright infringement and giving them the opportunity to remedy the situation.

Meanwhile, it will be important that appeals are heard quickly and efficiently. A first-tier tribunal at this stage, before we have introduced technical measures, will, because of its judicial nature, inevitably take far longer than is necessary or desirable and will possibly increase costs. I believed that the Committee considered all those aspects undesirable. Allowing further appeals to the High Court about a subscriber's identification in a copyright infringement report, where the ultimate sanction is anyway an alleged infringer being taken to court by a copyright owner, would seem entirely out of proportion, and not a good use of valuable court time.

[LORD YOUNG OF NORWOOD GREEN]

With regard to the costs of appeals, the noble Lord, Lord Lucas, said that he had been convinced of my argument that it is legitimate to have a cost, but not a disproportionate one, to deter mischievous appeals. We therefore believe that Amendments 120 and 125 would be disproportionate and costly, and would be taking a sledgehammer to crack a nut. We will deal with technical measures under Clause 13, should they be introduced.

Amendment 124, tabled by the noble Lord, Lord Clement-Jones, would require Ofcom to set up an independent adjudication scheme which subscribers could access in relation to any of the measures in Clause 15. However, the new subsection (4) in Clause 8 and the new subsection (2) in Clause 13 require the codes of practice relating to the initial obligations and any obligations to limit internet access to provide that there is a person who has the function of determining subscriber appeals in relation to activities covered by those codes. These provisions taken together provide an independent route of appeal for subscribers in relation to Clauses 4 to 15. I am not sure whether the noble Lord, in calling for an adjudication scheme, is looking for something substantively different from the appeals process I have outlined. Any appeals will have to consider the strength of the evidence of the copyright owners—we return to this subject again. We do not assume that a copyright owner is necessarily right in alleging that there has been a copyright infringement—that is why there is a right of appeal. A copyright owner may allege that there has been one, but there may have been a technical error or whatever. That is why we do not make such an assumption and why we have introduced a right of appeal. Any appeals will have to consider the strength of evidence that copyright owners, internet service providers and subscribers put before them and reach a conclusion on the merits of the individual case. I have no real sense of how an adjudication scheme would operate differently.

I therefore hope that with the explanations that I have given I have satisfied noble Lords that their concerns are already fully covered by the provisions of the Bill, and that they will therefore feel able to withdraw the amendment.

Lord Lucas: My Lords, that was a very good answer, and I undertake that when the noble Lord gives good answers, I will not raise the matter again, even should I find the opportunity. When he gives an insufficient answer, such as on the matter of "sufficiently independent", he may find me coming back to it, but I beg leave to withdraw this amendment.

Amendment 120 withdrawn.

Amendment 121

Moved by ***Lord Lucas***

121: Clause 8, page 11, line 9, after "OFCOM" insert—

"( ) that that person has, and makes available to subscribers without cost, the technical expertise to evaluate evidence of infringement presented by copyright owners;

( ) that there are adequate arrangements under the code for compelling copyright owners and internet service providers to provide that person with technical data relating to the alleged infringement and the manner of its detection;"

Lord Lucas: My Lords, when a subscriber is faced with an accusation which is technical in nature, he will often need some help to understand what it amounts to and how he can prove his innocence, or otherwise. Here, I envisage Ofcom offering a service whereby a subscriber can download a small program to his computer which will then inspect it and say, "Yes, you have taken the measures necessary and yes, there is no trace of unlicensed copyright material on this machine", sign it off and thereby provide sufficient proof that he is innocent. That is an easier thing for Ofcom to do. Ofcom is a body which may be trusted to do that. That sort of intrusiveness on one's computer hard disk is not something for which one wants to have to go to a commercial source, because it is all too easy for someone to add bits to that program that you do not want there. One way or another, the process has to provide subscribers with the ability to prove or disprove the allegation and to understand it. They will need some technical help to do that. It need not be expensive—or cost very much at all—but it needs to be there. I beg to move.

Lord Howard of Rising: My Lords, my noble friend's amendment identifies two key areas where evidence of an infringement at an appeal might need to be of a much higher quality than that which is presented to an internet service provider in an infringement report. Whether the simple process that my noble friend envisages is possible, I do not know. Whether an account has been hacked into despite reasonable measures having been taken, or whether a subscriber has apparently taken reasonable measures to prevent unlawful file-sharing but is in fact continuing, under the guise of being hacked, is a question that can be resolved only with a fair amount of technical expertise.

Similarly, the evidence that makes up the infringement report appears to be largely stand-alone. I am sure that the industry can show to its own complete satisfaction that an IP address was, at a certain time, unlawfully sharing a certain piece of copyright material, but will the evidence that satisfies a copyright owner be adequate to convince others who may take a less subjective view? Again, a certain level of technical expertise may be needed to show that the evidence that the rights holders claim is watertight is indeed watertight.

The Earl of Erroll: My Lords, this is more important than people may realise—particularly the last part about providing technical data. The reason is that we have seen cases in the past where large companies, in trying to protect positions where their electronic security provisions are supposed to be totally infallible, have not given complete information to the bodies that are trying to adjudicate on them. Some information given by banks to the financial services ombudsman springs to mind. There is a report from the Security Group at Cambridge covering the issue, if people want to look it up. It is very important that the technical data are correct and full and easily examined, because there will not be a lot of technical expertise on the tribunals. The problem is getting the stuff into a form that is really watertight. That has not always happened in the past.

Lord Young of Norwood Green: This amendment very properly seeks to ensure that the person responsible for hearing appeals about copyright infringement reports

or actions related to the copyright infringement report should have available to him the technical expertise and the relevant information from the copyright owner and the internet service provider to be able to evaluate the evidence for the alleged infringement.

I agree with the noble Lord that this is an important issue. Clearly, it will be important that the appeals body set up by the code should be capable of determining whether a copyright infringement notice has been properly generated, so it will require some technical knowledge and expertise of, for example—I stress the importance of this—whether an infringement has occurred; whether the time and date stamp is accurate; whether the IP address was correctly captured and recorded; whether it has been properly handled by the ISP; and whether the subscriber has been properly identified from the IP address and the time and date stamp provided. As I have said on a number of occasions, that means an audit trail, a validated evidence base, not incomplete information. No system is infallible, but we are talking about serious evidence that can be technically validated and proved and that has to be chronologically correct.

The need for the appeals body to have the relevant expertise and the ability to require the relevant information goes without saying in the context of what we need to reflect in the Bill and, to reassure the noble Lord, Lord Clement-Jones, to create public confidence in the system and these procedures. The provisions relating to the code give Ofcom all the powers it needs to ensure that the code is clear on these points and that the appeals body is constituted in such a way as to ensure that they are delivered.

One point in the amendment is not so straightforward. The noble Lord, Lord Lucas, suggests that the expertise available to the appeals body should also be available, without cost, to subscribers. Without disagreeing specifically with what I think the noble Lord is seeking to achieve, I must say that I would not put it in those terms. The appeals body will need to apply its expertise to any appeal that comes before it and consider the strength of the evidence that copyright owners and ISPs have presented. I am not sure that there is any need to make that expertise available to the subscriber rather than to the appeals body.

On general information available to the public about security measures that can be taken, we have already talked about public education. Such information will be available so that people can understand the process and how the evidence has been obtained. We do not believe that making that available on a nil-cost basis is viable. While the aims of this amendment are not out of line with what we are proposing, it is not necessary to ensure the effect that the noble Lord seeks to achieve. I hope that the explanation I have given is sufficient to enable the noble Lord to withdraw the amendment.

Lord Lucas: I find it difficult to understand how if I am accused and think myself innocent, I set about demonstrating that to the tribunal. I am puzzled about the way I am supposed to present my evidence. If I say, "I have never done this", what can I produce to substantiate that? If I say, "If it was on the system, it wasn't me, and I have taken all the protective measures necessary", how do I demonstrate that? Am I going to surrender my laptop for three months or, as has happened in other civil cases, more than a year in order for people to pore over it, or will Ofcom make that process simple in some way or another? When you are not technically minded—even when you are technically minded—sitting down at a computer to dig into its intestines to provide the necessary logs to prove that it does not contain any evidence of downloaded copyright material or that it was not online at a particular time or whatever else it might be, is a very technical issue. The only way to tackle this is to have a properly designed program. Ofcom ought to make something like that available. It will not cost them; once it is done, it is there, and it will run. It may audit someone's computer and say that there is no evidence of infringement.

Lord Young of Norwood Green: That depends on where we are. Let us say that a first letter has been sent and an allegation made that the individual concerned—certainly not the noble Lord, Lord Lucas, but some member of his family or mine—has infringed copyright. At that point, we are not proposing to take any action; we are inviting the subscriber concerned to consider whether they need to take action in case someone has piggybacked on their network, and are drawing to their attention actions that they can take. It seems to me that the examples that are being quoted are extreme. If we are talking about someone who is appealing against that first letter, for example, and is saying that it was not them, action would depend on what evidence they can produce in the circumstances. At this point, no one will be disconnected or have their bandwidth reduced, so I hope that we would take that into account before assuming that we need to go to the lengths that the noble Lord suggests.

Lord Lucas: My Lords, we will certainly return to this on Report, because the noble Lord has not answered my question at all. I meant that writing a letter, if he so wishes, might be the best way of responding to this. The question is simply: if I am presented with one of these letters—be it first stage, second stage or third stage—how do I defend myself against the allegation? In what way am I capable of defending myself, other than by saying, "I didn't do it, guv"? What practical means do I have of producing evidence to the tribunal that it might even begin to believe? That is the question, but I will not press it further now. I will delight the noble Lord even more by saying that, having listened to his speeches today, I do not need to move the amendments in the next group. I beg leave to withdraw the amendment.

Amendment 121 withdrawn.

Amendments 122 to 124 not moved.

Amendment 124A

Moved by ***Lord Lucas***

124A: Clause 8, page 11, line 13, at end insert—

"( ) that under this Act an internet service provider may not release data to a copyright owner unless that copyright owner has agreed to accept damages and undertakings on a basis specified by OFCOM should a subscriber either admit breaches of copyright or (within 7 days or earlier of the failure of an appeal) agree to settle without an admission of liability"

Lord Lucas: The amendment seeks to avoid excessive weight being placed on the civil courts. When someone admits their guilt, the process ought to be simple and structured; they should not be pitched into the uncertainties and high costs of the civil court system. There ought, at least at the first stage, to be a generally accepted level of penalties that can be applied. This would make life much easier for copyright owners in that they would not have the risks, difficulties and timescales of the civil court system. It would be much easier, too, for people who have admitted liability and just want to get it over and done with and to start behaving themselves. That, generally, would be a great weight off the court system. I offer that to the Minister as an idea for improving the Bill. I beg to move.

Lord Howard of Rising: My Lords, the suggestion of my noble friend is excellent, although putting it into practice may be slightly more difficult. By virtue of the flexibility and the mass of material available as regards this issue, I do not know whether there could be a menu which is long enough. When the Minister thinks about it, there is also the risk that if a menu is set out people would know how much it would cost them to break the rules. Therefore, the amount may have to be set rather high in order to prevent that happening.

Lord Young of Norwood Green: My Lords, this is an interesting idea. I certainly sympathise with the desire to ensure that the courts are not clogged up with many thousands or hundreds of thousands of cases, while simultaneously ensuring that those who continue to infringe, despite repeated notifications, suffer some penalty. The noble Lord, Lord Lucas, will not be surprised to hear that we do not think that this amendment works as it would prevent the copyright holder identifying the subscriber in order to reach any out-of-court settlement. Nor do we think that it would add very much to how this part of the process would work.

It might be helpful if I outline what we expect would happen. Once a copyright owner decides that they should take action against someone on the copyright infringement list, they would apply to the court for an order to get the ISP to release the identifying data. They would then write to the subscriber, setting out the allegation of infringement and seeking an out-of-court settlement. It is entirely right that this should happen, as it is important to keep cases out of court if an amicable settlement can be arrived at, and it may be that it can.

The proposition of the noble Lord, Lord Lucas, would provide a rate card of potential levels of damages that copyright owners could properly seek from the subscriber. This also raises problems since different infringements would cause different levels of damage. A pre-release film, for example, would cause a very different amount of damage from a number of relatively old music singles. In addition, the level of damage would depend on the individual loss to the copyright owner, which could be very different as between different copyright owners even for the same type of material—for example, a pre-release film which is expected to have a worldwide release as opposed to one likely to have very limited circulation. In the light of my explanation, I hope that the noble Lord will feel able to withdraw the amendment.

Lord Lucas: Yes, my Lords. However, I think that we are letting ourselves in for a situation a few years down the road in which a large number of our young people will face unpleasant levels of fines or court cases. To do that without retaining in some way a control on the level of punishment meted out to these people is unwise. Under the Bill, this is entirely in the control of the copyright owners. We have tens of thousands of these cases at the moment, so there is no reason why we should not have hundreds of thousands of cases under this Bill. If the amounts requested are on the scale that these same people have asked for in the United States, we are in for a very nasty time. The Government will have failed in their duty to their citizens if they do not keep to themselves a mechanism for making sure that at least the initial fine or punishment is within bounds. Ultimately, if this is what the Government want to do, I shall not oppose it further. I beg leave to withdraw the amendment.

Amendment 124A withdrawn.

Amendment 125 not moved.

Amendment 125A

Moved by ***Lord Lucas***

125A: Clause 8, page 11, line 13, at end insert—

"( ) It shall be a complete defence against any allegation of copyright infringement over the internet for a subscriber to show that he had implemented all the measures prescribed by OFCOM."

Lord Lucas: My Lords, we have been here before, but I do not feel that I have had an adequate answer. The noble Lord talks in generalities, referring to programs out there which will do these things. But will they work? In the event of being hauled in front of a tribunal, will the fact that I have bought XY and Z program, installed it and used it, be adequate to protect me against an allegation that I have downloaded or someone has used my network to download?

We really ought to provide our citizens with certainty in this matter. They ought to know what they have to do to avoid infringing. I think that it ought to be a duty of Ofcom to provide citizens with that information. It is not really asking a great deal. Unless this certainty is provided, Ofcom will end up paying a great deal more in the costs of arguing this endlessly in the tribunal than it would if it had taken the trouble to audit a few bits of software upfront. I beg to move.

Lord Howard of Rising: My noble friend raised the important issue of the subscriber taking reasonable precautions in the context of Amendment 43, which was moved by the noble Baroness, Lady Miller of Chilthorne Domer. I hope the Minister will excuse my revisiting the subject. We on these Benches fully support my noble friend's amendment. The noble Lord, Lord Davies, pointed out that any subscriber taken to court would have all the normal defences under copyright legislation. This amendment sets out a clear line of defence; and because it is clearly set out and everyone knows what the rules are, it may well manage to avoid unnecessary court proceedings such as those which the Minister said are so undesirable.

The Earl of Erroll: My Lords, this amendment is only reasonable. All too often we pass laws that create absolute defences and against which there is no defence, and then suddenly we find that they are totally unfair. We are not trying to do that in this Bill. However, if someone takes all the reasonable precautions that they are told to take, that ought to be an absolute defence. What else are you supposed to do? I do not see how this line could be opposed by any reasonable Government.

Lord Young of Norwood Green: As ever, the voice of reason. Following the debate during our second day in Committee on the subject of what constitutes a reasonable defence, I wrote to all noble Lords who had indicated an interest in this aspect of the online infringement of copyright provisions, recognising that this is of crucial concern. It is of fundamental importance that what we do here is fair, proportionate and transparent to subscribers who may become the target of the measures allowed either under the initial obligations code or, should it come to that, the technical obligations code. I hope that my letter clearly set out the Government's position. If a subscriber takes all sensible measures and—should he be notified under these provisions—shows that he has done so, that should provide him with a good defence for the purposes of the Bill.

The noble Lord's current amendment goes rather further than that, and I do not think that it would prove workable in practice. First, Ofcom will not be prescribing measures. The notification sent to subscribers will contain information that will help them to protect their privacy and prevent them inadvertently being the means of online copyright infringement in the future. However, I would not characterise this as Ofcom's prescriptions. I would, in any case, hesitate to include anything that affords a complete defence when it is dependent on the individual interpretation of generic advice.

I would much prefer to leave this to the independent appeals body to take a considered and sensible view of what any appealing subscriber has done to prevent infringement. Of course the sort of measures set out in the notification, as well as other commonly available measures, are likely to be highly persuasive in this judgment. However, I would rather leave room for the appeals body to make the judgment. Indeed, we do not prescribe the decision.

In the light of my earlier letter setting out the Government's view on defences and the impracticality of prescribing measures, I do not think that this amendment is necessary or practicable. I hope the noble Lord is reassured about the seriousness with which we take subscribers' ability to mount a reasonable defence after taking reasonable measures and that he will agree to withdraw the amendment.

6 pm

Lord Lucas: The noble Lord is describing a cumulative effect—all kinds of little ways in which Ofcom will not set out to help the consumer and all kinds of little ways in which someone accused under the Bill will find their life made difficult and tiresome, with a great deal of effort and uncertainty imposed on them in dealing with the allegation. Although each little piece of the argument has its own logic, as a whole it paints an uncomfortable picture, which is tilted too far towards the copyright owner rather than the citizen. I will listen to and read carefully what the noble Lord has said but, one way or another, we will come back to this on Report. I beg leave to withdraw the amendment.

Amendment 125A withdrawn.

Amendment 126

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

126: Clause 8, page 11, line 17, at end insert "or"

Lord Howard of Rising: My Lords, I shall speak also to Amendment 192. We move now to an interesting part of these provisions which has not yet been properly touched on. The Bill makes provisions for either Ofcom or the semi-independent body to impose a requirement on a body specified in the code to pay a penalty. The new body may also require damages from a copyright owner to indemnify an internet service provider for any loss resulting from the copyright holder's failure to follow the obligations set out in the relevant code.

On first reading the Bill, I thought that the penalty could be levied on both the internet service provider and the copyright holder and was to be given by one to the other as compensation for breaching the obligations in the relevant code. Having read Clause 14 more carefully, and after looking at the brief Explanatory Notes, I think that the penalty might apply only to the internet service provider, as the defences laid out in proposed new Section 124K(3) relate only to the provider. That would leave the internet service providers liable only to the penalty and the copyright holders liable only for damages. I hope that the Minister will be able to clarify whether that is the case. If it is, I hope that he will either satisfy the Committee that such a division is fair and clear under the legislation or bring back amendments to make it clear.

Can the Minister confirm that, if an internet service provider has a penalty levied on it, the penalty is paid to the copyright owner? Is that the case, or does Ofcom pocket some or all of the penalty as it passes through? What was the thinking behind making the internet service provider liable for a penalty unrelated to damages? If the Government were concerned about the internet service provider becoming liable for disproportionately enormous sums of money, damages could have been capped. As it is, the penalty need have no relation to the damage caused by the failure to comply.

Similarly, why are copyright owners liable for financial penalty only if they cause damages? If a copyright owner sends in an infringement report and demands a notification letter in a non-compliant manner, but the internet service provider catches the copyright owner's mistake before it sends out a letter or before any actual loss has resulted, why is the copyright owner not liable to any penalty? There appear to be two separate justifications for these two financial enforcement measures.

I have several more questions relating to this area of the Bill, but more amendments are to be brought forward and I shall save my points until then. I beg to move.

Lord Young of Norwood Green: My Lords, Amendments 126 and 192 propose the same change in relation to both the initial obligations code and the technical obligations code. Proposed new Section 124E(5) in Clause 8 and proposed new Section 124J(4) in Clause 13 allow the code to make provision for financial penalties when an ISP or a copyright owner fails to comply with one of the obligations or the provisions under the codes that put those provisions into practice.

It might help if I explain the Government's thinking. Failure on the part of either a copyright owner or an internet service provider to comply with the obligations or the code could have a damaging effect on a subscriber, a copyright owner or an ISP. In that situation it is appropriate that there should be some deterrent to ensure that the obligations and the code are complied with.

We have suggested two different types of deterrent, because the harm could occur in different ways, as the noble Lord, Lord Howard, identified. For example, if an ISP fails properly to process the copyright infringement notices, the notifications will not be issued and the resultant anticipated impact on the subscriber's infringement will not materialise. This is a generic failure causing generic rather than specific harm and, because it is generic, is appropriately dealt with through a fine. However, if a copyright owner makes a mistake in transcribing the time and date of an alleged infringement, an ISP might issue a notification to the wrong subscriber. If technical measures are in place, an ISP might even impose a technical measure on the wrong subscriber. This could cause real financial or other harm to the subscriber, who might then choose to take action against the ISP in relation to any loss suffered. If the subscriber were to win damages from the ISP in these circumstances, it seems only reasonable that the copyright owner responsible for the error should indemnify the ISP for any loss or damage resulting from the error.

We have put these two different mechanisms into the Bill not as alternatives but as complementary tools, because different types of harm could be suffered dependent on where the error or omission occurred. That is not to say that both would be used in any individual case, but the code should be able to contain both and apply them as appropriate. I hope that that has clarified the matter for the noble Lord.

The noble Lord asked whether, where an ISP was charged with a penalty, the money would go to the copyright holder or to Ofcom. The penalty would be paid to Ofcom and subsequently to the Consolidated Fund. I am sure that that response gives the noble Lord great pleasure.

Lord Howard of Rising: I thank the Minister for that reply. However, if damage and harm have been done, why should the penalty go to Ofcom and not to one of the people who has been harmed?

Lord Young of Norwood Green: I said not to Ofcom but to the Consolidated Fund, but let me come back to the noble Lord on that issue.

Lord Howard of Rising: I am grateful to the Minister for saying that he will come back on the matter and for the explanation that he gave. When he comes back on the point, which he has promised to do, he might care to have a re-look at the drafting to see whether it could be made slightly clearer. With that, I beg leave to withdraw the amendment.

Amendment 126 withdrawn.

Amendment 127

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

127: Clause 8, page 11, line 21, at end insert—

"( ) provisions requiring a copyright owner or internet service provider to indemnify a subscriber for any loss or damage resulting from the owner or provider's failure to comply with the code, the copyright infringement provisions, or the Data Protection Act 1998"

Lord Howard of Rising: My Lords, I shall speak also to Amendment 195. As the Bill is drafted, both the internet service provider and the rights holder can claim back some sort of financial recompense if either of them behaves improperly. It is noticeable that this is not true of the subscriber.

We have discussed data protection previously and have heard the Minister's assurances that there is no intention for subscriber information to be shared unjustifiably. However, this does not take account of improper behaviour by either of the two bodies. An internet service provider or an employee of one might take the opportunity to sell such information illegally, or copyright owners might group to form a blacklist of their own, based on infringement lists, of subscribers whom they suspect but have not been able to sue.

Bad behaviour could lead to enormous damages for a subscriber separate from data protection issues, particularly via technical measures. A technical measure that limits or suspends access to the internet can impose a real cost on a subscriber. Not only is there the loss of benefit from ongoing subscription costs to the ISP, since an ISP is unlikely to stop charging the subscriber the monthly fee just because a technical measure has been imposed, but there is also the time and cost spent fighting a wrongful allegation through the appeals system. I know that the Minister said earlier that the subscriber would get their costs back, but it is rare for all costs to be recovered and the appeal has to be financed in the mean time. If there has been substantial damage to one's business, one might find it difficult to be able to fund such an appeal.

Potentially most costly is the loss of revenue that many subscribers will experience from third parties if their subscription is limited. A large number of subscription services, from iTunes to online data sources such as Reuters or Bloomberg, use client site IP addresses to ensure that certain services are accessible only by those who have paid.

There are several much more sophisticated online services, especially in the financial world, where the sudden loss of an IP address would mean enormous loss of information, leading directly to loss of revenue. The Minister might argue that no one will get to the stage of technical measures without going through certain levels of checking and opportunities for correcting wrongful accusation. Can he therefore confirm that no technical measure will be imposed until the appeal process has been completed? I beg to move.

Lord Young of Norwood Green: I have some sympathy with the purpose behind the amendment. Arguably, subscribers are in at least as much need of protection against negligence on the part of copyright owners and internet service providers as are internet service providers in their relationship with copyright holders. I certainly concur with the noble Lord, Lord Howard, on that.

However, this situation will not arise in practice. Subscribers will have a clear path to appeal at each stage of the process. The grounds of such appeals will certainly include the failure of the internet service supplier or the copyright owner to comply with the code or the copyright infringement provisions, or failure to observe the provisions of the Data Protection Act, which in any case contains its own penalties for failure to comply.

Furthermore, under the initial obligations, no loss or damage will be suffered by the subscriber unless they are identified via a court order and the copyright owner takes legal action against them. In those circumstances, any failure on the part of the copyright owner or internet service provider to comply with the rules will be taken into account by a court.

Moreover, under the technical obligations, there is a further recourse to the First-tier Tribunal for those subscribers who are not satisfied with the decision of the initial appeals body. Any failure on the part of the copyright owner or internet service provider to comply with the rules will be taken into account by the tribunal. The Government believe that it is right that the appeals process should be exhausted before any penalty is imposed, which answers the question raised by the noble Lord, Lord Howard. In other words, no subscriber will suffer any harm until they have had the opportunity of arguing their case in front of the First-tier Tribunal.

On balance, this provision is not needed. The Bill builds sufficient safeguards into the process for subscribers. I hope that in the light of my explanation the noble Lord will feel able to withdraw the amendment.

6.15 pm

Lord Howard of Rising: I thank the Minister for his confirmation that no technical measure will be imposed until the appeal process has been completed. That is the most significant part of the amendment. I therefore beg leave to withdraw it.

Amendment 127 withdrawn.

Amendment 128

Moved by ***Lord Razzall***

128: Clause 8, page 11, line 21, at end insert—

"( ) provision requiring a copyright owner to indemnify an internet service provider for any loss or damage resulting from the owner wrongly accusing a subscriber of an infringement of copyright"

Lord Razzall: Although Amendments 128A and 128B are not in the same group, perhaps I may speak also to them to speed matters up, because they touch on related points. These are quite straightforward amendments, which reflect the argument that internet service providers are not involved in copyright infringement disputes. The current legal position is that internet service providers are bystanders or a conduit and are not directly involved in a copyright dispute that may arise between a copyright owner and an alleged infringer. They are a vehicle used by copyright owners and subscribers, rather in the way that the Post Office facilitates communications between various parties but is not a direct party to them. It is clear that the internet service provider has a role, reflected in the Bill, in providing information to the copyright owner, but it is not involved in any dispute between the copyright owner and the subscriber. Amendment 128 would require a copyright owner to indemnify an ISP for any loss or damage resulting from the owner wrongly accusing a subscriber of an infringement of copyright, were the ISP to be attacked by the owner in relation to it. Amendments 128A and 128B would make it clear that an internet service provider is not included in the definition of a copyright infringement dispute. I beg to move.

Lord Howard of Rising: My Lords, the noble Lord, Lord Razzall, has identified another loss that might occur to an interested party that does not appear to be covered by the provisions. What would occur if the copyright owner followed the code meticulously but an error was still made? Who would bear the subsequent damages? The noble Lord also raised the important point that an internet service provider is a conduit—merely a provider of a means of communication between two people—and, as such, should not be involved.

The Earl of Erroll: My Lords, the Minister said in response to the previous amendment that all protections were built into the Bill. Actually, there are very few of them. We have heard lots of assurances from the Minister that the protections will be built into the code, but they are not in the Bill, which means that they do not have to go into the code and we must rely on ministerial assurances. Unfortunately, Governments change, Ministers come and go and the world changes. We cannot be certain about what will happen five years down the road. We should build more of these protections into the Bill and not rely on what Ofcom or other people might put in a code later on.

Lord Young of Norwood Green: I thank the noble Lord, Lord Razzall, for this grouping, and I shall endeavour to deal with Amendments 128, 128A and 128B. I feel that we are still going over ground that to a certain extent we have covered in the previous debate—or, if not, that it is a variation on a theme.

The amendment would add to the current text covering the indemnification of internet service providers for failure to comply with the code or the copyright infringement provisions with further provision against wrongful accusation. While I understand the purpose behind the amendment, I do not believe that this addition is needed. The existing text protects internet service providers against the consequences of the failure of copyright owners to comply with the code or the requirements of copyright infringement reports, which includes the standard of evidence required, how the evidence is obtained and the way in which it is presented. We made it clear that the code allows for copyright

[Lord Young of Norwood Green]
owners to be made to indemnify internet service providers, in the event that they suffer loss as a result of a failure by the copyright owner. If there is such a failure, it is clear that we will have to indemnify the internet service provider. In producing the code, it will be an option for stakeholders to require other undertakings by copyright owners, if it was deemed appropriate. Clearly, ensuring that they make an accurate and valid copyright infringement report is vital to the success of this process.

Amendments 128A and 128B would affect that part of the clause that sets out what a copyright infringement dispute is. The text as it stands makes it clear that it addresses disputes between the industry parties as well as with subscribers, so removing the reference to internet service providers in this way would remove the possibility of a dispute between them and copyright owners being resolved quickly by the body set up to administer and enforce the code. We do not think that that helps. Instances where this might arise could, for example, be in the time taken to process copyright infringement reports, when the copyright owner may allege that the internet service provider is outside the time limit, while the internet service provider might claim that the way in which such reports were sent involved them in additional work. In those sorts of circumstances, it is envisaged that the body which has the function of administering and enforcing the code will be in a position to adjudicate, fairly and quickly, and resolve the dispute. That must surely be regarded as a sensible and useful provision, so I do not agree with the amendment that would essentially restrict this to a dispute between copyright owners and subscribers. As I have already said, there could be a different set of circumstances, in which there was failure on behalf of the internet service provider to carry out their obligations.

Subscribers will have a separate route to appeal against decisions, and were included in the copyright infringement dispute definition for completeness, because it is possible to envisage that they might be an active participant in such a dispute. Frankly, they are not the focus of it in policy terms; this is to enable differences between copyright owners and internet service providers to be resolved. Lines 26 and 27, which Amendment 128B would remove, set the scope and limits of the copyright infringement dispute, and attach it firmly to the initial obligations and the code, which must surely be right. Without it, the potential scope is unlimited. Again, I do not think that this consequence, which is perhaps unintended, is something that we should welcome.

Finally, the terminology used in the Bill may cause confusion, for which I apologise. However, if the noble Lord looks at the definition in subsection (6)(b), he will see that it applies only to,

"an act or omission in relation to an initial obligation or the initial obligations code".

So this is not about copyright infringement as such, but about compliance with the code. My apologies for any unintended confusion, but I hope that that clarifies the situation. The noble Earl, Lord Erroll, doubts that there will be a code. Of course, there will be a code and it will have to be produced in a reasonable time. We do not think that it is practical or desirable to put everything in the Bill. In the light of the debates that we have had, I think that there has been some general recognition and acceptance of this. Of course, it is about getting the proportion and balance right.

The Earl of Erroll: I know that the Minister believes that he understands what he thinks that I said, but I am not sure that he realises that what he heard is not what I meant. I was not saying that there was unlikely to be a code—I am sure that there will be a code. I was trying to say that the code has to contain only the things in the Bill; it does not have to contain all the other things. The things that he is saying "no" to, about appeals and detailed matters and technical stuff, do not have to appear on the code if they do not appear in the Bill. That is why we feel that it is important to put some of these things in the Bill so that they appear in the code. I am sure that there will be a code; the question is whether it will be the code that Parliament wanted.

Lord Razzall: My Lords, it is conventional for the mover of an amendment in Committee to say that he wants to read what the Minister has said in *Hansard*. In the context of this amendment, that is even more apposite. First, I have to take on board the late intervention from the Box on the operation of the clause; secondly, I have to take on board the noble Earl's saying that what he said was not what he really meant. I am not sure whether I can read what he did mean in the context of what he subsequently said, as it would test the wisdom of Solomon. First, I shall try to see whether we should have the point that I am making in the Bill.

The noble Lord, Lord Howard of Rising, and I agreed during our last sitting that there seems to be a slight disagreement between opposition parties and the Government on the extent to which things should be left to the code or put in the Bill. I shall look and see whether this is an area on which I want the noble Lord to join me at Report to decide whether this should be in the Bill. I really want to consider whether the Minister has convinced me about what the difference is between an ISP being in a dispute regarding the content of copyright by comparison with the Post Office being sued for the content of a letter. I am approaching it from the point of view that the ISP is in exactly the same role as the Post Office; it has all sorts of obligations with regard to the sender and recipient of the letter, but it does not have an obligation regarding the content of the letter. That is what this point is about. In the mean time, I beg leave to withdraw the amendment.

Amendment 128 withdrawn.

Amendments 128A and 128B not moved.

Clause 8 agreed.

Amendment 129

Moved by ***Lord Lucas***

129: After Clause 8, insert the following new Clause—

"Remedy for groundless threats of copyright infringement proceedings

(1) The Copyright, Designs and Patents Act 1988 is amended as follows.

(2) After section 169 insert—

"169A Remedy for groundless threats of infringement proceedings

(1) Where a person threatens another person with proceedings for infringement of copyright, a person aggrieved by the threats may bring an action against him claiming—

(a) a declaration to the effect that the threats are unjustifiable;

(b) an injunction against the continuance of the threats;

(c) damages in respect of any loss which he has sustained by the threats.

(2) If the claimant proves that the threats were made and that he is a person aggrieved by them, he is entitled to the relief claimed unless the defendant shows that the acts in respect of which proceedings were threatened did constitute, or if done would have constituted, an infringement of the copyright concerned.

(3) Mere notification that work is protected by copyright does not constitute a threat of proceedings for the purposes of this section.

(4) A copyright infringement report within the meaning of section 124A(3) of the Communications Act 2003, if notified to a subscriber under section 124A(4) of that Act, does constitute a threat of proceedings for the purposes of this section.""

Lord Lucas: This amendment arose as another attempt to deal with the problem caused by ACS Law and others in their harassment of people with allegations that they have downloaded copyright material. This provision mirrors provisions that are already present in respect of patent law and trademark law; it is a pattern already well established in similar areas of law, but which is absent in copyright law.

6.30 pm

Invalid assertions of copyright law are actually quite common. We have provided a definite life for copyright. The works of Shakespeare are out of copyright, for example, but you will often find modern versions of Shakespeare that assert copyright on the flyleaf. There is quite widespread assertion of copyright by museums and others that allow images to be published of articles in their collections that were made, sometimes, tens of thousands of years ago. Certainly, many of the works of the great masters are well out of copyright. These may well be protected by contractual rights, but not by copyright.

This particular approach to dealing with ACS Law would have wider implications, but ones that to my mind are justified. They have been proved to be sensible and proportionate provisions in the matter of patents and trademarks, and it is high time that we introduced them into copyright too. This would have benefit of providing a defence against law firms—doubtless the Minister has received as many e-mails and letters as I have concerning the activities of this particular firm—that just repeat endless allegations and threats, with no intention that I can see of actually going to court. It would give their victims some means of biting back; it would take only one in 100 victims to do so and bring a successful court case to bring this practice to an end. The Ministers have expressed their revulsion at this practice and have fulminated about it, but have come nowhere near proposing a remedy. I hope that this amendment, in one version or another, will find their approval. I beg to move.

Lord Clement-Jones: My Lords, I support the amendment. Whether or not it stands up legally, it is a good peg on which to hang a short debate about the activities of this operation, ACS Law. Like many noble Lords, I have had an enormous postbag about the activities of this law firm. It is easy to say "of certain law firms", but this is the only one that I have been written to about. That is the interesting aspect of this.

ACS seems to specialise in picking up bogus copyright claims and then harassing innocent householders and demanding £500, £650 or whatever—a round sum, in any event—in order to settle. Some people have been fighting off this firm's claims for several years. One letter says that a close friend of the writer's has been the target of regular bullying by ACS Law since September 2007 for alleged illegal file-sharing and currently has no means by which to prove his innocence, and so on; I could go through a whole series of letters on the subject. Someone has written eight letters to protest their innocence and answer the questions but the case has yet to be dropped. Someone has been asked how old their daughter is and what games console she has, when they have only a Nintendo DS.

This amount of intrusion is unacceptable. If someone has a claim, they need to issue a summons and go to court; but this bullying, which never results in a court action that can be tested, is the worst kind of harassment. This is only too common. Even though the Government may not favour this particular way of dealing with it, I hope that in some creative way, whether by direction, by ministerial statement or by some other mechanism, they can deter bodies such as ACS Law from engaging in this kind of activity.

I do not know quite how such firms get hold of these claims. We understand that they get hold of them by the Norwich pharmacal procedure, by which they get hold of information about these claims and then proceed to prosecute them. I admit, though, that I am somewhat hazy about how these cases are made against innocent people. People would not take the trouble to write these kinds of letters unless they felt really angry and that these cases were wholly unjustified.

I commend the noble Lord, Lord Lucas, who I know is cognisant of the activities of this particular firm, and I hope that the Minister will have something to say on the subject.

Lord Howard of Rising: My Lords, as my noble friend has pointed out, the amendment relates back in part to the actions that are currently being undertaken by some copyright owners, which the noble Lord, Lord Clement-Jones, also referred to, in order to protect their material or receive compensation for its unlawful dissemination. In practice, I do not think this sort of bullying is exclusive to the digital world. Licence fee letters from the BBC are certainly unpleasant and bullying—I have rather a good collection of them, actually. There is no question that once the Bill has become law, there will be much less justification for a copyright owner to pursue alleged infringements with the sort of threats and demands that is now sometimes the case.

Will the Minister give us any more information about the investigation into the legal organisations that have been sending out these unpleasant letters?

[LORD HOWARD OF RISING]
What action will be taken against them if they are found to have behaved improperly? Indeed, how disproportionate or threatening must their actions have been before improper behaviour is considered to have occurred? I believe that there are strict rules about the way that solicitors can behave; perhaps the Minister could direct certain people in that direction as well.

Lord Clement-Jones: My Lords, I failed to mention one further element. The noble Lord, Lord Howard, is right about solicitors' codes of conduct with regard to the Solicitors Regulatory Authority. It should be made clear to many of these individuals who have been bullied in this way that the SRA is available to them if they wish to make a complaint. It is difficult, though, even in those circumstances.

I remind the Minister, for the purposes of his response, that the reason why my noble friend Lord Razzall originally put down an amendment that said one should go first of all according to the codes rather than to court was entirely to try to eliminate this kind of issue. Obviously one cannot exclude the court completely, but one of the questions that the Minister might consider, certainly in drawing up the codes, is whether some kind of presumption should be stated in the code that most copyright owners will proceed according to the CIR notification process rather than through this kind of court action process. That is not a formal amendment, but it is something that I think the Minister should put into the pot in terms of his considerations.

The Earl of Erroll: This amendment illustrates why we should have started by looking at the whole issue of copyright in the digital age, rather than starting with an attack on people breaching copyright in the digital age. We have gone about things the wrong way round.

Copyright is a complicated thing. I did not realise until a week ago that apparently, with regard to what the noble Lord, Lord Lucas, has just said, it is illegal to accuse someone of trademark infringement or of patent infringement. You have to go about it in a much more oblique way. I cannot remember quite how it is done, but you cannot just come out with a bare-faced statement. That does not apply to copyright law because copyright law is much weaker in its protections. That is also why there is a much longer term in which to recover the value of your copyright. The term is now lifetime plus 70 years, whereas typically it is 30 years for a patent.

If people are behaving like this, we should be looking at what protections we give to copyright, and that should be done at a far more fundamental level than just including something in a Digital Economy Bill. However, as we need to put it somewhere, we should include a provision like this or we will get into trouble. The noble Lord, Lord Lucas, is quite right about that. The Government really have to think about protecting people or we will see an awful lot of abuse that will make some of the other scams that take place on the internet look like chicken feed.

Lord Young of Norwood Green: My Lords, I am not sure how the proposed new clause would be of benefit to the people it aims to help. Copyright owners are currently threatening to take people to court, and it is precisely that threat that the clause seeks to address. However, it does so by offering the individual concerned the right to go to court—precisely what the individual is assumed to be trying to avoid. After all, if they are confident that the threat is unfounded, and that a court will uphold that view, they would be as well off by simply letting the copyright owner pursue them and then seeking costs when the court finds in their favour.

The noble Lord, Lord Clement-Jones, said that these actions are appalling and unacceptable, but nobody has referred them to any of the regulatory bodies. I find that strange. We are saying that we have had thousands of these cases yet nobody has said that this law firm is acting in a totally unacceptable way. I should have thought that the legal regulatory bodies would by now have been involved and I am puzzled why they have not been.

I am also concerned by the suggestion that notification of a copyright infringement report as set out in the Bill should constitute a threat in this context. The noble Lord should be aware that the notifications, at least in the first instance, will not be threatening, and at no stage will they seek money from the subscriber. A notification under the Bill cannot of itself result in court action against the subscriber. Indeed, even putting the subscriber on the copyright infringement list cannot itself result in any direct contact between the copyright owner and the subscriber, and certainly not a threat of legal action or a demand for money. The copyright owner would first have to go to court, as they do now, to get an order to make the ISP release the subscriber's name and address. Therefore, although I have a good deal of sympathy with what the noble Lord is trying to achieve and while there may be scope to look at it again in the future, I do not think that the new clause is practicable.

A number of noble Lords asked what we were doing about this since we had sympathy with the amendment. We have undertaken to write to the Ministry of Justice. However, I hope that I have explained that we do not think the new clause is practicable and I therefore hope that the noble Lord will feel able to withdraw the amendment.

Lord Lucas: My Lords, I find the Minister's logic strange because what is upsetting these people is the failure of ACS Law to take them to court. They want to go to court to demonstrate their innocence and the ridiculousness of the demands made of them. This is about the failure of ACS ever to get to court but to continue the stream of insinuating, embarrassing—because it often alleges that pornography has been downloaded—and damaging allegations. People want to bring that to an end with a proper court case where allegations can be thrown out and a suitable end brought to what is going on. But it never comes to that.

I accept that this route will not do, if that is what the Minister says, but we will clearly need to find some means of dealing with these people.

Lord Clement-Jones: Does the noble Lord not agree that if subscribers are being harassed the Minister makes a fair point. There needs to be access to the

regulators and we need to make sure that these individuals are made aware of their rights. Can we have an assurance from the Minister that he will encourage those individuals to do so rather than simply saying "I'm surprised they haven't"? In many cases, I think they are unaware of their rights in this respect. They could go to the SRA and complain about the way in which ACS Law has behaved. Having looked at the way that it has behaved in some of these cases, it would be entirely justified. But I am not sure that we know that they have not complained.

6.45 pm

Lord Young of Norwood Green: I am not sure what our role is, particularly in encouraging people.

Lord Clement-Jones: People hang on the Minister's every word during the course of these debates.

Lord Young of Norwood Green: I hope nobody does hang on any of my words. To treat this seriously, I repeat that I am surprised nobody has complained and that the noble Lord, Lord Clement-Jones, has not advised people to do that. As I said, we will see what else we can do when we write to the Ministry of Justice.

I want to take the opportunity to respond to a point made by the noble Lord, Lord Howard, because I did not do so earlier. He made a valid point that the existence of the new notification system as proposed by the Bill will make it much more difficult for copyright owners to behave as they have been doing recently. It is entirely possible that a court that now issues orders for the release of names and addresses on the detail of just one infringement might well start to expect copyright owners to have gone through the process of issuing notifications and seeking to take legal action only against the repeat infringers once this process exists, rather than to issue legal letters on a scattergun approach. It might also be that courts, before they start agreeing to instruct internet service providers, might again look at the examples of the process that we will have identified in the code and see whether that process has been gone through. That is a bit of an assumption, but it is a reasonable one in the circumstances.

Lord Lucas: That brings us back to Amendment 33, which I am sure the noble Lord, Lord Clement-Jones, remembers because it came from his Benches and was attacking the problem from exactly that point of view: that we should encourage the courts to think of this as the proper way of dealing with copyright infringement rather than, as is happening at the moment, the massive use of Norwich Pharmacal orders even where there is supposed evidence of single infringements.

We will take what the Minister said seriously and, if we come back to this on Report, it will be on the basis of understanding exactly what happens when you take complaints to the solicitors' regulatory bodies. There are certainly other ways of doing this. The orders are being sought on the basis of allegations that information has been downloaded. As the Minister said at an earlier stage, there is no known way of doing that legally. Perhaps we can just say that a Norwich Pharmacal order may not be granted in respect of an allegation of downloading material. Since there is no known method of doing that legally that would seem to be a reasonable way of shutting off this particular attitude. Certainly, in terms of dealing with the perceived wrong, we shall be keen to return on Report if we can find a sensible way of doing that. For now, I beg leave to withdraw the amendment.

Amendment 129 withdrawn.

Clause 9 : Progress reports

Amendments 130 and 131 not moved.

Amendment 132

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

132: Clause 9, page 12, line 7, at end insert—

"( ) an assessment of the current level of subscribers' use of internet access services to obtain lawful access to copyright works;"

Lord Howard of Rising: My Lords, we turn now to the question of how well the provisions set out in Clauses 4 to 9 will work. I am glad to see that the Government have drafted an extensive section on assessing the impact that the notification letters might make and the list in new Section 124F(4) is a good starting point for setting out the sort of information that the Government, Parliament and the public should know. However, there are a few omissions in that list, the absence of which are possibly a matter for concern. This amendment seeks to balance the focus on unlawful peer-to-peer file-sharing with an assessment of how much use has been made of legal access to copyright material. Often in these debates, the Minister has equated all file-sharing with unlawful dissemination of copyright material. That is an inaccurate view because much of what is downloaded is legal. I hope this amendment will enable a more balanced picture to be produced.

I would hope that the measures the Bill provides for copyright owners to address unlawful file-sharing will not remove the incentive for copyright owners to continue to innovate. Internet access is here to stay, and looking to remove every person who has breached copyright from the internet is not practicable.

Lord Maxton: I am slightly confused. The noble Lord is, in one sense, talking about downloading, but the amendment refers to access. They are not necessarily the same; you can access an internet service without downloading it to your computer.

Lord Howard of Rising: I thank the noble Lord for his instructive point.

This amendment would ensure that Ofcom monitors whether legal access to material continues to grow, and how the balance between legal and illegal activity changes. It would also provide valuable information about the sort of behaviour that the Government seek to address in drafting Clause 17. As Amendments 130 and 131, in the name of the noble Lord, Lord Whitty, established a while ago, this clause could be used to report on all sorts of copyright infringement, not just

[LORD HOWARD OF RISING]
file-sharing. It becomes doubly important then to have a fair view of how internet access benefits copyright owners, as well as opening them up to unlawful exploitation. I beg to move.

Baroness Buscombe: My Lords, I support my noble friend's amendment. I understand that this would allow, particularly in relation to Clause 17, the possibility of understanding what is happening in the marketplace and with changes in technology. We need to have, in a sense, the good news story as well as the bad news story to be able to respond to changes in the marketplace and technology. You cannot do that unless you have an understanding of legal access and the growth in that, as well illegal access.

Lord Lucas: My Lords, I entirely support my noble friend's amendment. To understand what is happening in the market needs a better set of data than we have now. At an earlier stage, much was made of the experience in Sweden, where rules similar to these were introduced and internet use apparently halved. That is a disastrous answer for the copyright owners. It means that instead of people going out and legally buying their copyright material, they choose to have none of it. That means that it does not have even its advertising and promotional effect. There is no point in this legislation if it does not increase the consumption of legal copyright material. All we are doing then is punishing people; we are not benefiting anybody. We must know both sides of the equation. We must know what is happening in terms of illegal file-sharing, but we must also know what is happening on the other side. Without that information, we do not know whether further action is justified. Further action merely to punish people for something that does no damage—because ceasing it brings no benefit to the copyright owners—cannot, in my view, be justified.

The Earl of Erroll: The noble Lord, Lord Lucas, is 100 per cent right. If you do not have a benchmark or starting point, you do not know where you are going. The Swedish situation is interesting. When I mentioned it to someone the other day, they said that, yes, internet use had dropped, but no one knows why it was by 50 per cent immediately, in a day. It is highly unlikely to have been just because of that. There must have been some other reasons. Apart from that, they said that traffic is back up again and that it had dropped by 18 per cent soon after. The traffic is back up again, but much of it is encrypted now, so no one knows what is going across it. If that happens here it will completely mess up the Home Office. The Government will make themselves very unpopular with the Home Office.

Lord Whitty: My Lords, the noble Earl, Lord Erroll, and the noble Lord, Lord Lucas, have pointed out the problems of using the Swedish example as justification for the way the Government are going on this. I meant to make this point at a much earlier stage. The Swedish data show that although there was a drastic fall, immediately after the case, traffic went up. There is the problem that some of it is clearly encrypted and designed to avoid the kind of protection and sanctions that follow.

My main point on this amendment is that the whole point of the Government's strategy—as I understood it, and certainly as I would like to see it—is to move to a situation where the majority of people gain their copyright material by legal means. In other words, we should have time and incentives to develop the legal forms of downloading, particularly of music. If we do not know what level of take-up of those legal services exists at the beginning, we cannot judge how far we will need to use the sanctions that are provided in the next few clauses. It is important to get this benchmark, as the noble Lord, Lord Lucas, refers to it.

It is also important to get the strategy right. It is not sensible to use sanctions simply to reduce the traffic. The aim must be that the majority of the market uses legal means of downloading, uploading and file-sharing. Then we can deal with the residual problems that exist in the illegal sphere. I was going to make this point later and I will probably make it again, my noble friend will be happy to learn. It is very important that something like this amendment gives us a starting point in assessing how far we are successful in that objective.

Lord Davies of Oldham: My Lords, of course the Government do not disagree with the sentiments expressed so eloquently by my noble friend Lord Whitty, and preceded by all other noble Lords who have contributed to this short debate. We are, of course, committed to the fact that we need to promote the use of internet access services to access copyright material offered by copyright owners via legitimate channels. We have always made that clear. I am not sure that constant repetition throughout the Bill does a great deal of good in these terms.

We have always made it clear that there will be a three-pronged attack. The enforcement actions in the Bill back up—rather than exclude—moves to develop the commercial markets. We all see the advantages that can derive from exploitation of the new technology available to us. In addition, we will educate consumers about the value of copyright so that there is a wider appreciation in society of that situation. However, saying that we are all in agreement on that—and the Government agree with every sentiment that has been expressed positively in this debate—does not mean that it is appropriately expressed in this amendment. Would this amendment be useful in this context? Indeed, would it be reasonable?

Let us be absolutely clear. The noble Lord, Lord Howard of Rising, tabled the amendment; he is not, I hope, underestimating the fact that there are considerable additional costs in the preparation of Ofcom's annual report. We are, therefore, engaged in a cost-benefit analysis of whether the benefits which the noble Lord suggested with regard to the amendment would be advanced by the amendment and would justify the inevitable costs involved. What are we dealing with in this part of the Bill? We are tackling the online infringement of copyright. Therefore, it seems somewhat inappropriate that we should be involved in such a discussion on this proposal. Of course, the level of legitimate traffic is interesting—I do not deny that—but is it crucial to the objective that the Government are seeking with the Bill? Under subsection (4)(b) of the

proposed new Section 124F of the Communications Act, Ofcom already has an obligation to report to the Secretary of State on the steps,

"taken by copyright owners to enable subscribers to obtain lawful access to copyright works".

Therefore, we have the constructive dimension with regard to copyright. Requiring Ofcom to go even further and assess the current levels of such legitimate activity would scarcely bring additional benefits in comparison with the obvious costs involved in making this significant imposition on Ofcom in the preparation of its annual report.

I assure the Committee that the Government are, of course, concerned that we should promote exactly the issues which the noble Lord, Lord Howard, first raised and the benefits from ensuring that we increase the activity and the legitimate traffic in every way that we can, and particularly that we ensure that our fellow citizens do not fall foul of the law when they do not intend to. However, I ask the noble Lord, is the cost worth it?

7 pm

Baroness Buscombe: I am very grateful to the noble Lord for allowing me to intervene. That is a very good question. To some degree the measure has to be practicable. However, we are looking at the need to be proportionate. It is very difficult to be proportionate, particularly in relation to Clause 17, which concerns power to amend copyright provisions. Unless we have a clear idea of the degree to which illegal downloading is outstripping legal file-sharing, we are in a difficult place in terms of appreciating the degree to which there is therefore sensible pressure, or whether it is practical or reasonable to expect there to be amendment to the copyright provisions.

Lord Davies of Oldham: I hear what the noble Baroness says. I have accepted part of the argument, that we are all seeking to achieve the same objectives. However, this is a specific obligation on Ofcom to extend its annual report at very considerable cost. It would be engaged in an exercise which truly, in the context of this clause and where we are with the Bill, is not justified. As the noble Baroness knows, we will debate Clause 17, not at length—we never debate at length—but with considerable intensity. I look forward to that with the greatest delight.

It surely cannot be suggested that there are sufficient benefits attendant upon this extension of Ofcom's annual report to justify accepting this amendment. I hope that the noble Lord will see that we have thought very seriously about the amendment and that he can safely withdraw it.

Lord Lucas: My Lords, I am puzzled—to put it politely—about the noble Lord's reference to large costs. Under subsection (4)(b) of the new section, Ofcom is, presumably, already writing to the major copyright interests—there are not that many of them—to discover what they are doing so that it can fulfil its duty under the clause. If it adds a little line at the bottom, "How much have you sold online this year?", that would answer my noble friend's question. The data will just come as a result of an answer to one or two simple questions appended to communications that are already going out under this Bill. That would not even cost an extra stamp. It would be a matter of a few pounds. Given all the ingenuity of the Civil Service, how does the noble Lord manage to translate that into vast costs? What does he imagine Ofcom will spend money doing beyond what I have described?

Lord Davies of Oldham: The noble Lord will appreciate the extent to which this Bill puts very significant obligations on Ofcom. There is a whole series of proposals with regard to the annual report. I do not think that this request should be included in the annual report. It would not bring benefits bearing in mind the significant amount of work that it would involve and the responsibility that Ofcom would bear for it. That is why I ask the noble Lord to withdraw the amendment.

Lord Lucas: My Lords, the noble Lord has not answered my question. What work? He need not answer me now, but will he please write to me saying what work would have to be done beyond adding a line or two to a letter which will have to be written anyway to obtain these data? What work will be necessary beyond that for which my noble friend has asked in adding up a few figures and comparing them with those of previous years to provide the result? In what way does he not understand that we have to do that in order to comprehend the significance of the level of illegal downloading and the consequences of this measure in reducing it or otherwise? That is the only way in which we can judge it.

Reducing the level of illegal downloading is not in itself an absolute good. If we reduce the level of illegal downloading, all we will do is to reduce a lot of people's enjoyment of music and films. If we do not at the same time increase the level of revenue to the copyright owners, we will do nothing for them. We will produce a widespread bad, but no good. Just depriving people of something is not a good thing to do. It is good only if we can get more revenue for the copyright holders. That is how the effectiveness of this measure ought to be judged. It is an absolutely vital part of judging the performance of this Bill to know what its effect is on the revenue of copyright owners. That will cost mere pence compared with the cost of assessing the level of illegal downloads, which will require extensive research.

Lord Davies of Oldham: I hear what the noble Lord says and I will bear in mind the phrase that he used—a few pence. I will write to him about this issue but the context in which we are arguing this case is that the Bill is directed at tackling what we all appreciate are offences with regard to illegal activity. As I have indicated, there is no difference between noble Lords in any part of the House about the importance of promoting legitimate operations on the internet and extending legitimate copyright. The Government have made that clear in every aspect of defending this measure.

Lord Howard of Rising: My Lords, I thank my noble friends Lady Buscombe and Lord Lucas for their support and for making my point rather better than I did. I am also grateful to the noble Lord, Lord Whitty, for making a very valid point about the importance of being able to measure what is happening. If you

[LORD HOWARD OF RISING]
cannot measure what is happening, you do not know what is happening and you do not know whether what you have set out to achieve has been achieved. In that context, I cannot really see how the cost to Ofcom would be so great as to be relevant, as my noble friend Lord Lucas pointed out. If copyright owners are able to tell what is happening in the private sector by subscribing to various services, how is it that Ofcom cannot also see what is happening? I should have thought that any organisation that can afford to have its own bottled water would not find that cost too significant. If the Government cannot know what the starting point is and what will happen later on, they will have no method of knowing whether the Act is successful or unsuccessful. I do not know whether the Minister cares to comment on that.

Lord Davies of Oldham: My Lords, we will know whether the Act is successful in terms of the extent to which we make progress in reducing illegitimate traffic and finding ways in which fuller advantage of the opportunities which the technology provides can be enjoyed by all sections of society, particularly as regards those who produce material which requires copyright defence. The noble Lord obviously endorsed what the noble Lord, Lord Lucas, said. The implication was that this is merely a tick-box exercise that Ofcom would be involved in. It would not be that at all. The box may be ticked, but analysing the significance of the information received will take resources. Noble Lords opposite are dismissive of additional costs for a particular public institution, but spend a great deal of time saying how they will deal with this in general.

Lord Lucas: That is what I care about—that all the money that Ofcom spends on establishing the level of illegal downloading should have a purpose. Without knowing the level of illegal downloading, it has very little.

Lord Howard of Rising: My Lords, the point is that, if traffic doubles, how do you know whether it is because of a vast increase in legal or illegal activity? Without measuring it, you cannot know. Obviously we are not going to get much further on this tonight. I beg leave to withdraw the amendment.

Amendment 132 withdrawn.

Amendment 133

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

133: Clause 9, page 12, line 10, after "owners" insert ", OFCOM and the UK Intellectual Property Office"

Lord Clement-Jones: My Lords, this is a straightforward amendment. New Section 124F(4)(c) refers to,

"a description of the steps taken by copyright owners to inform, and change the attitude of, members of the public in relation to the infringement of copyright".

It is an essential part of the equation that Ofcom and the UK Intellectual Property Office also take part in the education process. It should not be up to copyright owners alone to engage in education of the general public. UK IPO has an honourable record of trying to change attitudes and inform the public about the value of copyright, and about its contribution to the UK creative economy. There is a gap here. It is important that Ofcom, in its progress report, describes its own efforts, those of UK IPO and those of the copyright owners. That will give a more comprehensive picture of what is happening.

We have agreed in these debates that education is as important as enforcement. That theme has run through our proceedings. It was picked up in the *Digital Britain* report. There is no difference between us on the importance of education. However, it is important that we identify where that education will come from. I beg to move.

Lord De Mauley: My Lords, Amendment 133, tabled by the noble Lord, Lord Clement-Jones, is interesting. I take the point that useful information could be provided by bodies other than copyright owners. Indeed, information is more likely to be accepted as reliable and impartial if it comes from bodies other than copyright owners, especially those able to take an objective view. However, we have concerns about the idea of Ofcom and the United Kingdom Intellectual Property Office getting involved in changing the public's attitudes. I hope that the noble Lord, Lord Clement-Jones, will forgive me for suggesting that that sounds as if we are asking impartial bodies with no stake in either camp to undertake a public relations campaign on behalf of copyright owners. Such a campaign would not only be unlikely to be effective, but might also cast doubt on the impartiality of the body responsible for administering the obligations code and adjudicating in disputes.

7.15 pm

Lord Young of Norwood Green: My Lords, the amendment would require the full report to the Secretary of State to cover any educational or awareness-raising activities undertaken by the IPO and Ofcom, in addition to those being undertaken by copyright owners. This is to misunderstand the nature of what we are trying to do. It is important to remember that this is a three-pronged approach to the online infringement of copyright. Inevitably, the Bill is most concerned with enforcement; but just as important are the efforts of copyright owners to develop new, attractive market offerings—that issue has been raised on a number of occasions—and the education of the general public on why copyright is important and worth protecting. It is primarily the responsibility of copyright owners to deliver on the commercial offerings, and also on the educational parts of the approach; and of course it is in their interests to do so.

The IPO produces some very well received educational material. I say that in response to the comment of the noble Lord, Lord De Mauley. By and large I agreed with his assessment of Ofcom. As I said, the IPO produces well received educational material explaining the function of intellectual property, and no doubt will continue to do so. However, it is the willingness of copyright owners to play their full part in tackling online infringement that we are asking Ofcom to report on here. That should not be joined or confused with initiatives in the public sector. On that basis, I ask the noble Lord to withdraw the amendment.

Lord Clement-Jones: I thank the Minister for that reply. I also thank the noble Lord, Lord De Mauley, for his contribution, which was slightly half-hearted. The Minister is correct that the UK IPO produces valuable material. The fact that we are talking about copyright does not mean that we have to be advocates for creative rights owners. This is about educating people about the value of copyright, about why the right is important to our UK economy and about the consequences if people do not observe it. There should not be an issue between us on the value of education by public bodies such as Ofcom and UK IPO.

With all due respect to the Minister, I do not think that I misunderstand the nature of the progress report. In my view, it should deal with the way in which our culture and our attitudes towards copyright infringement are changing. One may want to involve the Advertising Association and various other associations that, strictly speaking, do not hold copyright. The amendment argues for a broader view than simply expecting copyright owners to do all the heavy lifting. We all have a duty to try to get to a position where people understand the need to observe copyright, the reason for it, and the importance of copyright to our future as an economy. I hope that the Minister will consider that further. In the mean time, I beg leave to withdraw the amendment.

Amendment 133 withdrawn.

Amendment 134

Moved by ***Lord Lucas***

134: Clause 9, page 12, line 12, at end insert—

"( ) an assessment of the measures needed to encourage competition in electronic communications services provided over electronic communications networks;"

Lord Lucas: My Lords, I apologise to the Minister for the amendment. It belongs several clauses earlier in the Bill, with the general dealings of Ofcom. It is entirely my mistake that it appears here. The Minister can choose whether to reply to it now or wait until Report, when I will put it in the right place in the Bill. It merely addresses the problem that arises where individual companies gain a large slice of the internet communications market and then start to restrict the services that are available. I do not propose any particular remedy, but this is something that Ofcom should keep an eye on. I will give the Minister an example. Although we provided that there should be no favouritism when it came to access to directory inquiry services over fixed lines, where a company offers voice over internet protocol it can restrict access to one such supplier. That is merely an example for the Minister. I beg to move.

The Earl of Erroll: My Lords, these sorts of things are very important. The Americans are greatly concerned about networks and neutrality because they have been having problems with people trying to grab control of a bit of the market. Also, ISPs are currently doing something called traffic-shaping, in which they decide what bits of traffic you are and are not allowed to have in an attempt to optimise the traffic over their networks, particularly at busy times. However, it could also have the inadvertent effect of favouring one form of traffic over another. The indirect effect could well be that beneficial things that come over peer-to-peer networks are acted against because there is pressure due to unlawful downloading. One could go on for hours trying to invent reasons for this, but I think that this is a more important amendment than people realise.

Lord De Mauley: My Lords, as always, my noble friend makes his point very well. Despite his apology to the Minister, he has reinforced my view that what his Amendment 134 proposes is, as the noble Earl, Lord Erroll, said, important, whether or not this is the right place to do it.

Lord Young of Norwood Green: My Lords, in the light of those comments, I shall give an abbreviated response, which in no way indicates that I wish to appear dismissive.

New subsection (4) in Clause 9 sets out what a full progress report from Ofcom must include. The amendment would, in addition, require Ofcom to carry out a review of the measures needed to encourage competition in electronic communications services.

I am not sure whether it is intentional but, as drafted, the amendment would require the report to cover phone, broadband and broadcasting services, together with other data services such as the provision of smart metering information, as well as content-based services such as access to film, music and other copyright-protected content online. It certainly cannot be right that in this part of the Bill Ofcom should be asked to carry out a report drawn so widely. In the light of that explanation, I hope that the noble Lord will feel able to withdraw the amendment.

Baroness Buscombe: Before the noble Lord sits down, I should like to express the degree of importance that I attach to this amendment. I very much hope that this whole subject will be discussed properly at some point during the passage of the Bill. It sounds to me as though the amendment goes to the heart of Ofcom's core responsibilities—to ensure that there is a proper regard for competition. I hope that the Minister is comfortable and confident that this area will absolutely be a core part of Ofcom's responsibilities in relation to the Bill.

Lord Lucas: My Lords, I entirely understand the noble Lord's attitude. This amendment will reappear in its proper place in relation to the Bill on Report. For now, I beg leave to withdraw the amendment.

Amendment 134 withdrawn.

Amendment 135

Moved by ***Lord Lucas***

135: Clause 9, page 12, line 22, leave out "and"

Lord Lucas: My Lords, I shall speak also to Amendment 137, which works together with Amendment 135. I think that by and large the noble Lord answered this question in his responses on previous amendments, so for now I shall move my amendment, listen to the noble Lord, Lord Clement-Jones, and, if the Minister says anything that I think needs amplification, question him after that. I beg to move.

Lord De Mauley: My Lords, despite my noble friend's brevity, I should like to say that these amendments go right to the heart of the progress report. Indeed, it is somewhat surprising that something similar has not already been included in the Bill. The question of whether loss of revenue to the copyright owners has been stemmed is not the best measure of success of the provisions. If the cost of the provisions proves to be greater than the amount of revenue received as a result of the provisions, the provisions surely cannot be counted a success. The Minister's thoughts on this will be extremely interesting.

Lord Clement-Jones: My Lords, I feel that I barely need to speak to my amendment, such has been the brevity of the previous contributors. I think that Amendment 136 is self-explanatory. The wording,

"an assessment of the extent to which any such proceedings against subscribers have been successful",

seems to be an important addition. The amendment goes on to mention,

"an assessment of the extent to which the process for copyright clearance in the United Kingdom has improved … an assessment of the extent to which the legislation has had an impact on the adoption by subscribers of broadband services in the United Kingdom".

Again, that seems to be a sensible addition to the kind of report that Ofcom is required to give and I hope that the Minister will consider it favourably.

The Earl of Erroll: My Lords, on the previous amendment the noble Lord, Lord Lucas, rightly mentioned that there is no point in this legislation cutting off people's internet access and discouraging them from doing this, that and the other if there is no benefit to the rights owners. If it does that, it has no purpose. It will simply be acting like the traditional puritan who has a haunting fear that someone, somewhere, might be enjoying himself. There is absolutely no point in wasting public and other money on that.

Lord Young of Norwood Green: My Lords, tonight I have been accused of puritanism, as well as of having an easy life—and so it goes on.

It is important that we do not require Ofcom to produce a report of such extent and detail that simply gathering the data for it and putting it together becomes a disproportionate burden in terms of both time and money. We should bear in mind the fact that consumers will ultimately pay the cost of this, whether in the price that they pay for content or the price that they pay for broadband connections.

New subsection (4) in Clause 9 already identifies the issues that we have good reason to believe are key in enabling the growth of the market in legal content: the availability of legal offerings, public understanding and awareness, and enforcement. In addition, it allows the Secretary of State to request Ofcom to consider any other matter.

However, I bring your Lordships some good news. I think that some of the issues raised here might be relevant, although some might not. In the interests of making progress, I suggest that we work on the basis that the Secretary of State will carefully consider all the issues raised by your Lordships and consider whether to ask Ofcom to include them in its progress reports. On that basis, I invite the noble Lord to withdraw the amendment.

Lord Clement-Jones: My Lords, I am not quite sure what the Minister is saying. Is he saying that this is what the Secretary of State might include in a direction to Ofcom or that, when the Minister comes back to this on Report, there will be scope to introduce something that will be reflected in the Bill? I hope that it is the latter. I hope that this is a chink in the armour and that the Minister has noticed that even the fertile brains of the DCMS have realised that some aspects of the progress report can be improved. I well understand that the Minister does not want that report to become a great compendium, but some of these elements are extremely relevant. I hope that what is sauce for the goose is sauce for the gander. If we have discovered elements that should properly be included in the progress report, I hope that the Minister will come back with a suitably crafted amendment on Report to reflect that.

Lord Lucas: My Lords, I am greatly comforted by what the noble Lord said about the Secretary of State. I am sure that he will think of nothing else between now and 6 May. The crucial element of my amendment is the one that was raised in the earlier amendment tabled by my noble friend Lord Howard of Rising and it is certainly something that we will come back to on Report. Therefore, I beg leave to withdraw the amendment.

Amendment 135 withdrawn.

Amendments 136 and 137 not moved.

House resumed. Committee to begin again not before 8.29 pm.

Climate Change and Renewable Energy

Question for Short Debate

7.30 pm

Tabled By ***Lord Dubs***

To ask Her Majesty's Government how they intend to respond to the recommendations in the report of the British-Irish Parliamentary Assembly on Climate Change and Renewable Energy.

Lord Dubs: My Lords, I welcome the opportunity to say a little more about the British-Irish Parliamentary Assembly, to give examples of the work that is done by its committees and to consider the specific report about climate change and renewable energy.

I realise that there have been several debates and Questions on climate change in this House recently, but I make no apology for a further debate. The issues are too important. Membership of the British-Irish Parliamentary Assembly consists of parliamentarians from Westminster, Dublin, Edinburgh, Swansea, Belfast, the Channel Islands and the Isle of Man. It is the only parliamentary body that brings all these jurisdictions together. It is most welcome that both the Ulster Unionist Party and the Democratic Unionist Party are now members. At a ministerial level, the BIPA is developing links with the British-Irish Council. In a way, we are becoming the parliamentary tier.

We have four committees. I am the chair of Committee D, which deals with social and environmental issues. The committees produce a series of reports with recommendations to the various jurisdictions. I say with some regret that the Government have not always been punctilious in responding to the committee reports; I believe that the Oireachtas in Dublin has paid more attention to the work of the BIPA. I suppose that it is fair to say that we would like all the Parliaments and Assemblies, as well as the Governments and devolved Administrations, to take our reports more seriously. There has been progress on this, but there could be more.

Most of the work of the BIPA and its committees is concerned with issues that affect more than one jurisdiction. We point to best practice in one jurisdiction that could usefully be replicated elsewhere and indicate how there might be co-operation where appropriate between two or more of the jurisdictions. A few recent examples of the BIPA's work include reports on the integration of newly arrived migrants to Northern Ireland, the Irish community in Britain, measures to get the unemployed back to work, barriers to trade, ID cards and the common travel area, cross-border co-operation between police forces, mutual recognition of penalty points, the Consultative Group on the Past, and the future for small farms.

Let me now turn to the subject of tonight's debate: climate change and renewables. We deliberately excluded nuclear policy because of a wide divergence of views on the issue and because it had been the subject of a report some years ago. The method of the committee was as follows. We held evidence sessions in Edinburgh, London and Dublin. There was not enough time to go to all the capitals within the jurisdictions so we had to do things consistent with the difficulty of getting an international committee together. The BIPA has good relations with the Nordic Council and several of its representatives came to our meeting in London, where they made a very helpful contribution, as they, too, are interested in climate change. We had meetings with Ministers in Edinburgh and Dublin and we met people from business and universities, as well as officials, including some from the British-Irish Council.

I now turn to the recommendations and conclusions of the report. Clearly a balanced energy portfolio is essential to ensure that our energy needs are met not just by one country or region. To be as self-reliant as possible, a region needs to make the most of the renewable energy available locally, but a collective and regional approach is essential, as each jurisdiction probably cannot solve this problem on its own.

One of the key conclusions was the importance of the grid. Because of the uneven output of electricity from renewables, the more these renewables are interconnected the more likely it is that we will get an even flow of energy. That is pretty self-evident. To take wind farms as an example, if there is not enough wind off the coast of Scotland, there might be in Norway or Denmark. By having more connectors of this sort, we can have a more stable supply of electricity than by simply working in small regions. Progress is being made. Northern Ireland, Scotland, the Isle of Man and Ireland are working together on a feasibility study for an offshore electricity grid to transmit electricity from renewable energy sources—a Celtic grid known as the Isles Project.

The committee urges the Department of Energy and Climate Change and Ofgem to review grid access charges to ensure that they are no disincentive to developing the grid in the way suggested by the committee. The committee also suggests that joint working with the Nordic Council might be an appropriate step in the process of developing a pan-European super-grid. We should start in Ireland, Britain and the various jurisdictions and extend towards the Nordic countries. A further extension could then be towards some of the continental countries. I was delighted to read in the press a couple of weeks ago that there are already proposals to develop a European super-grid, which is very much in line with the committee's recommendations. I hope that the press were accurate in making that point.

The British-Irish Council has a crucial role in co-ordinating the work and sharing best practice, as well as in removing barriers to further co-operation between the member countries of the British-Irish Parliamentary Assembly. The committee hopes to revisit this issue within the next 18 months and will maintain a watching brief on the environment and energy sectoral groups of the British-Irish Council.

I now turn to innovation. Clearly the development of the energy sector suggests that there is great potential for more innovation. If nothing else, greater publicity is required for innovation that might improve significantly the use of renewable energy by both commercial and domestic customers. Competitions and academic sponsorship should also be used to encourage more innovation. The committee also recommends that each government department at all levels across the member countries of the BIPA should carry out an energy audit, set tough targets on reducing energy requirements in line with national renewable and energy efficiency targets and build on the national energy efficiency action plans in place across the EU.

Local authorities across BIPA member countries can play their part in encouraging renewable energy production. Local government is crucial in being close to the sensitive ecological and environmental considerations when one develops some of the links. It is clear that planning issues can present difficulties. Obviously there is pressure that power lines should not spoil areas of natural beauty and should go underground, but that is costly. One has to balance the cost of putting energy power lines underground against the environmental damage caused by spoiling areas of natural beauty.

Finally, all consumers and households have a part to play. An enormous amount of electricity is wasted each year—we all know this—because individuals fail to take simple steps to reduce their energy use. We were given shocking statistics of the waste of energy caused by the use of the standby facility on some electrical products. This is common knowledge, but the scale is alarming. We noted the *Which?* report stating that consumer electrics make up 16 per cent of domestic electricity usage. It suggested that just one electrical unit—for example, a Freeview box—could use more than 20 watts per year when on standby. Using 2006 energy prices, *Which?* estimated that that would cost more than £15 per household per year.

[LORD DUBS]
These are large figures. It also estimated that in 2006 consumers could save £40 per household just by turning off electrical and electronic equipment rather than using the standby facility. I wonder how many electronic items in this building are now on standby as we debate. I wonder how many there are in our homes—I hope not in mine, but I am sure that there are. We cannot do enough to tackle what is clearly a waste of energy, which will negate all the effort to invest in renewables.

Citizens can also take responsibility for reducing their energy use by ensuring that privately owned buildings are insulated and that they have energy efficient products installed such as light bulbs and double glazing. Of course, progress has been made. The light bulbs are now mandatory and double glazing is becoming more common, but more could be done.

I conclude by saying that not only do Governments, local authorities, businesses and universities have a part to play, but each of us has a part to play to reduce our energy consumption to make this a better and safer planet.

7.38 pm

Lord Judd: My Lords, it is a great pleasure to follow my noble friend Lord Dubs, who is in every sense a friend of long standing. I am sure that I am not alone in wanting to thank him most warmly not only for the powerful report—I hope that the Government will take it extremely seriously, as it makes its case convincingly—but also for all the work that he does within the British-Irish Parliamentary Assembly. He is never one to take on responsibilities lightly and the way in which he has thrown himself into this task is a model for us all. His practical approach to life was illustrated in the postscript to his remarks. Like him, I always believe that one's most powerful position is to be able to say, "Do as we do", rather than, "Do as we say". This building should be a model of economy in the use of power. Although we have moved a long way forward, I am not sure that we are anywhere near where we should be.

I want to comment first on the Assembly. During my ministerial days in the 1970s, I paid a bilateral ministerial visit to Dublin. That wonderful character, Garret FitzGerald, was my host. It was a particularly happy, fruitful and useful visit, despite the troubles, difficulties and preoccupations that we had over security and all the rest. I came back thinking how sad it was that we were not more in conversation, creatively and imaginatively, with our friends just across the water. We have so many issues on which we have a lot to say to each other and on which, working together, we can achieve so much. It is tremendous that the British-Irish Parliamentary Assembly exists and is getting on with the job of creating a positive and imaginative environment of co-operation.

I want secondly to draw on a matter that my noble friend has firmly covered. I always ask myself why energy is so necessary in our lives and that of our nation. Presumably, we want to have a society worth living in. If we are to have that, one of our richest assets is the unrivalled, wonderful scenery of Scotland, Ireland, north-west England, west England and Wales. I would like an absolutely firm assurance from my noble friend that, in any work done on the grid and elsewhere, preservation of that rich asset will be at the top of the list of priorities. It must not be just a factor to be taken into consideration; it must constantly exist as a requirement on which we will not yield in whatever we take forward. We can look at the Philistine havoc caused during the Industrial Revolution of the 19th century, when some of our most beautiful valleys were raped for industrial purposes. Surely we have learnt from that. We must be determined that whatever we do—and it is essential to be doing these things—we do it in a civilised way, ensuring that we keep a society that has a character worth having and one whose scenic inheritance is second to none.

The third point that I want to raise is associated with the report rather than covered specifically in it. As we are moving forward on energy policy, we are giving a great deal of attention to nuclear policy. Presumably, that will have a relationship with the grid. If there can be a rationalisation of the power lines and so forth—the power being generated in west Cumbria going into a grid system that is taking aesthetic considerations very much into account—that will be good. However, I want an assurance from my noble friend that, with our good friends just across the water, we are having the fullest possible discussions about the implications of our proposals.

Nuclear waste in west Cumbria has implications not only for west Cumbria but for the Irish. We share the sea, the water, between us. Can my noble friend assure us that there are full discussions with the Irish about that issue? Can he also assure us that, on the proposals to develop perhaps as many as three nuclear generating stations in west Cumbria, there is full consultation with the Irish about the implications for them? It would be dreadfully sad if, as we take forward very important policies, we inadvertently and unnecessarily cause anxiety and distress to our Irish friends. I hope that my noble friend can give a convincing answer on those points tonight.

7.44 pm

Lord Teverson: My Lords, I and a number of my colleagues from these Benches, massed around me tonight, thank the noble Lord, Lord Dubs, for bringing the report of the British-Irish Parliamentary Assembly to this House. It is not recognised enough in the work that we do. I congratulate him on his work and on having become chair of such a vital and important committee within that body.

I like in particular the issues raised almost slightly randomly in comparison with some reports that we read—and very refreshing because of that. It mentions nuclear energy very quickly. Nuclear is a contentious subject and the noble Lord, Lord Judd, mentioned some of its aspects. When I was elected to the European Parliament in 1994, it was the first time that the Greens had been elected to represent Ireland. They were elected because of the nuclear issues—the scares connected with the Irish Sea and nuclear pollution in Ireland. The Republic of Ireland is very much a non-nuclear state—I am not sure about the views of the Northern Ireland Assembly—and Scotland is also very much so. England is the only proponent of nuclear power within this grouping.

Renewables is exactly the right subject for this grouping of legislators to discuss. The area which the domains cover has the highest potential for such sources—and not just wind power. I was pleased to see mention in the report of geothermal. That technology is beginning to be developed, there being two schemes in Cornwall. I am sure that both Benches on this side of the House are delighted by that and are looking forward to seeing where it goes. The potential for geothermal is greater within the Nordic Council area and in Scotland. Renewable energy from the oceans is another issue. We have examples not just in Cornwall but also Orkney, particularly where technology and research on wave and tidal power is starting to move forward. I am sure that that is also true in the Republic of Ireland.

Those technologies are very important and I am sure that a great deal of expertise and common practice can be brought together so as to share the great wealth of resource that is still relatively untapped, even in comparison with wind power that is still, in many ways, in its infancy. The challenge is to start to bring those technologies on in reaching the testing targets mentioned in the report—15 per cent of energy from renewables in the UK by 2020 and 16 per cent in the Irish Republic. Those are massive targets to meet and one of the ways that can happen is by collaboration. However, they will be met much more successfully if we are able not only to share research, technology and its application, but if we can join up the system. That is what I found particularly exciting about the report. I must admit that I had never heard of the Isles project or the Celtic supergrid, but it seems such an obvious way forward. I shall be interested to hear from the Minister the Government's view on how it can develop and be successful.

We often hear a great deal about energy security in our discussions, but one way to obtain energy security and the de-peaking of renewable sources is by joining them up and having a plentiful and varied supply of them in terms of technology, geography and timing. I would be particularly interested to hear from the Government how we move forward on that.

That is part of the larger scheme of the European supergrid. The last time I asked the Government whether they were looking rather more favourably on the European supergrid than they had previously, I think that I detected a gradual warming process. I hope that that is still the case; I will listen with interest on that. When we start to bring in Iceland, although it is half an ocean away—that is one of Iceland's great strategic plans, with fisheries, to move away from the financial services industry—and Scandinavia, where they have hydroelectricity, we will have a really exciting mix of renewable energies that can be used in north-western Europe.

Without wishing to repeat points too often this debate, there is grid access. In the south-west, we have a dilemma. We have extended areas of great countryside, areas of outstanding natural beauty and national parks. We want both to have a green economy, a green energy supply, and to protect our visual environment. Access to the grid is key. For so much of what we want to happen, and certainly for us to meet the testing EU targets that have been taken on in both the United Kingdom and Ireland, we must find a way to ensure that grid access really works. Again, I will be interested to hear how the Government see that moving.

I conclude by saying that the report brings together three crucial areas: the fact that we need access; the fact that we have different technologies; and the fact that we need to bring them together. This is one area where there is real synergy in security, technology and experience.

7.52 pm

Baroness Wilcox: My Lords, I, too, thank the noble Lord, Lord Dubs, for bringing forward this Question for Short Debate asking Her Majesty's Government how they intend to respond to the recommendations in the report of the British-Irish Parliamentary Assembly on Climate Change and Renewable Energy. I also thank the committee for its insightful report.

The Conservative Party fully supported the Northern Ireland Act 2006 in its passage through Parliament. Since the beginning of this leadership, my right honourable friend David Cameron, the leader of the Opposition in another place, has made it clear that moving Britain to a low-carbon economy will be a key task of a Conservative Government. That is important for environmental reasons, but also to ensure that Britain takes advantage of the potential for green jobs, for wealth creation and for industries which will grow in importance as the rest of the world reduces its dependent on fossil fuels and uses energy more efficiently. As well as being important to protect our energy security, moving to a low-carbon economy provides protection against fossil fuel price volatility at a time when, as we all know, household energy bills are in excess of £1,200 a year on average.

When Committee D of the British-Irish Parliamentary Assembly began its inquiry into climate change and renewable energy in November 2008 and took evidence in Edinburgh, London and Dublin, we were very interested in reading the recommendations in its report in 2009 and the Government's response to it. Tonight, the noble Lord, Lord Dubs, has given your Lordships' House the opportunity to put questions to the Government which, we hope, will urge forward more speedily their response to the recommendations.

I am certain that the Minister will agree that we need to work on the clarity of the message and present the case for change on what we all know is a very technical subject in a language that the majority of our people will be able to understand. I should like to ask a few questions. I am aware that I am the last to speak before the Minister, so if it is not possible to get notes from the Box in time, I should be only too happy to receive any written answers that he is able to give.

Can the Minister let us know of any progress that has been made on developing an all-Ireland energy island? How much low-carbon energy generation does he envisage will be produced by Ireland in the next 10 years? Can he reveal how barriers such as political and organisational complexities will be addressed in order to kick-start the implementation of the supergrid? Will he confirm that he will work with the Irish Government to raise the profile of marine renewables as an emerging and viable renewable energy resource

[Baroness Wilcox]
in the European Union in conjunction with the UK Administrations? Finally, will the other Administrations be following suit and introducing legislation to expand the marine renewables sector across the island of Ireland?

When coming into government, the Labour Party promised to be the,

"first truly green Government ever".

However, in May 2009, the Government's own watchdog, the Sustainable Development Commission, reported that not only were the Government,

"still not on track to meet in crucial targets, including goals on carbon reduction",

but that the targets themselves,

"don't match the scale of the challenge we face".

Carbon emissions from the Government's civil estate have risen since the baseline year of 1999-2000. The noble Lord, Lord Dubs, raised the question of energy use in this building, and the noble Lord, Lord Judd, referred to "doing as we do and not doing as we say". The energy efficiency of government buildings has fallen by 18 per cent between 2006-07 and 2007-08, so there is a way to go there if we are to set an example.

The report is tremendously important, and I am sure that the Government, following some of the disappointment of Copenhagen, will want to get the wind in their sails again. Their response here will be a very good place to start.

7.56 pm

Lord Faulkner of Worcester: My Lords, I thank my noble friend Lord Dubs for this opportunity to debate the findings of the British-Irish Parliamentary Assembly's report on climate change and renewable energy, and I congratulate him on his distinguished chairmanship of two committees of the assembly and on driving forward this inquiry and report. I also thank the other speakers in this debate, all of whom, as I am sure he will have been delighted to hear, have supported the recommendations of the BIPA report with great enthusiasm.

As the noble Baroness just said, last December's Copenhagen accord has reinforced the need for strong domestic action on climate change to be taken across the world. A rapid expansion in the supply of renewably generated energy is central to enabling us to cut the greenhouse gas emissions which cause climate change, as well as strengthening our security of energy supply.

We are delighted that the BIPA has chosen to undertake an inquiry into this critically important area of policy, which has considerable relevance to all its jurisdictions. Before I deal with the report, I would like to say how much the Government recognise the valuable contribution that BIPA has made, since its inception in 1990, to promoting mutual understanding among the countries that it represents, and I have every confidence that it will continue to do so. If I am allowed a brief personal reminiscence, I remember when BIPA was founded as the British-Irish Parliamentary Body under the auspices of the Inter-Parliamentary Union, for which I was working as an adviser to help to organise the IPU's centenary conference back in 1989—that seems a very long time ago now.

To tackle the twin challenges of climate change and energy security effectively, it is essential to work across borders, and bodies such as BIPA provide an important function in promoting this collaborative approach. The co-chair of BIPA, my right honourable friend Paul Murphy MP, has written to the Secretary of State for Energy and Climate Change, seeking his comments on its report on climate change and renewable energy before the assembly meets at the end of February. A full government response will be provided.

In advance of the Secretary of State's comments, I can say that the Government welcome BIPA's report, which has been informed by a breadth of sources from the public and the private sectors. I wholeheartedly agree with its core message that renewable energy has a central part to play in mitigating climate change and strengthening security of supply and that government, businesses and citizens must take responsibility to ensure that this happens.

Collaboration between the members of BIPA is of major value in helping us to make progress against our demanding renewable energy targets. That is why the Government are an active participant in the British-Irish Council's work streams on the closely related themes of electricity grid infrastructure and marine renewable energy. The BIC energy work streams were launched last year and are at a fairly early stage, but we are confident that they will have a positive and significant impact.

The UK Government are leading on the BIC work stream on electricity grid infrastructure, which will take stock of the work on grid development that is under way in each jurisdiction and go on to propose possible areas for collaboration. Collaborative work in this area, in an EU context, could assist in developing a common British Isles position for influencing EU energy policy and securing funding. The work stream could also be used to join up bodies, such as regulators, grid companies and research bodies, that could help achieve the aims agreed by BIC Ministers.

We are also playing an active part in the marine renewable energy element of the BIC energy work stream, to which the noble Baroness referred. It is being led by the Scottish Executive. It will focus on wave and tidal energy generation. It will share updates and policy development on areas, including marine spatial planning, and progress on research and development and issues relating to grid access, capacity and investment. BIC members are also proposing to collaborate by preparing papers across a range of issues, including the development of strategic environmental assessment and marine legislation and identifying strengths and gaps in academic research and related activity.

The Government are a strong supporter of marine energy technologies. Our £60 million funding programme to support wave and tidal technologies includes investments in our already world-leading marine energy testing infrastructure: £10 million to build new onshore testing equipment at the New and Renewable Energy Centre in the north-east; £9.5 million for Wave Hub in the south-west of England; and £8 million to expand the existing marine energy testing facilities at the European Marine Energy Centre in the Orkney islands. The UK is planning to host a ministerial meeting in

March this year at which energy Ministers from each BIC member will agree upon how these workstreams will take shape.

I should also add that Ministers and officials engage with the devolved Administrations of Scotland, Wales and Northern Ireland on energy and climate change matters, particularly where there are implications for devolved policy or to ensure the co-ordination and alignment of reserved matters with devolved policy.

The BIPA report calls for the Government to review grid access charges to ensure that no disincentives are applied to producers of renewable energy—a number of speakers in tonight's debate referred to that. The Government agree that grid access is a crucial factor in enabling the supply of renewable energy from producer to consumer. We consulted on improving grid access in the latter half of last year and last week announced our intention to take forward a reform model that will ensure that all new generators can get access to the grid in a reasonable timeframe.

Ultimately, investment in new networks is the real solution to connecting renewable and other essential low-carbon generation. The March 2009 Electricity Networks Strategy Group report, which was chaired by DECC and Ofgem, sets out the potential transmission grid investments needed. Yesterday, Ofgem announced the first stage of funding needed to take forward those investments, amounting to £319 million.

I also note with interest that BIPA's report supports the proposal of a future European supergrid. The Secretary of State has already used powers granted by the Energy Act 2004 to establish an innovative regulatory regime to connect offshore wind projects in UK waters to the Great Britain onshore grid in the most cost-effective way. This regime allows for the construction and ownership of cables connecting offshore generation projects to the onshore grid to be undertaken by means of a competitive exercise. Ofgem has already commenced tendering for nine offshore generation project connections and expects to grant the first offshore transmission licences for these connections from summer this year.

The concept of an offshore supergrid potentially connecting offshore wind projects in UK waters to those in other EU member states' waters, including Ireland, or using such connections to interconnect to mainland Europe, could further support the Government's aims of developing offshore wind and other renewables and promoting more interconnection between European electricity markets. However, it raises a range of regulatory, financial and technical issues that we are considering with the European Commission and other member states. Last month, my noble friend Lord Hunt of Kings Heath and eight other Ministers launched an initiative to co-operate on the development of offshore wind infrastructure in the North Sea and the Irish Sea, which should help achieve our longer-term objective. We also fully support greater interconnection between neighbouring countries because of the benefits market integration can bring. We are particularly pleased that the Irish system operator EirGrid will this year start to build an interconnector between Ireland and the United Kingdom. When it is completed in 2012, it will connect the Irish and British electricity systems for the first time.

The report's recommendation that innovation in renewable energy should be promoted by BIPA member countries is very much shared by the Government. We have a comprehensive strategy in place to take forward the best innovative ideas in renewable and low-carbon technologies as quickly as possible to help us meet our greenhouse gas and renewable energy targets, as well as to secure economic benefit to the UK. This includes: a strong long-term policy framework that provides clear signals to the market on our long-term priorities, and greater investor confidence in the future prospects for UK business sectors; direct support for innovation to address the main market barriers, including the £400 million Environmental Transformation Fund over the CSR period, plus an extra £405 million, which was announced in Budget 2009; and the development of a road map to 2050 that will provide a vision of what the energy system will look like in 2050.

It is vital, as the BIPA report recommends, that the Government take a lead by ensuring that emissions from government departments are subject to emissions reduction targets. I am very pleased that my noble friend Lord Dubs referred to this, as did the noble Baroness, Lady Wilcox. As part of the sustainable operations on the government estate targets, government departments must reduce carbon emissions from their offices by 12.5 per cent by 2010-11 from 1999-2000 levels. Some progress has been made. The Government reduced emissions from across their estate by 10 per cent in 2008-09, from the 1999-2000 baseline, and plans are in place to reduce emissions by nearly 18 per cent by 2010-11. The question of energy saving in this building is not a matter for me or for the Government, but I am sure that the House authorities will take note of what has been said in this debate tonight.

I also note the BIPA report's remarks on the need for the planning system to be sensitive to environmental and ecological concerns in the treatment of planning applications for renewable energy generators—a point which my noble friend Lord Judd made with great force. The Government have made it clear that renewable energy developments should be located in appropriate places and that local concerns should be listened to. We recognise the need to ensure that all renewable energy developments take place within the formal planning procedure, which allows all relevant stakeholders, including members of the public, to put forward their views on the likely impact of any proposal on the environment and the local community.

The BIPA report is a valuable contribution to our continuing work on responding to the linked challenges of mitigating climate change and enhancing the security of energy supplies. There is considerable merit in working with our partners in the BIPA to help us to overcome the obstacles—technological, regulatory and financial, among others—which we face in expanding our renewable energy capacity.

My noble friend Lord Dubs and the noble Lord, Lord Teverson, referred to co-operation with the Nordic Council. Norway has been invited to join the initiative to co-operate on the development of offshore wind infrastructure in the North Sea, and it has declared an interest in joining that initiative. My noble friend Lord Hunt signed a political declaration on this with other Ministers in December.

[Lord Faulkner of Worcester]

I am afraid that I have not had time tonight to answer to a number of questions from noble Lords, including from the noble Baroness, Lady Wilcox, but I assure her that I have the answers to them and will write to her with them very shortly. As my time has now come to an end, I congratulate my noble friend Lord Dubs on securing this important debate, and I thank him and other noble Lords for their very good contributions and constructive suggestions.

Digital Economy Bill [HL]

Committee (4th Day) (continued)

8.29 pm

Amendment 138

Moved by ***Lord De Mauley***

138: Clause 9, page 12, line 31, at end insert—

"( ) The Secretary of State must lay before both Houses of Parliament a copy of every full report."

Lord De Mauley: My Lords, this is a simple amendment to ensure proper parliamentary scrutiny of the reports. The Government have sensibly accepted many of the Delegated Powers and Regulatory Reform Committee's recommendations and have improved the level of parliamentary control over the imposition of many of the orders in this part. It would therefore be sensible to ensure that Parliament has formal access to the reports necessary to inform its scrutiny. We have stopped short of suggesting that the interim reports should necessarily be laid before Parliament, as this might be too burdensome. We would, however, expect these to be published in other ways. It would be helpful therefore if the Minister could confirm the extent to which the Government intend that both the interim and full reports will be published. I beg to move.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): My Lords, a report from Ofcom to the Secretary of State, while not being the only evidence that will be considered, will almost certainly play an important part in the process whereby the Secretary of State makes his decision on whether it is necessary and appropriate to introduce technical obligations. I agree that it is reasonable that one of the main planks of that decision should be made available to Parliament.

It would be important to ensure that the Secretary of State should have the power not to disclose information which is commercially confidential or should not be disclosed for legitimate reasons. I feel sure that the noble Lord, Lord De Mauley, would recognise those factors. Broadly, we think that this is right, so I should like to thank the noble Lords, Lord Howard of Rising and Lord De Mauley, for tabling this constructive amendment and suggest that we take it away and consider it further.

Lord De Mauley: My Lords, I thank the Minister for his response. I accept his point about confidential information. On the basis of his offer, I beg leave to withdraw the amendment.

Amendment 138 withdrawn.

Amendment 139

Moved by ***Lord De Mauley***

139: Clause 9, page 12, line 31, at end insert—

"( ) The Secretary of State may by order remove the obligation from OFCOM under subsection (3) to produce interim reports."

Lord De Mauley: My Lords, this deregulatory amendment seeks to allow the power for the Government to remove quickly and easily a regulatory burden that may very soon become unnecessary. The pressure that has led to the Government drafting in the three-monthly interim reports is understandable. There is a great deal of concern about how these provisions will impact on certain stakeholders and about their efficacy and so on. However, once the provisions have bedded in, it would surely be ridiculous to continue to produce such frequent reports on such a multitude of subjects as is laid out in subsection(4). The interim reports would become meaningless pieces of paper containing nothing of value and would serve no purpose but to keep public servants busy. I hope that the Minister will appreciate the intent behind the amendment. I beg to move.

Lord Young of Norwood Green: My Lords, I thank the noble Lord, Lord De Mauley. We believe that he has raised a very constructive point, which we will take away and consider further.

Lord De Mauley: There is no end to the Minister's generosity. On that basis, I beg leave to withdraw the amendment.

Amendment 139 withdrawn.

Clause 9 agreed.

Clause 10 : Obligations to limit internet access: assessment and preparation

Amendment 140

Moved by ***Lord Lucas***

140: Clause 10, page 12, line 35, at beginning insert "After the passage of two calendar years from the coming into force of this section,"

Lord Lucas: My Lords, the Minister has set a very encouraging trend and I fully expect to be the beneficiary of it. By way of aside, we have talked about the stage at which technical measures might become necessary. These amendments are alternatives. They are both designed to ensure that the regime set out in Clauses 4 to 9 has a chance to work before we tip ourselves into technical measures. I beg to move.

The Earl of Erroll: My Lords, I support this amendment. There could be all sorts of delays or people might want to hasten things forward, particularly under pressure. One might find precipitate pressure because people believe that it is not working. As we have already established, we will not be working for a benchmark for what is good. Having a two-year period for things to bed in and to find out whether this provision is okay is sensible.

Lord Howard of Rising: We on these Benches entirely agree with my noble friend's concern that technical measures should not be imposed until there has been a proper assessment of the success or failure of the reports, letters and lists allowed under the previous clauses. We will come on in time to the question of what exactly these technical measures will cover. There seems no doubt that the Government's intention in these provisions is to provide a backstop power in the event that notification letters and civil court proceedings do not have the hoped-for effect.

We on these Benches are broadly happy with that progression although we have many specific concerns about the detail of the Government's policy. However, we agree that if sending letters does not work then more serious steps will need to be considered to prevent widespread copyright infringement. However, this progression is not expressed in the Bill, and I think that a great deal more clarity is needed about the progression from reports under Clause 9, through the assessment under Clause 10, resulting in an order under Clause 11. A two-year period to allow Clauses 4 to 9 to be implemented and assessed seems sensible. If the Minister disagrees, perhaps he can give us an idea of how long he would be willing to wait before deciding that there was no improvement.

Lord Clement-Jones: I speak to Amendment 143, which is very much consonant with the points made earlier under this grouping though the timescale may be slightly different from that envisaged by the noble Lord, Lord Lucas. It seems to us that the Secretary of State should be able to direct Ofcom to undertake an assessment of technical measures only after its first progress report has been received by the Secretary of State. That implies a period of 12 months after the initial obligations code has been adopted. This will ensure that Ofcom undertakes an assessment of the potential imposition of the technical measures and reports on those to the Secretary of State before the Secretary of State can direct Ofcom to take steps in preparation for such measures. The next group will, I think, deal with that aspect.

We seek to enshrine this intention by ensuring that the Secretary of State cannot direct Ofcom to assess technical measures before Ofcom's first full report under new Section 124F is received by the Secretary of State. This would provide reassurance to all parties that they should commit to making stage 1—the technical obligations—effective and not lobby the Secretary of State to exercise his powers under new Section 124G within the first 12 months of the Bill's provisions coming into effect. This would protect the Secretary of State from unhelpful lobbying, from which I am sure he would wish to be protected, and enable Ofcom to focus on assessing that first stage rather than on the last resort of technical measures.

I think that we are all heading in the same direction. It would be extremely unfortunate if, by a side wind, these technical measures were brought into effect before a proper Ofcom assessment had been made. I very much hope that, in one form or another, the Minister will accede to this. I return again to the issue of public confidence—consumer confidence, subscriber confidence and ISP confidence.

Lord Whitty: My Lords, with this amendment we come back to the real strategy here. I declare my interest as chair of Consumer Focus, and on this I speak exactly for it and its policy and not from my personal prejudices. Our preferred strategy is certainly to engage in stage 1. The points that I have been making up to this stage have sought to improve the transparency and accountability of stage 1—that is, that the notification should go out. We then move to stage 2 and the use of technical measures—that is, sanctions—with all the problems of due process which that involves. I will come on to that issue in later amendments. It is a very serious step. It is a step that needs to be taken in the light of all the evidence. A few amendments ago we were talking about what will be included in Ofcom's reports, and most of us around the Chamber indicated that part of the assessment really needs to assess how effective we have been in developing legal means of file-sharing. That ought to be the objective of the Government, the industry and the right holders. If we are going to do that effectively, we need to pause to see whether stage 1 has worked and we need the facts as to how far the legal market has developed before we take the significant step in stage 2.

In the impact assessment produced prior to the Bill, the Government indicated that they thought that 70 per cent of subscribers would desist on receipt of the first letter and that that would lead to a reduction of 55 per cent in the number of illegal downloads. The Government were being a little optimistic there for the reasons we have explored in terms of whether the subscriber actually gets the notification as distinct from the perpetrator. Nevertheless, if we take that figure, we have already dealt with something like half the problem.

We then need to ensure that the vacuum that is created moves over to legal providers. There are all kinds of legal providers—Spotify, Skype, Sky Songs and others—operating in the field, some of which are more successful than others, and there will be new business models developed. We want to ensure that that happens in a relatively short period. If the strategy is to get to legal provision which is of a higher quality than individual attempts at file-sharing, which is provided at a reasonable cost and with a reasonable return to the rights holders, we ought to pause at that stage. Two years seems to me about right. I am not hung up on two years—there are some delays built into the process of the Bill in any case—but we certainly need a period of reflection before we move to stage 2. Putting it up front before we move into the second stage in Clause 10 would be a sensible thing to do. I therefore support the noble Lord, Lord Lucas, although I apologise that I was not here to hear him move the amendment.

Lord Faulkner of Worcester: I shall speak also to Amendments 141 to 143. All these amendments essentially prescribe a minimum period during which the Secretary of State could not require Ofcom to assess the need for and prepare to introduce technical obligations.

It might be helpful if I start by saying why we have included the possibility of technical obligations in the Bill. As my noble friends on the government Front Bench have said many times in our consideration of the Bill thus far, the Government believe that the

[Lord Faulkner of Worcester]
initial obligations set out in Clauses 4 to 8 should result in a significant reduction in online copyright infringement. We believe that they are reasonable and proportionate steps to take and that most people will respond positively when they become aware that their actions are not only unlawful but also visible to those who can take steps to seek redress.

However, we also recognise the strength of the argument that has been put to us that these initial obligations may not be sufficient. Those industries that have suffered at the hands of mass online copyright infringement are rightly anxious that we should be sure that the Bill gives us all the tools required to solve the problem. Therefore we have in Clauses 10 to 13 a reserve power to introduce technical obligations, should it be necessary to do so, to stem the flood of online copyright infringement if the initial obligations do not work. Clause 10 gives the Secretary of State the power to require Ofcom to assess the need for technical obligations and to make preparations for the imposition of those obligations such as preparing a technical obligations code.

The amendments would build in a delay to when these preparatory powers could be used. The noble Lord, Lord Lucas, feels that a period of two years for the operation of the initial obligations is necessary before even thinking about technical obligations. The noble Lord, Lord Clement-Jones, suggests that 12 months—the time when Ofcom must prepare a full progress report—would be sufficient. The noble Lord, Lord Howard of Rising, simply suggests that the Secretary of State must have regard to Ofcom's progress reports, implying that at least two interim progress reports must have been delivered over a period of six months. However, we disagree with all these suggestions. Clause 10 is not about the imposition of technical obligations—that is covered in Clause 11, which we shall no doubt come to soon enough. Clause 10 is about preparation for technical obligations.

8.45 pm

Perhaps I may paint a picture. Let us imagine that the initial obligations have been in place for a year and that Ofcom produces a progress report which says that the initial obligations are having no effect and that even online copyright infringement is growing. In those circumstances, the Secretary of State may feel that it is important to introduce technical obligations quickly.

But here is the problem. We can be absolutely sure that the introduction of one or more technical obligations will require a good deal of work, analysis, consultation and a three-month notification with the European Commission before it can come into force. It is not impossible to imagine that it could take well over six months, or even as long as a year, for technical measures to be designed, prepared for and imposed in proper legal form.

I therefore ask whether we really want to prevent the Secretary of State even asking Ofcom to do the preparatory work until we are sure that there is a problem. It would be better to be able to prepare before the need for technical measures is clear so that, if such an urgent need arises, the Secretary of State and Ofcom can move quickly to address it.

The clause does not attempt to allow technical obligations to be introduced on day one; rather, it allows preparations for such an eventuality to be started straightaway so that, should that day come, we are able to move quickly. I hope that I have explained the purpose of the clause sufficiently convincingly to encourage the noble Lord, Lord Lucas, to withdraw his amendment and for other noble Lords not to press theirs.

Lord Clement-Jones: My Lords, perhaps I should conclude therefore—I am sure that the noble Lord, Lord Lucas, will have his own take on this—that the Government are proposing that Ofcom takes steps to assess how technical measures can be taken before there is any evidence of problems associated with the initial obligations code. That is the implication of what the Minister said. If that is the case, there is absolutely no confidence in the process.

Lord Lucas: There is no answer from the Minister because that is right. Presumably—

Lord Faulkner of Worcester: I am sorry. I was waiting for the noble Lord, Lord Lucas, to speak. The noble Lord, Lord Clement-Jones, is absolutely right: this is the view that we take. It is necessary to be ready from day one.

The Earl of Erroll: We have heard much to the effect that it will be a slow process and that these drastic measures will not be introduced immediately. Amendments to previous clauses have been knocked down on the grounds that technical measures will not be introduced on day one or even in year one. It was implied that we were suggesting Armageddon in our amendments by saying that they would be introduced immediately. I think that the Minister has just told us that Armageddon is going to happen almost on day one.

Lord Clement-Jones: My Lords, those of us who wish to see this Bill pass, subject to a number of amendments, find what the Minister has just said quite breathtaking. We will certainly have to consider our position on Report if the outcome is exactly as the noble Earl has said. We have heard all about softly-softly steps. I could draw parallels with preparing for war in 2002 without any UN resolutions, but that may be a slightly extreme example. The Minister is saying that there will be no evidence and that Ofcom will not have carried out a proper review, yet it will be asked by the Secretary of State to prepare these measures. That is breathtaking.

The Earl of Erroll: My Lords, perhaps I may take advantage of Committee stage rules, because this is extremely important. We just knocked down a whole lot of amendments from the noble Lord, Lord Lucas, and alternative proposals by the noble Lord, Lord Clement-Jones, on the constitution of the tribunal. We were told that it was not important at that stage, because it was a very early stage of letter-writing and did not require the same level of provision. People are going to have to defend themselves from day one, if these technological measures come in. We will have to review what the Minister said in response to all those amendments before we get to Report.

Lord Faulkner of Worcester: For the convenience of the Committee, I repeat what I said at the very end of my remarks. This clause does not attempt to allow technical obligations to be introduced on day one, but it allows preparations for such an eventuality to be started straightaway so that, should that day come, we will be able to move quickly. I should have thought that that was common sense. It is not the desperate scenario to which the noble Lord, Lord Clement-Jones, referred.

Lord Lucas: My Lords, that was a very interesting exchange. As for the comparison that the noble Lord, Lord Clement-Jones, drew with 2002, I think that the Government have learnt their lesson, which is why they want to prepare for the occupation before they declare any public intention of a war. To take my cue from what the Minister said, we should clearly attack the words "at any time" in line 21 on page 13, which is where he wishes us to stick our delaying clauses—our "wait for two years" bits—although we are probably coming down to the formulation proposed by the noble Lord, Lord Clement-Jones, of this being done after the first report, rather than my two years. That is where this should bite.

After listening to the Minister's remarks, we should expect to receive a positive response. That would be consistent with everything that the Government have said about there being a real sequence here. In other words, we really are going to give the measures in the first part of this part of the Bill a try. That must mean running them for a year and having a report on them. It cannot be less than that.

My second point is that the second to last word in line 36 on page 12 of the Bill should be "might". There is no way that Ofcom can assess whether,

"technical obligations should be imposed",

in the absence of evidence of what is going on. It can only assess whether they might be imposed. That was very much the sense of what the Minister said. If preparations are going to start straightaway, so that this armament is ready for use when Clause 11 triggers it, that I can understand. However, it requires a little bit of revision to Clause 10 to achieve that and a specific time limit in Clause 11 to match up with the Government's rhetoric. I beg leave to withdraw the amendment.

Amendment 140 withdrawn.

Amendments 141 to 143 not moved.

Amendment 144

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

144: Clause 10, page 12, line 37, at end insert "and report as such to the Secretary of State"

Lord Clement-Jones: Having heard the last debate, I am not hopeful about these provisions. One needs to be rather more pessimistic about the Government's intentions in this respect. Perhaps the technical measures will be introduced in rather more short order than was originally anticipated.

Ministers have previously said, consistently, that technical measures would be a last resort and that a combination of notification, targeted legal action against repeated infringers, general education by rights holders and new legal services will be given adequate chance to make an impact before those technical measures are contemplated. It will be important for all relevant parties, whether they are subscribers, Ofcom, ISPs or rights holders, to work together co-operatively during what we might call stage one with the certainty that the Secretary of State is not going to consider technical measures until or unless the stage one-type activities under the initial obligations code have been pursued with full vigour.

Given the likely high costs and unintended impact of technical measures on non-infringing traffic and innocent internet users—other people relying on a household's internet access service, for instance, other than an alleged or proven infringer—the clause should empower the Secretary of State to direct Ofcom only to make an assessment of such measures rather than also taking steps to prepare for those obligations. The amendments seek to achieve just that. In the light of what the Minister has said, he will be extremely reluctant to give up those powers, but that is the logic of this: the assessment is made and then, on the basis of the assessment at a subsequent time, those preparations are made.

I hope that just because my noble friend Lady Miller is not here today, the Minister will not omit to answer Amendments 145 and 147 in her name. I do not have speaking notes for them but they have a similar import, and I hope that the Minister will deal with them at the same time.

Lord Howard of Rising: My Lords, the noble Lord makes an important point about the role that Ofcom should play in the recommendation and assessment of technical measures. As in so many parts of the Bill, there is confusion over the division of responsibility between Ofcom and the Secretary of State. As I understand the clause as it is drafted, Ofcom will have almost complete control over what technical measures should be assessed. I hope the Minister will correct me if I am mistaken.

Will the Minister give us more detail on what exactly the Secretary of State will direct Ofcom to consider under Section 10? Will he specify the one or more technical measures that Ofcom is to look at, or will that interfere with Ofcom's prerogative to decide what is worth the time?

I am sorry to revert to the discussion that we had on the previous amendment, but this is a different point—only very marginally different, but it is worth making again. As both my noble friend Lord Lucas and the noble Lord, Lord Clement-Jones, have commented, directing Ofcom to prepare for the imposition of technical measures even before the assessment has been made—never mind the question of parliamentary scrutiny—is extraordinary. I cannot imagine a process more likely to make stakeholders feel railroaded into submitting to potentially enormously damaging measures.

There is also concern on these Benches at the possibility that Ofcom might assess an obligation and later be directed to impose it, but without drawing up

[LORD HOWARD OF RISING]
a report under new Section 124G(1)(c). As I understand it, the list is entirely flexible—each paragraph is independent of the others. The clause is extremely loosely drafted, and I recommend that the Minister look at it and at how it could be tightened up before we revisit it on Report.

Lord Young of Norwood Green: My Lords, we have already discussed this, or at least the purpose of Clause 10, at some length. The clause will allow a Secretary of State and Ofcom to be in a position to move quickly to introduce technical obligations, should that prove necessary.

Looking at the noble Lord, Lord Clement-Jones, I cannot help feeling somehow that he was probably a member of the Boy Scouts. He has not denied that, so I am sure that he believes in the motto about being prepared. Just because we are prepared, though, does not mean that we are going to implement this. That is what we were implying; or, rather, that is the assumption that was drawn, despite all the assurances given by my noble friend Lord Faulkner.

Lord Howard of Rising: My Lords—

Lord Young of Norwood Green: I wish you would not make me sit down.

Lord Howard of Rising: I am giving the Minister a bit of a rest. I am grateful to him for giving way. I cannot remember what I was going to say now.

If we introduce things like this—however much we, sitting here, may not intend to implement the measure in the wrong fashion—they will be abused sooner or later by somebody. It is no accident that old ladies who get up and read out lists of the Iraqi dead in front of the Cenotaph get arrested. That was not the intention when the Bill went through Parliament. The Minister knows that and so do I, but these things happen. I will return to this point again. I could give the Minister many other examples, but I do not want to waste too much time.

9 pm

Lord Young of Norwood Green: Let me try to reassure the noble Lord. Preparations will not in any way short-circuit the requirements of Ofcom to collect the evidence and prepare the progress reports—all the things that were outlined previously. It might help if I elaborate on the sort of steps that we have in mind.

In order to make an assessment of whether technical obligations should be imposed on internet service providers, Ofcom will need to consider all the various technical obligations that could be imposed, how effective they would be and what unintended and unwanted side effects they might have. Once a conclusion was reached about the best technical obligations, it would not be possible to bring such an obligation into effect until the requisite code had been drawn up and notified for a three-month period to the European Commission under the technical standards directive. Also, the relevant order would have to go through the proper procedures here and in another place.

All that takes a considerable amount of time—time during which harm would continue to be done to our creative industries. However, it is right that it should take that amount of time. We stand by the assurances that we gave noble Lords that this is a graduated process. We are about prevention. The noble Lord, Lord Clement-Jones, shakes his head, but we have given our commitments. The graduated process has been defined in the Bill—from the first stage of action to the last letter of notification. All that will take place. The progress reports have to be made by Ofcom. We talked about the full progress reports and it was accepted that they would be necessary in the first year. None of that has been removed; it all remains in place. I am puzzled by the idea that, just because we investigate what preparations will be needed to introduce technical measures, which we have defined in this clause, it is all a fait accompli and implementation will just take place. That cannot happen.

I reiterate what I said earlier: preparations taking place would not pre-empt any decision. No positive decision would have to be taken just because a code existed in draft form. However, that would allow for a swift imposition of technical measures if it were deemed necessary. That is the point that we are trying to make. I absolutely agree with all noble Lords who have expressed concern. We do not want to rush into technical measures. As the noble Lord, Lord Clement-Jones, said, it would be totally counterproductive and would totally undermine what we are trying to do.

We said that we are serious about trying to change behaviour. That is still our main focus. We will review the situation after a period of time. We do not believe that it is necessary to state in the Bill whether that should be one year or two, but it would be at least a year. If, after that period and after a succession of progress reports, we find that there has been no real change in behaviour and that there is a need to introduce technical measures, we will then have the means to do it. There is no question of that preparation somehow being a device to short-circuit the assessment process. After all, we want to make sure that we get the technical obligations right, so we are using that preparation time wisely. It does not in any way undermine all the previous commitments. I do not believe that there is anything in the legislation that allows one to draw that conclusion.

I understand the concern. There is no difference between us about the concern to ensure that, in changing behaviour, we get all the other points right first and do not rush into this. We absolutely accept those concerns. I hope that, in light of the explanation and assurances that I have given, the noble Lord will withdraw the amendment.

Lord Clement-Jones: My Lords, I am afraid that the Minister's reply has only served to emphasise the concerns that we all have about this part of the Bill. It is the darkest part of the Bill as far as we are concerned. The Minister is fully aware of all the controversy about technical measures. It is the part of the Bill that has caused most concern. The safeguards regarding when technical measures are contemplated and then put into effect are absolutely crucial to every other Bench, as well as to many Members on the government Benches. It is absolutely vital to get this right.

The Minister has not been convincing, in respect of either when Ofcom is able to review these matters and recommend technical measures or when it starts preparing for those technical measures. The idea that Ofcom, well before the first report, could even start preparing for technical measures horrifies me. If we are going to talk about proper government process, we must talk about review by Ofcom. In its first progress report it should ask: has the education process worked? Has the initial obligations code worked in terms of notifications, and so on, as it did in Sweden? Or will we have a situation where the Secretary of State can simply click his fingers before any Ofcom report and say, "Right guys, we had the Act and went through it all but the MPA has flown over and expressed a lot of concern. Let's go to it. Start the preparations: let's get a technical obligations code drafted and we'll put it all into effect"?

That may be a dark scenario but it is the one that many people are painting. They believe that the kind of two-part structure that the Government have put into effect is for the purpose of show. They do not believe that this is a genuine undertaking by the Government genuinely to look at the evidence. Everything that the Minister has said on this group of amendments and the last has convinced me that the timing between the initial obligations code and the technical measures code is wafer thin. It could be a matter of months—not a year and not two years. It could all happen suddenly. It would be a major denial of the underlying purposes of the Bill and the good faith that needs to be demonstrated as part of it.

I urge the Minister to think very carefully about this. If he genuinely wants the Bill to pass and not get lost in wash-up in the other place, he will have to demonstrate that these provisions are copper-bottomed in how they operate. I just give him that warning. In the mean time, I beg leave to withdraw the amendment.

Amendment 144 withdrawn.

Amendments 145 to 147 not moved.

Amendment 148

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

148: Clause 10, page 12, line 40, at end insert—

"( ) Any technical obligations imposed must be accompanied by an assessment of their impact on individuals, copyright holders and internet service providers."

Lord Clement-Jones: My Lords, this amendment would be a fairly straightforward addition to the provisions of Clause 10. I expect that the Minister will tell me that what is says is implied in the duties that will be imposed on Ofcom. However, this is an extremely important matter in terms of public confidence. The Minister knows that we have had discussions about strangling and all the forms of TAS. Therefore, the types of technical measure and the way in which they could affect subscribers and consumers are extremely important. This amendment aptly adds a further duty to ensure that Ofcom would do the proper thing and illustrate the consequences of imposing technical measures. I beg to move.

Lord Howard of Rising: My Lords, we on these Benches entirely agree with the noble Lord. This would be a sensible requirement to be inserted into any assessment under this clause.

The Earl of Erroll: My Lords, I am not sure that the proposed positioning of this measure in the Bill is exactly correct. It might be better if it were inserted at the end of paragraph (a), but that is just a matter of grammar, English and positioning. In principle, this measure is exactly what I was talking about earlier—namely, that we must be careful to ensure that we do not do more damage to the Government's plans for e-government, the country as a whole and the entire take-up of broadband. We must ensure that we look at the impact on subscribers as well. This is not just about protecting the position of the large rights holders; we must also look at the effect on the country and the citizen as a whole. That is our duty in Parliament.

Lord Faulkner of Worcester: My Lords, I am pleased to tell the noble Lord, Lord Clement-Jones, that I can offer him rather more sympathy on this amendment than perhaps he was expecting. It cannot, in our opinion, be anything other than entirely proper for an assessment of the impact of any technical obligations on individuals, copyright owners and internet service providers to have been carried out before such obligations are imposed.

However, while we think that this amendment is absolutely right in its intent, we do not think that the legislation requires this specific addition to have that effect. As your Lordships will be aware, an amendment has been tabled in the name of my noble friend Lord Mandelson—we shall consider it in a moment—so that any technical obligations will be imposed by an order under the affirmative procedure. Any such order will as a matter of practice be accompanied by a full impact assessment, which will look at the impact on all possible affected parties, including those mentioned in the amendment—consumers, copyright owners and internet service providers. I hope therefore that the noble Lord will feel able to withdraw the amendment.

Lord Clement-Jones: My Lords, all I can say is that I am deeply touched by the Minister's sympathy. I very much look forward to seeing the fist that he makes of introducing the government amendments. I beg leave to withdraw the amendment.

Amendment 148 withdrawn.

9.15 pm

Amendment 148A

Moved by ***Lord Faulkner of Worcester***

148A: Clause 10, page 12, line 43, leave out "particular" and insert "some or all relevant"

Lord Faulkner of Worcester: My Lords, Amendments 148A, 155A, 177B and 206A have been tabled by my noble friend Lord Mandelson in response to the second report of the Delegated Powers and Regulatory Reform

[Lord Faulkner of Worcester]
Committee. Amendment 178, tabled by the noble Lord, Lord Lucas, covers exactly the same ground as Amendment 177B.

I shall start with Amendments 148A and 155A. The objective of the technical obligations, should they ever be required, is to apply technical measures against those subscribers who ignore the notifications sent to them and who either do not appeal against the notifications or have failed in their appeal. The Delegated Powers and Regulatory Reform Committee pointed out that there was no clear limit on the type of subscriber on whom technical measures may be imposed. Obviously, that is not the Government's aim. We have been clear throughout that, should technical measures be necessary, they should be targeted at those subscribers who have repeatedly infringed copyright online, or allowed others to use their subscription to do so, and that they should be used only after several warnings. The amendments that we propose will put that right. They ensure that the technical measures will apply only to some or all relevant subscribers and they will tie the definition of what is meant by that to that used in subsection (3) in Clause 5, which describes subscribers who are liable to be added to a copyright infringement list. The Government are grateful to the Delegated Powers and Regulatory Reform Committee for pointing out this unintended consequence. I hope that noble Lords will agree that the amendments put the proportionality that was always intended back into this part of the Bill.

I turn to Amendments 177B and 178. Amendment 177B was tabled by my noble friend in response to a recommendation from the Delegated Powers and Regulatory Reform Committee that any order by the Secretary of State imposing technical obligations should be subject to the affirmative procedure. The text currently requires that the negative procedure be used. The Government proposed that this was the correct option almost by definition because of the highly technical nature of the measures. However, the Delegated Powers and Regulatory Reform Committee took a different view and considered that the very technicality of such powers might increase rather than reduce the need for the affirmative procedure. We have always been clear about the seriousness of introducing technical obligations. It will not be done lightly. Therefore, in the light of the recommendation of the Delegated Powers and Regulatory Reform Committee, it is right for us to amend the Bill in order for the recommendation to be met. Amendment 178, tabled by the noble Lord, Lord Lucas, makes the same proposal in slightly different wording. In view of the amendment that we propose, I hope that he will be gracious enough to withdraw his amendment.

I turn finally to Amendments 200A and 206A, which have been tabled by my noble friend Lord Mandelson. Amendment 200A is intended to clarify the candidates for making contributions towards the costs of the online infringement of copyright provisions. It makes it clear that this applies only to copyright owners and internet service providers, ensuring that the power is no broader than it needs to be. It also allows for the possibility that subscribers may be asked for a contribution towards the costs of the appeals process.

Amendment 206A is in response to a recommendation by the Delegated Powers and Regulatory Reform Committee, which said that, if the split between the copyright owners and internet service providers on payment of the costs of the provisions was not specified in the Bill, the order on the sharing of costs should be subject to the affirmative, rather than the negative, procedure. As noble Lords know, we think that the Bill should set out the general principles but that the detail of how things should be done, including who should pay what, should be left to the statutory instrument, which will have the advantage of being fully consulted on. The statutory instrument at present has only working assumptions on the split, because to leave it entirely blank would be regarded as disingenuous. However, it is right that something as important as this should be considered more fully and slowly, giving all concerned ample opportunity to put forward their views and evidence. That being the case, we are happy to accept the recommendation of the Delegated Powers and Regulatory Reform Committee that the order on cost sharing should be subject to the affirmative procedure. On that basis, I beg to move the amendment.

Lord Clement-Jones: My Lords, I will speak briefly. For some reason, Amendment 180 was not put in this group. However, the Government's amendment fits the bill in introducing the affirmative procedure and I welcome it. For a change, and for a brief moment, the Minister is dispensing sweetness and light.

Lord De Mauley: My Lords, this group contains an interesting collage of amendments from the Secretary of State. Perhaps I may start in the middle and work outwards. Government Amendment 177B is of course, as the Minister said, another Delegated Powers and Regulatory Reform Committee recommendation. As ever, we are glad to see that the Government have tabled it, no doubt prompted by Amendment 178 in the name of my noble friend Lord Lucas.

Government Amendments 148A and 155A seem reasonably clear too. I think I understand that the purpose is to prevent the possibility of a technical measure falling on a subscriber who has never been the subject of an infringement report. I am a little concerned that only one report might be needed for the subscriber to take the necessary steps to protect his wireless connection and make him liable. Might I suggest to the Government that the threshold should be considerably higher? Perhaps three notification letters should be sent, with the implication that the subscriber is not responding to warnings. As drafted, could we not end up with a system where the three-letter process is watered down to one warning, followed immediately by a technical measure? I hope that the Minister can explain why my concerns are unfounded.

Amendment 200A is, I fear, rather more worrying. Why are we suddenly talking about subscribers paying for the appeal in dispute resolution processes? So far, it has always been the responsibility of the ISPs and copyright owners to make sure that their allegations are accurate, and to bear the costs should they fail to do so. I do not see why it is suddenly suggested that subscribers must pay to clear their names if they have arrived at that situation through no fault of their own.

Although we agree with Amendment 206A and thank the Minister for it, there are some quite serious issues to be answered here.

Lord Maxton: I am feeling rather confused by all this. It seems that, quite rightly, we are trying to bring about a system that does not penalise the subscriber. That might be me or it might be any other Member. If I receive a letter, I will probably say, "Fine, I have committed an offence. I am not going to carry on". However, there must be a group of hard-faced, cynical people who, when they receive that first letter, knowing that they have already committed an offence, will say, "It is going to be another nine months to a year before my computer or internet service is finally switched off"—or decreased in speed or whatever the technical obligation is. If I cannot record or download every piece of music that I shall want to listen to for the rest of my life in those 12 months, then I am not very technically bright. I could then either put them all on to discs or, more particularly in the modern world, put them on to a site using cloud technology somewhere out there. Then, just before the Government or Ofcom impose this order on me, I say, "Oh, I'm very sorry. I didn't mean it and I won't do it again", by which time I shall have all the material I want. It will be up there somewhere in the clouds, and what will the Government be able to do about it? The answer is: very little.

Lord Faulkner of Worcester: My Lords, first, I thank the noble Lord, Lord Clement-Jones, for his support for the amendments and for the outbreak of sweetness and light from the Liberal Democrat Benches.

In respect of the point made by the noble Lord, Lord De Mauley, regarding the people at whom the technical measures will be targeted, I made it clear in my opening remarks that it will be only those who repeatedly infringe copyright online or allow others to use their subscription to do so. We are not putting an exact number into the Bill at this stage—we do not think that it is right to do that—but the provision is directed at repeat offenders.

The question of consumers paying for appeals is something that we discussed in debate on earlier amendments in Committee. We do not want to make appeals expensive so that people are deterred from using them. Indeed, we have always made a point of saying that appeals must be accessible. There may also be merit in having a refundable fee which is set at a low enough level not to scare off subscribers but is high enough to deter purely mischievous appeals. Whether that is the road we go down will depend on the consultation that will need to be carried out on a statutory instrument on costs, a draft of which noble Lords have seen. But we think that it is right that the Bill should at least allow for that possibility while ensuring that subscribers do not pay for any of the other provisions. That is rightly placed as a responsibility for the industry participants. I beg to move.

Amendment 148A agreed.

Amendment 149 not moved.

Amendment 150

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

150: Clause 10, page 12, leave out lines 45 and 46

Lord Clement-Jones: In the absence of my noble friend Lady Miller, I am moving Amendment 150 and will speak to Amendments 151 and 155. I do not have a speaking note but I believe that the essence is that there should be a rigorous, clear cost-benefit analysis of any technical measures, and that is what these amendments are designed to secure. I beg to move.

Lord Lucas: As a rider to the amendments, I am fascinated to know what sort of measures the Government propose to prevent a subscriber who is so challenged simply to change his ISP, or ceasing to subscribe to an ISP and getting the family subscription through his wife, teenage son, or whoever else it might be. That is such a simple way of avoiding these measures and I am sure that the Government must have thought of some way of dealing with it. I would be fascinated to know what it is.

The Earl of Erroll: I thought that I would also investigate how the Government thought they would have a technical measure. The first of the amendments is about limiting the speed. Obviously they are trying to limit it to something that will stop or inhibit the downloading of music. But music files are not very big, so whatever you do will inhibit the use of the internet as a whole. You might as well cut them off. I am not quite sure about the purpose of this technical measure. It will not achieve very much except to make people very cross—and very cross with their ISPs and the Government. It may be that the Government are trying to leave a poison pill for a future Government, perhaps run by a different party, so that they fall foul of all this in about two years' time. I should be interested to know the purpose of this technical measure.

Lord De Mauley: The noble Lord, Lord Clement-Jones, and his colleague, the noble Baroness, Lady Miller, are right to probe by these amendments what sort of measures might be imposed. There seems to be some disagreement not only over what is a reasonable restriction to impose but over whether a measure can actually be implemented effectively and how much it would cost to do so. Can the Minister explain whether the list of possible measures is his assessment of what sort of steps are considered possible with the technology currently available, or has there been some measure of future proofing in this area? Is the list merely a reflection of what the Minister would like to be able to do if someone comes up with the necessary technology in the future?

The drafting of the subsection is of concern because of the many areas that measures could eventually be targeted at. I hope that the Minister agrees with me that the primary, indeed the only, purpose of imposing a technical measure is to prevent ongoing copyright infringement. There should not be a deterrent or punitive element to these measures except as naturally arises from the primary purpose. Any measure taken deliberately against usage that does not relate to online copyright infringement should surely not be permitted by the Bill. If there is no technology capable of blocking access to file-sharing programs but the subscriber rarely uploads any material for any other purpose, I can understand preventing significant levels of uploading as a proportionate response to ongoing infringement. Similarly, if the only measure capable of being imposed is outright suspension, that should be considered.

9.30 pm

Lord Young of Norwood Green: My Lords, I shall take these amendments together as they each have the effect of changing the scope of the technical measures that might be introduced by the Secretary of State. I do not believe that any of them would improve the effectiveness or fairness of the Bill. Removing the possibility of capping somebody's band width or restricting the speed at which their service runs, or preventing or limiting access to particular material, would be a significant loss in terms of the flexibility of response. Arguably, inconveniencing a subscriber while preserving their access to the information society is the sort of measure that should always be at least considered before resorting to account suspension.

The noble Earl, Lord Erroll, asked why we would do that. Clearly, it would depend on the level of infringement. If the measure was considered to be a suitable deterrent, the subscriber would still be able to operate e-mails and various other features. We therefore believe that it has a part to play and is a valid measure that could be introduced. It is certainly one we ought to consider before moving to the last resort, having gone through all the other processes, which is account suspension. There is no desire in the first instance to be punitive, but perhaps I may remind the noble Lord, Lord De Mauley, that we are trying to prevent people ending up in court. It should be remembered that there is always the option of the copyright owner going to court. We are trying to move away from the position in which the courts are involved unnecessarily and are trying to persuade and educate. That is the basis behind these measures. The list is a reflection of what we would like to do. It is an illustrative list—that is the best I can say. It lists those measures that we expect to be the most useful and appropriate.

Furthermore, removing subsection (3)(d) would restrict the measures available to just those listed. The current text makes it clear that it is an illustrative list, leaving room for future developments and changes that might render specific measures ineffective or inappropriate. I believe that such flexibility, recognising that tomorrow will not be the same as today, is an important element and should be retained. I hope that, in the light of those explanations, the noble Lord will feel able to withdraw the amendment.

Lord Lucas: My Lords, if the Minister does not feel able to answer my questions now, I will happily bring them back again on clause stand part, giving him time to contemplate them.

Lord Clement-Jones: My Lords, on that note, I thank the Minister for his reply—

Lord Young of Norwood Green: I thank the noble Lord for giving way. I apologise—I missed a sheet of paper that had been handed to me and I want to take the opportunity of at least trying to respond to the noble Lord, Lord Lucas.

We agree that changing an ISP is an option. We have no intention of creating a blacklist, but it is inconvenient, especially if they change too often. However, I believe that we need to come back to the noble Lord with a more detailed answer. To be honest, I do not think that that is sufficient.

Lord Lucas: It is a very helpful beginning, on the other hand, and I thank the noble Lord for it. Particularly inconvenient to people would be their inability to remove their domain name from the ISP they were currently with.

Lord Clement-Jones: My Lords, I congratulate the Minister. Discretion is the better part of valour in that respect. To contest these technical issues with the noble Lord, Lord Lucas, at this time of day would be extremely inadvisable. That has saved us all a good deal of time.

In responding on behalf of my noble friend, I will say that this has been a useful debate. There is a great deal of nervousness about the armoury available under the technical measures. We have had a debate about how those should be evaluated and prepared for. The noble Lord, Lord De Mauley, put it very well when he said that the primary reason is to prevent ongoing copyright infringement, not to act as a punishment. That principle should be very clear in our minds and that of Ofcom in due course. A number of noble Lords have questioned the efficacy of the technical measures; quite a number of people out there question their efficacy.

The Minister did not really address those who have a view about whether there should be such a thing as a content-limiting measure. In order to do that, you have to know what the content is. For an ISP to do that instantly flips it over into a different role. That is a problem, and the Minister did not really address that aspect. This will continue to be an important area, and I do not think that we have quite got there, but no doubt we will continue these discussions at further stages. In the mean time, I beg leave to withdraw the amendment.

Amendment 150 withdrawn.

Amendment 151 not moved.

Amendment 152

Moved by ***Lord Lucas***

152: Clause 10, page 13, line 2, at end insert "(but any such measure may not involve the reconstruction of a subscriber's traffic)"

Lord Lucas: This brings us straight back to the last point that the noble Lord, Lord Clement-Jones, was addressing. Paragraph (b) prevents a subscriber from gaining access to particular material or limits such use. It has raised the question in many minds, including mine, of what exactly is being proposed here. Without really understanding what sort of measures the Government are proposing, my amendment is intended to ensure that they do not include something which amounts to reading the subscriber's traffic—in other words, reconstructing it so that you can see what the subscriber is downloading. That would amount to surveillance on a scale at which the RIP Act balked, and is not something that should be contemplated without a great deal of careful consideration, and certainly not in a procedure that is subject only to the affirmative resolution. I beg to move.

Lord Maxton: Does the noble Lord, Lord Lucas, imply from that that someone should not get into my e-mails, for instance, and read them as a result of what the Government propose? The problem with that, and the problem with legislating in this area, is that a lot of e-mails contain links. If I click on the link, I get into another website, but without knowing that the e-mail was there in the first place, how do you know whether the link was there? The ongoing implications are so enormous that I do not understand what the noble Lord is getting at.

Lord Lucas: It is getting at the process. If, as the Bill states, you are trying to limit,

"gaining access to particular material",

the only way that you can tell whether someone is gaining access to that material is to read their traffic. That involves a complete loss of privacy, which is a considerable step. To my mind, as we had an entire Act on that subject and took it extremely carefully, we should not give the Government a blanket power to do that subject only to affirmative resolution. In terms of the technicalities, if I am downloading a file from the United States somewhere, that file may be going simultaneously through 20 or 30 different routes and be reconstructed only very close to me—a mile or two away. You have to go in for a level of technical surveillance that is available, under particular circumstances, to the security services, but should not be there to protect EMI.

Lord Howard of Rising: I hesitate even to get to my feet when caught between two people who know so much about what they are talking about as the noble Lord, Lord Maxton, and my noble friend Lord Lucas. However, these Benches strongly endorse retaining the privacy of people's internet connections. It would be quite wrong for there to be untrammelled access, indeed, any access, to people's internet connections unless it was extremely restricted.

The Earl of Erroll: I entirely agree with the noble Lord, Lord Lucas. Looking into the content of people's e-mails and other internet traffic was in Part 1 of RIPA and is subject to very special provisions and protections: it is open to the security services and the police under warrant. Part 2 gave access to the header material—in other words, to who you were communicating with—to more people. That is what the Home Office proposed looking at under the intercept modernisation programme, and there has been a lot of outcry about that. There were never any proposals under IMP—the intercept modernisation programme—that the Home Office, at an everyday level, should be allowed to look at the content of e-mails. There have been huge arguments about where the header stops and content starts. To start bypassing that in a Bill like this is hugely dangerous.

This needs to be looked at in the context of the Regulation of Investigatory Powers Act. This is exactly the sort of thing that a lot of people, particularly the noble Baroness, Lady Miller of Chilthorne Domer, worried about when the Phorm technology was used for targeted advertising. Even though it used anonymising technology, because it was looking at the content of the transmission it caused huge concerns about whether it was legal. It is quite possible that this may conflict with other laws, and we ought to worry about that.

How does an ISP restrict access to these websites? Normally, if you are trying to restrict access to a website, it is not your ISP that would do it, but the host of the website. It is not necessarily an ISP, but is a web hosting service. It would be asked to take the website down or restrict access, or you could even have the registry take it off the domain name service in order to make sure that people did not get access to it. You would not normally try to get an individual ISP to restrict access to particular internet sites. It would be technically difficult to do. I am not sure that what the Government propose is well worded. They should pay attention to the noble Lord, Lord Lucas.

Lord Whitty: Without completely understanding all the technology that has been talked about in the past five minutes, I have become increasingly alarmed that the possibility of getting the ISP or anybody to look into the total traffic of our e-mail connections was even contemplated by the Government. I hope the Minister will deny that that is even conceivable as one of the technical measures. If not, the issues of privacy that were already alarming me and many other people are much larger than I first realised.

Lord Clement-Jones: The noble Lord, Lord Lucas, has emphasised and highlighted a point of particular concern about where being a conduit translates into policing content. That is the big issue, and the Government need carefully to consider the implications of this clause before they require ISPs to undertake that role.

Lord Young of Norwood Green: The list of measures in Clause 10(4) is intended to be an illustrative list of the sorts of technical measures that might be helpful in tackling online copyright infringement. The paragraph referred to in this amendment is meant to refer to the possibility of blocking access to particular types of traffic. I stress that it is certainly not to look at the contents of any of the subscriber's traffic or to change the contents in any way. The amendment would simply prevent certain types of traffic—in this instance, those most likely to be carrying infringing peer-to-peer material—from being accessed. We know that you can block access to particular sites; it is certainly technically feasible.

It may be worth my making the more general point to my noble friends Lord Whitty and Lord Maxton and the noble Earl, Lord Erroll, that any technical obligations imposed under the Bill would have to be operated in a way that was consistent with existing legislation, including the Data Protection Act and the Regulation of Investigatory Powers Act; so anything that would not be possible under those Acts will equally not be possible as a result of the Bill.

9.45 pm

Lord Maxton: I am grateful to my noble friend for that point. I understand that it is quite possible to block a site when someone is taking something directly from a website, but is it possible to block in the same way a link on an e-mail that has been sent to someone? I occasionally get e-mails of this nature with a link to a particular website. To be honest, I do not know whether you can block that site by the means proposed by the Government without going into the original e-mail and finding out what that e-mail was.

Lord Young of Norwood Green: I cannot interpret the indications from the Box; it is like trying to interpret the bookmakers' tic-tac on a race course. We will get back to my noble friend on that point. Why did I not say that anyway? It is such an easy life at the Dispatch Box.

While I sympathise with the intentions behind the amendment, it is unnecessary to achieve the impact that the noble Lord is looking for. In the light of the debate, we will write to the noble Lord with an exploration of the technical points that were raised and an assurance about the contents issue.

Lord Howard of Rising: I urge the Minister not to get too obsessed with the technical points and to remember the fundamental point: that people's traffic cannot be looked at.

The Earl of Erroll: I will try to be helpful to the Minister rather than difficult. One does not want unintended consequences. I have a feeling that Skype and other such voice over IP traffic is peer to peer. I am not sure how easy it is to distinguish between other peer-to-peer traffic in which music may be exchanged and Skype. I know that certain protocols, such as the SET protocol, may make it very easy to distinguish between the two, but we must be careful that we do not end up blocking people's telephony when we are trying to stop them exchanging music. Voice over IP is becoming a more general way of telephoning and communicating, particularly among the young who cannot afford landlines.

Lord Lucas: What is even more alarming is that more and more people are using image over IP, so you can no longer answer your telephone in your bathrobe or less. You have to be very careful and rush for the make-up before you pick up Skype. With that horrible thought, I am very grateful for what the Minister has said—it is entirely satisfactory—and I beg leave to withdraw the amendment.

Amendment 152 withdrawn.

Amendment 153

Moved by ***Lord Lucas***

153: Clause 10, page 13, line 3, after "service" insert "for a defined period of time"

Lord Lucas: My Lords, Amendment 153 is a simple probing amendment to find out what the Government's ideas are about how long these measures will last and how the prohibition will be lifted. Would it be for ever or would it be for three months and, if you misbehave, six months next time? What are the Government looking at? I beg to move.

Lord De Mauley: My Lords, not for the first time my noble friend Lord Lucas has raised an important point. I agree that the length of time a measure can be imposed needs to be clarified. As far as I can see, there is no restriction on the period of time a subscriber's account might be suspended, apparently rendering the power at the extreme the equivalent of completely cutting him off.

It is understandable that there might need to be some level of flexibility when assessing what length of time is effective, but there should still be some indication in the Bill of a maximum time. There is surely also the possibility that without a time limit the measure may fall foul of other legislation.

Lord Clement-Jones: My Lords, it is interesting that in all the descriptions of technical measures temporary account suspension is referred to. But, of course, that is not what the Bill says. It has rather different language and the noble Lord, Lord Lucas, is right to probe this aspect.

Lord Faulkner of Worcester: My Lords, I am very happy to respond to the noble Lord, Lord Lucas, and to other noble Lords who have spoken on this amendment. Suspensions of accounts as a technical measure has been somewhat misrepresented in the media and more widely. In particular, terms such as account termination have been bandied about most misleadingly. Let us be clear: when we talk about suspension, that is precisely what we mean; namely, a temporary cessation of access to the internet as a measure which we hope will never need to be employed. If it needed to be employed, it would be on the basis of repeated warnings and with a proper appeals process.

I am grateful to the noble Lord for his amendment, which emphasises that point, but I would maintain that the additional phrase is redundant. The noble Lord, Lord Lucas, is one of the most well read and literate Members of your Lordships' House. I am reluctant to quote from the *Collins English Dictionary* a definition of "suspension". However, it states that suspension is,

"an interruption or temporary revocation".

That is clear enough and, I believe, renders the amendment unnecessary. On that basis, I hope that the noble Lord will agree to withdraw it.

Lord Lucas: My Lords, I am grateful for that clarification and education, and I beg leave to withdraw the amendment.

Amendment 153 withdrawn.

Amendment 154

Moved by ***Lord Lucas***

154: Clause 10, page 13, line 3, after "subscriber;" insert—

"( ) requires the payment of an additional fee by the subscriber for the maintenance of unrestricted internet access, which is to be remitted to a licensing body established under the Copyright, Designs and Patents Act 1988;"

Lord Lucas: My Lords, half the thought behind Amendment 154 leaps ahead to Clause 42. Under new Section 116B in Clause 42, the Government talk about copyright licensing agencies and the idea that material can become freely available, but that you have to pay the copyright licensing agency, as is the case with music performance. No one stops a person performing, but if they do perform, they have to pay a fee. Given the fact that someone is having a technical obligation imposed on them, it seems that they might choose to pay a fee to such an agency, which would go to relevant copyright holders. Terminating, suspending

or limiting someone's internet access just does someone harm. But if, for an equivalent harm, some good could be done at the same time, that seems to be a reasonable idea. I beg to move.

Lord De Mauley: I was pleased to listen to my noble friend Lord Lucas's explanation of his Amendment 154. I may be misunderstanding his intention, but we would have some concerns about using technical measures as a penalty, if that is what is intended. We feel, as I think we discussed earlier, that the purpose of technical measures should be to stop infringement rather than to punish a past offence, which I think should require proper proceedings.

The Earl of Erroll: My Lords, I think that this is incredibly sensible. Lawyers tell me that downloading is not illegal but that illegal downloading is. This is a civil breach of copyright, which is a civil offence and not a criminal one. The usual remedy in civil cases is not to lock someone up but to make them pay compensation as a remedy for the civil harm done. We are not creating any criminal acts in this legislation and, if Clause 17 is passed, the Secretary of State will not be able to introduce any criminal acts in amendments to the legislation. So I think that this is a very sensible way of remedying the situation. It is a bit like pleading guilty. Rather than going through the huge expense of proceedings, the person who is alleged to have committed the offence provides a remedy for the wrong that they have done and it goes to the right place. It is a very positive, sensible and forward-thinking way of dealing with the situation without terminating a lot of people's internet service. If they are caught red-handed, let them voluntarily—with a little bit of persuasion—provide a remedy to the people harmed. It is not going to the Government or giving anyone an incentive to do anything untoward. It is one of the most positive things that we could put into the Bill.

Baroness Howe of Idlicote: My Lords, having listened to all this for really quite a long time, I cannot help but say that I thoroughly agree with my noble friend Lord Erroll. This seems an ideal way of moving towards compensating the copyright holders for their creation. If we can speed up the process by which these downloads become lawful—which is the purpose of these provisions, as I understand them—by making people pay, without their feeling too hard done by, and in a fairly simple process, then good luck to us. This is a route leading us in the right direction.

Lord Whitty: My Lords, I had not understood the implications of the noble Lord's amendment when I read it. However, from a consumer point of view and an acceptability point of view, requiring people to pay a fee is a much more effective remedy than the disproportionate one of cutting off their internet access even for a limited time. I think that this would be seen as more equitable than the technical measures themselves. I therefore urge the Government to consider the amendment, whether or not in these exact words, as an alternative to the technical measures.

Lord Young of Norwood Green: My Lords, this amendment suggests that, alongside the sort of technical measures proposed, subscribers should have the option instead of paying an amount to a copyright collecting society. I understand why the noble Lord, Lord Lucas, with his fertile imagination, has come up with this proposal. Internet access is becoming increasingly important and it might be that, for some subscribers, the payment of financial compensation to those copyright owners who have suffered would be more acceptable than to have their internet access limited in some way. However, this is not something that we can consider. There are already many ways of accessing content legally and we hope and expect to see new legal content offerings emerge as infringement is reduced. Indeed, my noble friend Lord Whitty said that that was the way forward and in that respect—not in many, but in that—I agree with him.

Anyone who is in a position where a technical measure might be invoked must already have had many notifications providing information on how to find legal services. We are not talking about an ingénue or innocent who has stumbled across the content. We are talking about someone who has had repeated attempts to help them. We have sent them one, two or possibly three letters, but they have continued committing the same offence. The amendment says, "That's okay. You can continue to download illegally, but just pay a fine". This goes against the whole purpose of what we are trying to do. We are all agreed that we are trying to change behaviour and take people away from illegal downloads. I stress that in order to conform to what the noble Earl, Lord Erroll, was reminding us about.

The amendment suggests a sort of default legal option to download as much as you like for whatever level the fee might be set at. The unintended consequence of this is that it has the potential to be quite an unhelpful intervention in the market for legal content offerings. That is what we have all said that we are trying to encourage.

In the interests of time, I am not going to go on any further. I know how much we are enjoying ourselves but, nevertheless, there comes a time when we should consider drawing matters to a close. I hope that, in the light of that helpful explanation, the noble Lord will consider withdrawing the amendment.

10 pm

Lord Lucas: My Lords, I did not expect the amendment to appeal to the Front Benches. The noble Lord has misinterpreted what I am after. I was not suggesting that the amendment is a permission to continue downloading any more than limiting someone's internet access is a permission to continue downloading. It is, as it were, a compensation for past sins, which you can pay for either by not being able to access the internet properly or by making a contribution.

I suspect that I have concluded that the right way for copyright to move on the internet is towards the pattern used for sheet music—a matter not of control but of payment. This is reflected in what the Government propose in Clause 42, where they are clearly anticipating that kind of move to the point where the important thing is that the copyright holder gets paid, not that the copyright holder absolutely controls the timing and means by which the copyright material is acquired.

[Lord Lucas]
We will have many opportunities to discuss Clause 42. For now I beg leave to withdraw the amendment.

Amendment 154 withdrawn.

Amendment 155 not moved.

Amendment 155A

Moved by ***Lord Faulkner of Worcester***

155A: Clause 10, page 13, line 4, at end insert—

"( ) A subscriber to an internet access service is "relevant" if the subscriber is a relevant subscriber to the service, within the meaning of section 124B(3), in relation to one or more copyright owners."

Amendment 155A agreed.

Amendment 156 not moved.

House resumed.

House adjourned at 10.02 pm.

Written Statements

Wednesday 20 January 2010

Equine Infectious Anaemia
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 wish to inform to the House that on 19 January 2010 the Chief Veterinary Officer for the United Kingdom confirmed equine infectious anaemia (EIA) in two horses in Wiltshire following importation from Romania via Belgium.

Two premises are currently under restriction and the two infected horses will be humanely destroyed in line with existing regulations.

The animals arrived in a group of 10 horses, nine of which originated from Romania and one from Belgium. The nine Romanian horses were tested for EIA as part of routine post-import testing. Two of the horses tested positive, the remaining seven tested negative. The horse that originated in Belgium will be tested later today. As part of our control measures we will be undertaking a detailed epidemiological investigation.

The risk of further spread among horses is considered by experts to be very low, but this will be kept under review pending further epidemiological investigation. Expert advice from the Health Protection Agency is that EIA is not a risk to human health and that there is no evidence that this incident presents a risk to the local community.

This is the first case of equine infectious anaemia infected animals being imported into Great Britain since 1976 and shows the success of our post import testing regime. These were apparently healthy horses carrying a notifiable disease that we are keen to keep out of Great Britain.

EU: Agriculture and Fisheries 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.

My honourable friend the Minister for Marine and the Natural Environment (Huw Irranca-Davies) represented the United Kingdom at the Agriculture and Fisheries Council in Brussels on 14-16 December. Richard Lochhead MSP and Michelle Gildernew MLA also attended.

On fisheries, Council agreed the annual fishing opportunities regulation for 2010 which sets fishing quota and effort limits, principally for the North Sea, Irish Sea, Channel, and Atlantic. Discussions were narrower than in previous years, as technical and control measures are no longer included in this measure, since they are now subject to co-decision with the European Parliament. However, the recent failure of talks between the EU and Norway on the annual fisheries agreement meant that the regulation would need to find an interim mechanism to allow fishing of the stocks concerned. This led to unexpected complexity and difficulty in the final negotiations.

The major points of interest to the UK in the final compromise included:

commitments to the implementation of incentive catch quota, the detail to be determined following an EU-Norway agreement;

only a 9 per cent reduction in Irish Sea nephrops;

a quota reduction of 25 per cent in West of Scotland Haddock (with 25 per cent in 2011);

a quota reduction of 5 per cent for Western Channel Sole;

a 10 per cent increase in quotas for North Sea and West of Scotland megrim;

no reduction in Celtic Sea cod quota;

a rollover of quota for North Sea nephrops; and

agreement from the European Commission to look again at the technical measures re-imposed on the West of Scotland at the November Council.

Following a ministerial lunch on animal health, discussions then turned to the substantive agriculture items. Firstly, the Council took note of the Commission's report on options for animal welfare labelling and animal welfare reference centres; which was followed by a brief state of play report from the Presidency on the negotiations to agree a revision to the current rules governing the welfare of laboratory animals (expressing confidence that a deal could be struck with the European Parliament early in 2010).

Continuing a trend of set-piece discussions on the future of the CAP, the Commission then presented its views on rural development policy post-2013 (it should be greener, and better aligned with the Lisbon Strategy), noting in summary that it saw no justification for continuing to finance Pillar 2 via modulation. Member States broadly welcomed the Commission's thoughts.

Next, Council unanimously approved requests for state aid for agricultural restructuring from Latvia, Lithuania and Hungary. The UK, Denmark, Czech Republic, Estonia, Netherlands, Germany, Spain and Austria abstained.

Council then reached partial political agreement on the timber due diligence regulation, though with further work needed on comitology provisions. The UK, Denmark, Spain and Belgium abstained, with the Netherlands voting against, because the final compromise did not include an express prohibition of the placing of illegally-logged timber on the Community market. The dossier would now be handed over to future Presidencies, starting with Spain, to handle negotiations with the European Parliament.

Ministers took the opportunity to comment on the Commission's work on the 39 simplification proposals they had presented during the CZ Presidency. A number of the proposals had been addressed, but others had not been taken up. Denmark tabled a letter suggesting

further discussions on the outstanding proposals at a political level. There was general support for two UK concerns: (1) that the Commission needed to be more joined-up and look at burdens on farmers beyond DG Agri and include DG Sanco and DG Environment; and (2) that the Commission should take a more risk-based approach to audits and controls, including the way penalties were applied. Work on this dossier would continue.

The Commission then presented the latest instalment of its dairy market quarterly report noting that both commodity prices and farm gate prices had risen, that EU production remained lower than in 2008, and that the market was likely to be in balance in 2010. They also made reference to the recently established Dairy Fund, as well as to deliberations on improving the dairy supply chain in the High Level Group, as measures aimed at ameliorating the dairy crisis. The UK welcomed the positive trends and rising prices detailed in the report, urged the Council and Commission to focus on modernising the sector in preparation for the abolition of dairy quotas.

The Commission presented its Communication on a better functioning food supply chain, a follow-up to last December's report on food prices to the European Council. Its aim was to examine the contractual relations across the chain, to monitor the development of competition issues, and to provide the basis for further in-depth discussions during the Spanish Presidency.

Under any other business:

the Presidency presented its report of the Conference of the EU Paying Agencies;

Poland called for abolition of the sugar production charge (the UK argued against with Commission support);

Slovakia called for transitional aid in the sugar sector to be targeted at the affected producers;

the Commission informed Council of its recent agreement with the US and Latin countries, resolving long-standing banana disputes;

Council took note of the progress made to update on EU food labelling rules;

the Commission gave an update on the ongoing difficult negotiations with Russia on sanitary and phytosanitary issues; and

the Netherlands informed Council of the outcome of a conference on GM policy held in the Netherlands from 25-26 November.

Families: Relationships

Statement

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): Strong, stable families are the bedrock of our society. Families give children the love and security they need to grow up and explore the world, and the moral guidance and aspiration to make the most of their talents and be good citizens. And families are where most of us find the support and care necessary for a happy and fulfilling life—as children and adults, parents and grandparents too.

Support for All: The Family and Relationships Green Paper seeks to reflect the reality of families today. There have been significant changes in family form and structure; there has been a trend towards smaller families and a growth in the number of step families. Increasing numbers of couples are cohabiting and more children are being born outside of marriage. Roles within the family have also changed with more women going into paid employment and more fathers becoming involved in caring for children.

This Government's conviction is that it is both possible and necessary to develop policies to support all families without intruding into the privacy of family life. This means supporting families to help themselves, ensuring that all public services play their part in supporting strong and resilient family relationships, but also recognising that sometimes relationships fail and that some families need extra help.

Marriage is an important and well-established institution that plays a fundamental role in family life in our society. However, marriage is a personal and private decision for responsible adults, with which politicians should not interfere. The Government support couples who choose to get married: for many families marriage offers the best environment in which to raise children, and remains the choice of the majority of people in Britain.

But families come in all shapes and sizes these days and the evidence is clear that stable and loving relationships between parents and with their children are vital for their progress and well-being. This was confirmed in the Families in Britain Evidence Paper. The Government are therefore strongly committed to supporting all parents, grand-parents and carers in sustaining strong and resilient relationships.

This Green Paper sets out a wide range of measures to support all families as they bring up their children and to help families cope with times of stress and difficulty. They recognise that while all families need some help, there are families in our society with complex needs and others who require additional—and sometimes non-negotiable—support. Some of the policy proposals can be implemented straight away; others are for consultation or will take longer to put into place.

This policy is informed by *Families in Britain: an evidence paper*, published by my department and the Prime Minister's Strategy Unit in 2008, as well as by many other pieces of independent research, carried out both here and abroad during the past 10 years. It has also been influenced by discussions with experts and leading voluntary organisations; and by the views and experiences of families themselves.

All the proposals set out in this paper have been developed with a view to supporting stronger, more resilient families, who can help themselves and stronger, safer communities where families help each other.

The consultation will remain open until 21 April 2010.

Copies of this paper are available in the Libraries of both Houses and available electronically at www.dcsf.gov.uk/supportforall.

G20

Statement

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

As part of the new G20 framework for strong, sustainable and balanced growth agreed at the Pittsburgh summit, the Treasury has today submitted its national template to the International Monetary Fund (IMF), setting out its national policy frameworks, programmes and projections for the medium term.

This is in accordance with the mutual assessment process agreed by G20 Finance Ministers and central bank governors at their meeting in St Andrews in November 2009, which calls on the IMF to help with analysis of how the national and regional policy frameworks of the G20 members fit together.

Copies of the document are available in the Vote Office and have been deposited in the Library of the House.

Immigration and Nationality Fees

Statement

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): My honourable friend the Minister of State for Borders and Immigration (Phil Woolas) has today made the following Written Ministerial Statement.

My right honourable friend the Secretary of State for the Home Department (Alan Johnson) is today laying regulations for the fees for immigration and nationality services that are set at levels above the normal administrative costs of the service. The Government review the fees on a regular basis and makes appropriate changes as necessary. We have continued with our strategic approach to charging; setting certain fees above cost on the basis of the value of the service.

These fees must be set out in regulations before both Houses of Parliament and are subject to the affirmative procedure. The fees for these applications allow us to generate revenue which is used to fund the UK immigration system and to set certain fees below cost recovery to support wider government objectives. The revenue generated will contribute towards the development and delivery of the new points-based system, the rollout of ID cards for foreign nationals and investment in IT capability both overseas and in the UK. This coming year we will continue to strengthen that capability in underpinning technology and process improvement. For transparency, I have included the estimated unit cost for each route, so that it is clear the degree to which certain routes are set above cost.

We have succeeded in limiting the extent of our general increases, by taking a more targeted approach to fees adjustment which is consistent with both the UK Border Agency's strategic charging principles, and also with broader government objectives. We have made several amendments to the UK settlement fees and we have proposed a nominal 10 per cent fee for all applications for UK-based dependants to reflect the fact that each individual brings a processing cost to us. Full details of all fees changes are outlined in the Explanatory Memorandum accompanying these regulations.

Finally we will continue to generate revenue to fund the transitional impacts of migration. The Migration Impacts Fund has played a vital role in helping ease the pressures on certain communities.

I am publishing today the fees for immigration and nationality services that are set at levels above the normal administrative costs of the service alongside these regulations. I will announce our proposals for the fees for immigration and nationality fees that are set below the administrative costs of the service when we lay negative regulations in February 2010.

Full details on how to apply for all of these services will be provided on our website at www.ukba.homeoffice.gov.uk.

A table of fees for 2010-11 for immigration and nationality services that are set at levels above the normal administrative costs of the service is set out below:

Visa Fees

Products	*2009-10 Fees (£)*	*Estimated Unit Cost for 10-11*	*Proposed Fee for 10-11*
Non PBS Visas			
Long term visit visa (up to 2 yr)	215	140	230
Long term visit visa (up to 5 yr)	400	141	420
Long term visit visa (up to 10 yr)	500	155	610
Settlement visa*	585	249	644
Settlement Visa*—Dependent Relative	585	272	1680
Other visa	215	115	230
PBS Visas			
T1 (General, Investor/ Entrepreneur)*	675	332	690
TI (General/Entrepreneur) CESC*	615	332	629
T2*	265	197	270
T2 (CESC)*	245	196	250

* The fees for these applications include a contribution of £50 to the migration impacts fund.

** The fees for T4 applications include a contribution of £20 to the migration impacts fund.

IN UK—Leave to Remain and Nationality Fees

Products	*2009-10 Fees (£)*	*Estimated Unit Cost for 10-11*	*Proposed Fee for 10-11*	*Dependents Fee*
Non PBS Routes—Migrants Inside UK				
ILR Postal*	820	341	840	129
ILR PEO*	1020	256	1095	154
ILR Postal (CESC)*	750	341	767	121
ILR PEO (CESC)*	920	256	992	144
ILR Dependant Relative (Postal)*	820	341	1680	213
ILR Dependant Relative (PEO)*	1020	256	1930	238
Leave to Remain Non Student Postal*	465	419	475	92
Leave to Remain Non Student PEO*	665	348	730	118
FLR (IED) Postal*	400	210	400	85
FLR (IED) PEO*	600	210	650	110
FLR (BUS) *	800	210	800	125
Transfer of Conditions PEO	515	341	578	57
Mobile Biometric Enrolment and Case-working (Premium+)	0	1982	15,000	N/A
Nationality applications—Migrants Inside UK				
Nationality 6(1) Single*	640	208	655	N/A
Nationality 6(1) Joint*	690	231	770	N/A
Nationality 6(2)*	640	208	655	N/A
Nationality Registration Adult*	460	208	470	N/A
Nationality Registration Single Minors*	460	208	470	N/A
Nationality Registration Multiple Minors*	510	255	567	97

* The fees for these applications include a contribution of £50 per person to the migration impacts fund.

IN UK—PBS Fees

Products	*2009-10 Fees (£)*	*Estimated Unit Cost for 10-11*	*Proposed Fee for 10-11*	*Dependents Fee*
PBS—Migrants Inside UK				
TI (General)—Postal*	820	317	840	129
T1 (General)—PEO*	1020	288	1095	154
T1 (General/Entrepreneur) CESC Postal*	750	317	767	121
T1 (General/Entrepreneur) CESC PEO*	920	288	992	144
T1 (Invs or Ent)—Postal*	820	354	840	129
T1 (Invs or Ent)—PEO*	1020	446	1095	154
T1 (Post Study)—Postal	500	317	550	100
TI (Post Study)—PEO*	700	325	800	125
Tier 1 (Transition) Postal*	400	259	408	85
Tier 1 (Transition) PEO*	600	275	663	111
T2—Postal*	465	344	475	92
T2—PEO*	665	330	730	118
T2 CESC Postal*	425	344	434	88
T2 CESC PEO*	605	330	669	111
T4—PEO*	565	374	628	107
T5—PEO	515	369	578	57
T5 CESC PEO	460	380	521	52

* The fees for these applications include a contribution of £50 per person to the migration impacts fund.

PBS Sponsorship and Certificate of Sponsorship Fees

Products	*2009-10 Fees (£)*	*Estimated Unit Cost for 10-11*	*Proposed 10-11 fees (£)*
PBS Sponsorship and CoS Fees			
T2 Sponsor licence—medium/ large business	1000	880	1000
T2 & 4 Sponsor licence— medium/large business	1000	950	1000
T2 & 5 Sponsor licence— medium/large business	1000	880	1000
T2, 4 & 5 Sponsor licence— medium/large business	1000	950	1000
T2 Certificate of Sponsorship	170	25	170

Justice: Family Courts

Statement

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My right honourable friend the Lord Chancellor and Secretary of State for Justice (Jack Straw) has today made the following Written Ministerial Statement.

My right honourable friend, the Secretary of State for Children, Schools and Families (Ed Balls) and I wish to make the following Statement to the House about the launch of a review of the family justice system in England and Wales.

The family justice system involves life changing decisions for many thousands of children and their families each year at a cost to the taxpayer of over £800 million. There have been some important elements of reform in recent years. But we need to be certain that the system, as it is currently set up, supports parents as fully as possible in establishing and maintaining a co-operative approach to agreeing future arrangements when relationships break down, and does not unwittingly cause additional stress at what will already be a difficult time. It is also important to ensure that valuable court time is focused on protecting the vulnerable from abuse, victimisation and exploitation and that the system is being managed as effectively as possible.

We have therefore decided to initiate a review of the family justice system and have secured the agreement of the Welsh Assembly Government that, where appropriate, the review shall encompass the devolved functions of Welsh Ministers. Gwenda Thomas, Deputy Minister for Social Services, has made a similar statement to the National Assembly for Wales.

The review will be conducted by a panel, comprising four representatives independent of government and senior representatives from the Ministry of Justice, Department for Children, Schools and Families, and the Welsh Assembly Government as relevant for devolved matters.

The review will be asked to make recommendations in two core areas: (1) what steps can be taken to promote informed settlement and agreement; and (2) whether improvements need to be made to the way in which the family justice system is managed.

It will be guided by the following principles:

the interests of the child should be paramount in any decision affecting them (and, linked to this, delays in determining the outcome of court applications should be kept to a minimum);

the court's role should be focused on protecting the vulnerable from abuse, victimisation and exploitation and should avoid intervening in family life except where there is clear benefit to children and vulnerable adults in doing so;

individuals should have the right information and support to enable them to take responsibility for the consequences of their relationship breakdown;

mediation and similar support should be used as far as possible to support individuals themselves to reach agreement about arrangements, rather than having an arrangement imposed by the courts;

the processes for resolving family disputes and agreeing future arrangements should be easy to understand, simple and efficient; and

conflict between individuals should be minimised as far as possible.

Copies of the full terms of reference have been placed in the Libraries of both Houses.

We have asked for the review panel to provide a final report to us, as well as the Welsh Assembly Government Minister for Health and Social Services, in 2011.

Police: Grant Report

Statement

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): My right honourable friend the Secretary of State for the Home Department (Alan Johnson), has today laid before the House the *Police Grant Report (England and Wales) 2010-11* (HC 278), copies of which are available in the Vote Office. The report sets out my right honourable friend's, determination for 2010-11 of the aggregate amount of grant that he proposes to pay under Section 46(2) of the Police Act 1996, and the amount to be paid to the Greater London Authority for the Metropolitan Police Authority.

General police grant allocations, which include Home Office Police Grant and Department of Communities and Local Government/Welsh Assembly Government General Grant for each police authority for 2009-10 and 2010-11 are set out in the table.

General Police Grant Allocations by English and Welsh Police Authority 2010-11

Police Authority	*2009-10 Formula Allocation*[1]	*2010-11 Allocation*[1]	*Change on 2009-10 Formula Allocation*
	£m	*£m*	*%*
English Shire Authorities			
Avon and Somerset	179.7	186.1	3.5%
Bedfordshire	70.8	73.1	3.3%
Cambridgeshire	81.0	83.5	3.0%
Cheshire	120.5	123.5	2.5%
Cleveland	97.7	100.1	2.5%
Cumbria	67.2	68.9	2.5%
Derbyshire	112.6	116.2	3.1%
Devon and Cornwall	186.4	191.1	2.5%
Dorset	65.3	66.9	2.5%
Durham	91.4	93.7	2.5%
Essex	177.9	183.1	2.9%
Gloucestershire	59.3	60.8	2.5%
Hampshire	207.5	213.0	2.7%
Hertfordshire	121.2	124.9	3.0%
Humberside	128.4	131.8	2.6%
Kent	192.1	197.4	2.7%
Lancashire	204.1	209.7	2.7%
Leicestershire	118.0	121.4	2.9%
Lincolnshire	64.3	66.3	3.2%
Norfolk	87.6	89.8	2.5%
North Yorkshire	76.7	78.6	2.5%
Northamptonshire	75.5	77.5	2.7%
Nottinghamshire	141.4	146.0	3.3%
Staffordshire	120.6	123.8	2.7%
Suffolk	71.0	72.7	2.5%
Surrey	101.8	104.4	2.5%
Sussex	169.8	174.1	2.5%
Thames Valley	238.2	244.7	2.8%
Warwickshire	54.1	55.6	2.7%
West Mercia	121.8	124.9	2.5%
Wiltshire	65.2	66.8	2.5%
Shires Total	3669.0	3770.0	2.8%
English Metropolitan Authorities			
Greater Manchester	458.9	472.5	3.0%
Merseyside	267.4	274.3	2.6%
Northumbria	249.9	256.2	2.5%
South Yorkshire	204.1	209.2	2.5%
West Midlands	486.1	504.3	3.8%
West Yorkshire	339.2	350.5	3.3%
Mets Total	2005.7	2067.1	3.1%
London Authorities			
GLA—Police	1978.3	2027.7	2.5%
City of London[2]	21.0	21.8	N/A
English Total	7674.0	7886.6	2.8%
Welsh Authorities			
Dyfed-Powys[3]	54.4	55.8	2.5%
Gwent[3]	82.6	84.7	2.5%
North Wales[3]	80.1	82.1	2.5%
South Wales[3]	181.5	186.4	2.7%
Welsh total	398.6	409.0	2.6%
Total	8072.6	8295.7	2.7%

Questions for Written and Oral Answer: Costs

Statement

The Financial Services Secretary to the Treasury (Lord Myners): My honourable friend, the Exchequer Secretary to the Treasury (Sarah McCarthy-Fry), has today made the following Written Ministerial Statement.

The Treasury has conducted its annual indexation exercise of the cost of Oral and Written Parliamentary Questions so as to ensure that these costs are increased in line with increases in underlying costs. The revised costs, which will apply from today, are:

Oral Question £425; and

Written Question £154.

The disproportionate cost threshold (DCT) will be increased to £800, also with effect from today.

Written Answers

Wednesday 20 January 2010

Alcohol: Pricing

Questions

Asked by ***Lord Jones of Cheltenham***

To ask Her Majesty's Government what assessment they have made of the impact that the introduction of minimum pricing for alcoholic drinks would have on the viability of public houses, clubs and restaurants; and what is the forecast effect on the closure rate of public houses. [HL1228]

Baroness Thornton: The Independent Review of the Effects of Alcohol Pricing and Promotion by the School of Health and Related Research (ScHARR) at Sheffield University estimated changes in alcohol consumption and consumer spending in both the on-trade and off-trade for a range of pricing interventions, including different levels of minimum unit price. The effects vary according to the intervention chosen and its level.

The ScHARR review has already been placed in the Library.

Asked by ***Lord Jones of Cheltenham***

To ask Her Majesty's Government what assessment they have made of the effect on the level of smuggling into the United Kingdom of the introduction of a policy of minimum pricing for alcoholic drinks. [HL1229]

The Financial Services Secretary to the Treasury (Lord Myners): No assessment has been made of the effect on the level of smuggling into the United Kingdom of the introduction of a policy of minimum pricing for alcoholic drinks.

Anguilla

Question

Asked by ***Lord Jones of Cheltenham***

To ask Her Majesty's Government what progress they have made towards an agreement with the Government of Anguilla over their plans for an economic stimulus to assist recovery from the global downturn. [HL1268]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): We are in regular contact with Anguilla about their desire to increase their borrowing, their financial shortfall and their plans to make significant savings.

Care Services: Free Personal Care

Question

Asked by ***Lord Lipsey***

To ask Her Majesty's Government what consideration was given to the Prime Minister's proposal of free personal care at home prior to its announcement at Labour Party conference (a) by the Cabinet, (b) by Cabinet Committees, and (c) in official ministerial correspondence. [HL1237]

Baroness Thornton: Consistent with longstanding practice, information relating to the proceedings of Cabinet and Cabinet committees is generally not disclosed as to do so puts at risk the public interest in both collective responsibility and the full and frank discussion of policy by Ministers.

Civil Service

Question

Asked by ***Lord Foulkes of Cumnock***

To ask Her Majesty's Government what action they are taking to reduce, freeze or contain below inflation remuneration increases for permanent secretaries in the Civil Service. [HL1145]

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): The Government have provided evidence to the Senior Salaries Review Body suggesting that there should be no increase in the pay bill per head available for base pay for all members of the senior Civil Service (including Permanent Secretaries) for 2010-11. Copies of this evidence have been placed in the Library.

Climate Change

Question

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

To ask Her Majesty's Government further to the Written Answer by Lord Hunt of Kings Heath on 6 January (*WA 94*), whether any agreement signed by the parties at the Copenhagen climate change conference or any subsequent meetings will be put before both Houses of Parliament under affirmative or negative procedure. [HL1200]

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): Before ratifying or acceding to a treaty the Government would be required to publish and lay that treaty before Parliament in accordance with the Ponsonby Rule.

At Copenhagen, representatives of 49 countries reached agreement on a political Accord, copies of which have been made available in the Libraries of the House. This does not have the status of a treaty and therefore the Ponsonby Rule does not apply. Building on the agreements reached at Copenhagen, the Government will continue to work towards a legally binding outcome in the form of a treaty in order to combat dangerous climate change.

As regards any future treaty, if it is subject to ratification or accession, it would be laid before Parliament under the Ponsonby Rule. If any debate is requested, it would be considered in the normal manner, and arranged in accordance with the internal procedures of Parliament.

Defence: Grob Tutor Service Inquiry

Question

Asked by ***Lord Trefgarne***

To ask Her Majesty's Government what were the qualifications and relevant experience of the Royal Air Force officers who carried out the recent inquiry into the accident involving two Grob Tutor aircraft. [HL1291]

The Minister for International Defence and Security (Baroness Taylor of Bolton): The inquiry into the accident on 11 February 2009 involving two Tutor aircraft was carried out by a team of three experienced RAF officers. As with all inquiries of this nature, inquiry teams are drawn from those with recent expertise in the relevant areas. In this case, the team comprised two qualified Tutor pilots with experience of air experience flying and instructing roles and a qualified aircraft engineer with previous experience in aircraft accident investigation.

Additionally, the team were supported by a range of experts including: service inquiry advisors whose full-time role is to advise on all aspects of aircraft accident investigation process and on the associated policies and procedures and advisors from the RAF's Centre for Aviation Medicine. The team also worked closely and shared evidence with the independent investigator from the Air Accident Investigations Branch on technical and operational issues. Technical advice was also provided by QinetiQ. The range of expertise both within and available to the team ensured that the inquiry was both professional, comprehensive and covered all relevant factors.

Democratic Republic of Congo

Questions

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

To ask Her Majesty's Government how much United Kingdom aid to the Democratic Republic of Congo has been allocated for educating children in each of the last 12 years. [HL1012]

Lord Brett: Details of the Department for International Development's (DfID's) expenditure in developing countries is published in *Statistics on International Development*, which is available in the House Library and on the DfID website at http://www.dfid.gov.uk/About-DFID/Finance-and-performance/Aid-Statistics/Statistics-on-International-Development-2009/.

DfID expenditure for the past 12 years on the education sector in the Democratic Republic of Congo is presented in the table below.

Year	*£ in thousands*
1997-98	0
1998-99	0
1999-00	0
2000-01	0
2001-02	0
2002-03	0
2003-04	61
2004-05	290
2005-06	148
2006-07	95
2007-08	82
2008-09	835

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

To ask Her Majesty's Government what international programmes they are promoting to protect and increase the voice of women in the Congo in local and national decision-making bodies, and to ensure their participation in international organisations dealing with political empowerment and human rights. [HL1014]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): We take women's empowerment in the Congo very seriously. Our embassy in Kinshasa has developed a gender strategy to promote gender equality and women's empowerment in the Congo and to tackle the serious and widespread problem of sexual and gender based violence (SGBV). We have set ourselves a target of improving the representation of women in local, provincial and national parliaments in the Congo (from 8 per cent in 2006 to 30 percent by 2011), and improving the capacity and visibility of current female elected representatives.

The Government of the Democratic Republic of the Congo has ratified the international Convention on the Elimination of all forms of discrimination against women, but a serious gap remains between the legal framework that has been put into place and the reality on the ground. Our work to empower women in the Congo therefore focuses on providing support and advice to the Ministry of Gender and helping to build its capacity to mainstream gender issues across the whole of government; lobbying and providing training and support to parliament, political parties and election components; and through providing £58.8 million funding from 2008-2012 to the United Nations Development Programme Governance Programme which works to advocate and promote women's political empowerment.

Economy

Question

Asked by ***Lord Hunt of Chesterton***

To ask Her Majesty's Government whether they will set alternative goals for national economic policy following the United Kingdom Commission on Sustainable Development and President Sarkozy's high level economic report concluding that goals focused on increasing gross domestic product may not be consistent with sustainable development and efficient use of natural resources. [HL727]

The Financial Services Secretary to the Treasury (Lord Myners): The Government recognise that GDP is not a perfect measure of welfare, and that measuring a broad set of quality of life indicators is desirable in informing national economic policy.

The Government's objective is to build a strong economy and a fair society, where there is opportunity and security for all. While measurement of gross domestic product (GDP) data informs the Government's economic forecasts and related targets for the Government's fiscal plans, the aim of national economic policy is to raise the rate of sustainable growth, and achieve rising prosperity and a better quality of life with economic and employment opportunities for all. This requires other indicators, for example as set out in its sustainable development strategy *Securing the Future*, available at http://www.defra.gov.uk/sustainable/government/publications/uk-strategy/documents/SecFut_complete.pdf.

The Government publish information on life satisfaction, broken down by socio-economic class, as part of the sustainable development indicators published by the Department for Environment, Food and Rural Affairs, and is available at http://www.defra.gov.uk/sustainable/government/progress/documents/SDIYP2009_a9.pdf. Work to develop these indicators presents a number of methodological challenges, which the Government are working to help overcome.

Embryology

Questions

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

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 16 December 2009 (*WA 236–7*), why the Hampton Implementation Review on the Human Fertilisation and Embryology Authority suggested that the relationship between the Authority and those it monitors could, if left unmonitored, lead stakeholders to question the independence, objectivity and consistency of the authority. [HL1326]

Baroness Thornton: The Hampton Implementation Review of the Human Fertilisation and Embryology Authority (HFEA) forms part of a series of reviews of the work of 36 national regulators against the principles of good regulatory and enforcement practice first set out in the Hampton report, *Reducing Administrative Burdens: Effective Inspection and Enforcement* (2005).

The findings of the HFEA report reflect the views of a team consisting of peer reviewers drawn from other regulators and Better Regulation Executive officials, who visited the Human Fertilisation and Embryology Authority (HFEA) in April 2009. The review conclusions are based on a range of evidence, including interviews with regulator staff and stakeholders.

In its report, the Hampton review team commends significant aspects of the HFEA's work as well as highlighting some areas for improvement. Since the review, the authority has already undertaken a number of steps to improve processes and address the issues raised. This work will continue, informed by the final report.

The findings of the report are for the HFEA to consider and it will implement changes as appropriate.

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

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 16 December 2009 (*WA 236–37*), how the Human Fertilisation and Embryology Authority has responded to the finding in the Hampton Implementation Review on the Authority on making more effective use of sanctions; and what sanctions the Authority would apply on a licensed centre that withholds information inappropriately or provides misleading information to the Authority. [HL1333]

Baroness Thornton: The Human Fertilisation and Embryology Authority (HFEA) has advised that it has nothing further to add to the information I gave in my response of 16 December 2009 (*WA 236-37*). The HFEA's policy on the use of sanctions is outlined in its indicative sanctions guidance for licence committees, which is available on the authority's website at www.hfea.gov.uk/docs/Indicative_Sanctions_Guidance.pdf.

Equality and Human Rights Commission

Question

Asked by ***Lord Harries of Pentregarth***

To ask Her Majesty's Government further to the remarks by the Solicitor General, Vera Baird, on 2 December (*Official Report*, Commons, col. 1226), when they commissioned research on caste from the Equality Commission; and when they expect the commission to report its findings. [HL926]

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): The Solicitor General's statement relates to a request which the Government Equalities Office (GEO) had, then, recently made to the Equality and Human Rights Commission (EHRC) to take forward the Anti-Caste Discrimination Alliance's recommendation that the EHRC should undertake detailed research on caste. The EHRC, which is an independent body, has subsequently indicated it does not intend to undertake research in this area at the present time, although it is discussing the issue with stakeholders.

GEO is therefore now in the process of seeking an alternative provider for this research on caste discrimination. It is working in consultation with both the EHRC and the Department for Communities and Local Government.

EU: Budget

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government what effect a 6 per cent increase in the European Union budget for 2010 will have on the gross contribution of the United Kingdom to that budget. [HL1079]

The Financial Services Secretary to the Treasury (Lord Myners): Under the 2009 Adopted EC Budget, UK Own Resources payments were set at £10,879 million. Under the 2010 Adopted EC Budget UK contributions were calculated at £11,735 million.

A key driver for the size of the 2010 budget is the financing of the European economic recovery plan, as well as additional support from structural and cohesion funds for the new member states, many of whom have been hit hardest by the economic downturn. The overall budget increase is also partially driven by the expected acceleration in the delivery of those funds across the EU.

EU: Economy

Question

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

To ask Her Majesty's Government what meetings they have planned with the European Commission to discuss the economic agenda for the European Union over the next 10 years. [HL1072]

The Financial Services Secretary to the Treasury (Lord Myners): Treasury Ministers and officials have meetings with a wide variety of organisations in the public and private sectors as part of the process of policy development and delivery. As was the case with previous Administrations, it is not the Government's practice to provide details of all such meetings.

Financial Services Authority

Question

Asked by ***Lord Lucas***

To ask Her Majesty's Government further to the Written Answer by Lord Myners on 5 January (*WA 29*), when the Financial Services Authority will write to Lord Lucas. [HL1342]

The Financial Services Secretary to the Treasury (Lord Myners): I have been informed that the FSA will write to Lord Lucas by Tuesday 26 January 2010.

Government Departments: Bonuses

Question

Asked by ***Baroness Northover***

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 the Department for Transport 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. [HL48]

The Secretary of State for Transport (Lord Adonis): An element of the Department for Transports' 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 predetermined 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 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 Department for Transports' standard pay and performance management process for the three most recent performance years.

	2006-07		*2007-08*		*2008-09*	
	SCS	*Non-SCS*	*SCS*	*Non-SCS*	*SCS*	*Non-SCS*
Number of staff eligible for performance-pay award	171	14313	168	14397	177	11867
Number of staff who received a performance-pay award	130	11367	126	11405	128	9894
Average value of a performance-pay award	£9,025	£663	£9,760	£841	£8,107	£1,059
The maximum payment for a performance-pay award	£20,000	£1,750	£22,000	£4,133	£15,000	£4,255

Government: Office Equipment

Questions

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*, 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 (a) the Environmental Agency, (b) the Waste Resources Action Programme, and (c) the Department for Environment, Food and Rural Affairs, in the latest period for which figures are available. [HL1031]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): In the financial year 2008-09 the Environment Agency bought a total of 120,000 reams of white A4 80 gsm paper at £2 per ream (excluding VAT). Total cost for the year was approximately £240,000. The brand of paper bought was called Evolve Office, which is 100 per cent recycled.

The Waste and Resources Action Programme bought a total of 1,980 reams of white A4 80 gsm paper at

£3.29 per ream (excluding VAT). Total cost for the year was £6,514. The brand bought was Evolve and is 100 per cent recycled.

Core Defra purchased a total of 45,125 reams of white A4 80 gsm paper at £2.09 (excluding VAT). The total cost was £94,177. The brands purchased were Evolve Office and Evolve Business which are 100 per cent recycled.

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*, 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 Foreign and Commonwealth Office in the latest period for which figures are available. [HL1033]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): Our posts overseas source and purchase all paper locally. Due to this the information requested is not held centrally and could only be obtained at disproportionate cost.

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 International Development in the latest period for which figures are available. [HL1115]

Lord Brett: The average purchase price of a 500 sheet ream of white A4 80gsm photocopier paper currently paid by the Department for International Development in the UK is £2.62. All such paper is purchased using an Official Government Commerce (OGC) Framework contract.

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*, 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 Transport in the latest period for which figures are available. [HL1117]

The Secretary of State for Transport (Lord Adonis): It is the Department for Transport's policy to use 100 per cent recycled photocopier paper. The mean average purchase price, excluding value added tax, paid by the department for a 500 sheet ream of white A4 80 gsm photocopier paper is £2.08.

Health: Republic of Ireland

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government how they record citizens of the Republic of Ireland who seek medical treatment from the National Health Service; and how that country's government is charged. [HL1058]

Baroness Thornton: Irish citizens seeking scheduled medical treatment in the United Kingdom are required to present an E112 form. This enables the UK to charge the Irish Government, in arrears, for treatment provided. Since October, details of E112 forms have been recorded electronically. This has replaced the previous clerical process and has resulted in a faster and more efficient method for processing and submitting claims to other member states.

Mental Health: Race Equality

Questions

Asked by ***Lord Ouseley***

To ask Her Majesty's Government what measures are proposed to tackle mental health conditions affecting the African Caribbean community, particularly schizophrenia, as identified in a recent report by the Institute of Psychiatry at the Maudsley Hospital. [HL1047]

To ask Her Majesty's Government what progress has been made with the planned recruitment of 500 community workers to tackle social issues through 80 new community engagement projects, as set out in the Department of Health's plan for delivering race equality in mental health care in 2005. [HL1048]

Baroness Thornton: The 2006 Aetiology and Ethnicity of Schizophrenia and Other Psychoses (AESOP) study of ethnicity and psychosis in England found rates of psychosis up to nine times higher for African Caribbean communities than for the White British population, six times higher for African communities and increased risks of a smaller degree for other Black and Minority Ethnic (BME) groups. In contrast, rates in the Caribbean and Africa are comparable to the overall rate in England.

In December 2008, over 450 community development workers (CDWs) were in post. These CDWs work directly with BME groups in their area, raising awareness of mental health issues and of available services and also highlight the specific needs of these groups to local health services in order to improve their experiences of mental health services. Delivering Race Equality in Mental Health (DRE), a five-year action plan for improving mental health services for BME communities, has developed a better understanding of BME community and service users' attitudes towards mental health and the services provided. The programme has supported the development of 79 community engagement projects nationally to forge partnerships with the voluntary and community sectors (VCS) and to develop the skills base of people involved with small BME VCS

organisations. A report describing the work of DRE and an analysis of the community engagement projects is to be published shortly.

New Horizons—towards a shared vision for mental health, which was launched in December 2009, will build on the work of the DRE programme, consolidating this work into a wider mental health equalities context. This is because it has become increasingly evident that we need to consider all strands of equality together—ethnicity cannot be dealt with in isolation. New Horizons aims to ensure that we have an integrated approach and equalities are an integral part of the programme. A Ministerial advisory group is being set up which will oversee this work.

Minister for the Olympics: Overseas Visits

Question

Asked by ***Lord Patten***

To ask Her Majesty's Government further to the Written Answers by Lord Davies of Oldham on 9 December 2009 (*WA 135*) and to HL722, whether they will publish information on the destinations, purposes, costs and names of those in each official party of overseas visits on ministerial business undertaken by the Minister for the Olympics in 2008 and 2009 prior to and separate from the publication after the end of the financial year of the annual lists of all ministerial travel costing over £500. [HL1035]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): In order to provide a record of all Ministerial travel costing over £500 which is both accessible and comprehensive the Government publishes this information in an annual list.

This information will be published as soon as it is ready after the end of the financial year.

Music: Funding

Questions

Asked by ***Lord Wallace of Saltaire***

To ask Her Majesty's Government how much funding the Department for Children, Schools and Families has given to Youth Music in each year since its creation. [HL1168]

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): The Department for Children, Schools and Families does not provide the core funding for Youth Music, which comes from the National Lottery. However, there have been several specific projects since Youth Music's creation for which grants have been paid to that organisation, for example Youth Music is the lead partner of the consortium which delivers the £10 million a year Sing Up programme.

Asked by ***Lord Wallace of Saltaire***

To ask Her Majesty's Government how much of the £3 million allocated from 2008–11 for In Harmony projects has been spent; and on how many projects. [HL1169]

Baroness Morgan of Drefelin: Just under £1.5 million of the £3 million committed to the government-funded In Harmony programme has been spent so far. This has funded the three projects in Liverpool, Norwich and Lambeth.

Asked by ***Lord Wallace of Saltaire***

To ask Her Majesty's Government how much funding Arts Council England has given towards Sing Up (a) directly, and (b) through Youth Music, in each year since the launch of Youth Music. [HL1170]

Lord Davies of Oldham: The Sing Up project is funded by the Department for Children, Schools and Families, not Arts Council England.

Asked by ***Lord Wallace of Saltaire***

To ask Her Majesty's Government what proportion of the Music Standards Fund is used to fund (a) Wider Opportunities programmes, and (b) Sing Up. [HL1171]

Baroness Morgan of Drefelin: The Music Standards Fund, now the Standards Fund Music Grant, is provided to local authorities to fund opportunities for key stage 2 pupils to learn a musical instrument and/or to receive specialist vocal tuition, and to maintain and extend the broadest possible access to music education provision. We do not collect information on what proportion of the Music Grant each local authority spends on its Wider Opportunities programme.

Sing Up is centrally funded and we have no information on what additional support local authorities might provide to the programme.

Asked by ***Lord Wallace of Saltaire***

To ask Her Majesty's Government which local authorities had music services or an identifiable music service in (a) 2009, (b) 2004, and (c) 1999. [HL1172]

Baroness Morgan of Drefelin: Information on which local authorities had a music service, or access to one, is not held centrally. However, all local authorities have received an allocation through the Music Standards Fund grant since it began in 1999. The grant was provided to protect and expand music services, which at that time were reportedly in decline. By 2005[1], 20 per cent of music services were less than five years old. Eleven of these were unitary authorities. Six music services, not named in the information source, were established in 2004.

By 2009 all but three local authorities (Rutland, City of London and the Isles of Scilly) had access to a music service, though not necessarily their own. For example Bournemouth and Poole both use Dorset; Tees Valley covers Hartlepool, Middlesbrough, Redcar and Cleveland and Stockton.

[1] Survey of Local Music Services 2005, the Institute of Education, University of London (DfES Research Report 700)

Ponsonby Rule

Questions

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

To ask Her Majesty's Government further to the Written Answer by Lord Hunt of Kings Heath on 6 January (*WA 94*), what is the Ponsonby rule. [HL1199]

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): The Ponsonby Rule requires that before the Government ratify or accede to a treaty, they must publish that treaty as a Command Paper and lay it before Parliament for a minimum of 21 sitting days, or, when circumstances require a degree of flexibility, follow one of the established alternative ways of consulting and informing Parliament.

The rule arose from parliamentary proceedings in 1924, when Mr Arthur Ponsonby, Parliamentary Under-Secretary of State for Foreign Affairs announced the new practice. It has been consistently observed by successive governments since 1929.

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

To ask Her Majesty's Government further to the Written Answer by Lord Hunt of Kings Heath on 6 January (*WA 94*), what would be the consequences of one or both Houses of Parliament voting against an agreement or treaty on climate change. [HL1201]

Lord Hunt of Kings Heath: Before ratifying or acceding to a treaty the Government would be required to publish and lay that treaty before Parliament in accordance with the Ponsonby Rule.

The Ponsonby Rule is not currently embodied in statute. It is designed to give Parliament the opportunity to scrutinise, debate and vote on a proposed treaty ratification, but there is no legal obligation on the Government to act on the views expressed by Parliament in this process.

Railways: East Coast

Questions

Asked by ***Lord Moonie***

To ask Her Majesty's Government what has been the weekly volume of traffic to the East Coast website since National Express relinquished the east coast franchise. [HL1187]

The Secretary of State for Transport (Lord Adonis): Monitoring website usage is an operational matter for East Coast and I suggest that my noble friend contacts Elaine Holt, Chair of East Coast with his question at: Elaine Holt, Chair, East Coast, 1st Floor, Great Minster House, 76 Marsham Street, London, SW1P 4DR.

Asked by ***Lord Moonie***

To ask Her Majesty's Government what assessment they have made of passenger congestion at east coast stations as a result of the introduction of ticket barriers; and what are the capital and revenue budgets for the installation of barriers this year. [HL1188]

Lord Adonis: Installation of ticket barriers and monitoring usage is an operational matter for East Coast and I suggest that my noble friend contacts Elaine Holt, Chair of East Coast with his question at: Elaine Holt, Chair, East Coast, 1st Floor, Great Minster House, 76 Marsham Street, London SW1 P 4DR.

Asked by ***Lord Moonie***

To ask Her Majesty's Government what estimate they have made of the amount of ticket revenue forgone as a result of not having barriers at certain east coast mainline stations; and what impact the installation of barriers will have on commercial franchises operating within areas with barriers. [HL1189]

Lord Adonis: Revenue protection is an operational matter for East Coast and I suggest that my noble friend contacts Elaine Holt, Chair of East Coast with his question at: Elaine Holt Chair, East Coast, 1st Floor, Great Minster House, 76 Marsham Street, London SWIP 4DR.

Asked by ***Lord Moonie***

To ask Her Majesty's Government how many passenger complaints have been received since National Express relinquished the east coast franchise. [HL1190]

Lord Adonis: Monitoring passenger complaints is an operational matter for East Coast and I suggest that my noble friend contacts Elaine Holt, Chair of East Coast with his question at: Elaine Holt, Chair, East Coast, 1st Floor, Great Minster House, 76 Marsham Street, London SW1P 4DR.

Asked by ***Lord Moonie***

To ask Her Majesty's Government how many people are employed by East Coast Mainline; and how many were employed when National Express relinquished the franchise. [HL1191]

Lord Adonis: Employee numbers are an operational matter for East Coast and I suggest that my noble friend contacts Elaine Holt, Chair of East Coast with his question at: Elaine Holt, Chair, East Coast, 1st Floor, Great Minster House, 76 Marsham Street, London SW1P 4DR.

Asked by ***Lord Moonie***

To ask Her Majesty's Government what consideration has been given to capital spending plans on the East Coast mainline for the next ten years. [HL1192]

Lord Adonis: The independent Office of Rail Regulation has considered and approved the capital investment plan put forward by Network Rail for the enhancement of the East Coast Main Line in control period 4, which will be completed by 2014. Additionally, the East Coast Main Line will benefit from investment associated with the Thameslink program, and rolling stock will be upgraded with the planned introduction of Super Express Trains.

Asked by ***Lord Bradshaw***

To ask Her Majesty's Government whether they will not relet the East Coast Mainline franchise until after the new timetable for it is introduced in May 2011. [HL1309]

Lord Adonis: The new InterCity East Coast franchise is expected to commence in Autumn 2011.

Rights of Way

Question

Asked by ***Lord Greaves***

To ask Her Majesty's Government whether they will issue new and clear advice to farmers and land managers who keep cattle and other livestock in fields or land which are crossed by rights or way or are subject to other rights of access. [HL1271]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): The Health and Safety Executive publishes an information sheet in England and Wales, which provides advice to landowners and farmers on cattle and public access. The information sheet gives specific advice on the legislation, risk assessment and signage. Natural England also provides advice in its publication *Managing Public Access*.

In addition, Natural England has recently held a meeting with major stakeholders to reconsider the current Government guidance on cattle, dogs and public access, and how it is publicised to landowners, farmers and the public.

RMS "St Helena"

Questions

Asked by ***Lord Jones of Cheltenham***

To ask Her Majesty's Government what assessment they have made of the benefits of providing a replacement ship for the RMS "St Helena" for St Helena. [HL998]

Lord Brett: In 2004, the Department for International Development (DfID) commissioned a full feasibility study into future access arrangements for St Helena, which examined the costs and benefits of continuing with sea access through a replacement ship. A copy can be found on the Saint Helena Access Project website at www.sainthelenaaccess.com.

Asked by ***Lord Jones of Cheltenham***

To ask Her Majesty's Government further to the Written Statement by Lord Brett on 16 December 2009 (*WS 251*), why they are analysing further the costs and options for a replacement ship for RMS "St Helena". [HL999]

Lord Brett: The UK Government will analyse further the costs and options for a replacement ship in order to ensure that the latest and most comprehensive information is available to compare with the other access options for St Helena.

Schools: Citizenship

Question

Asked by ***Lord Norton of Louth***

To ask Her Majesty's Government what steps they took in 2009 to enhance the status of citizenship teaching in secondary schools. [HL1177]

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): DCSF is committed to improving the quality and effectiveness of citizenship education in English schools.

In recognition that citizenship is the newest subject in the curriculum, the department has funded a national continuing professional development CPD programme since 2006 to increase the number of teachers with expertise in citizenship. Our current contractor, the University of Plymouth, has developed a course in 2009 that is designed to be more accessible to the citizenship teaching workforce. It is delivered locally to a national specification which is accredited to masters level.

DCSF made available support for all secondary schools to implement the new secondary curriculum in 2008. This includes support for citizenship teaching as well as overall curriculum design. We have developed and promulgated materials for the new identity and diversity strand within the citizenship curriculum, introduced in 2008, which enables pupils to explore and build a sense of shared identity and values, as British citizens. A Who Do We Think We Are project has been funded by DCSF since 2008 to produce materials for teachers and to engage local authorities in supporting their schools in personalising delivery to match the interests of pupils and the needs of their community.

DCSF has also invested in developing continuing professional development materials for local authority advisers to use in training and supporting the whole school workforce in designing and delivering effective citizenship in schools, thus providing a means of building and sustaining a trained and effective workforce.

St Helena

Questions

Asked by ***Lord Jones of Cheltenham***

To ask Her Majesty's Government what assessment they have made of the effect on the economy and tourism in St Helena of providing an airport there. [HL997]

Lord Brett: In 2004, the Department for International Development (DfID) commissioned a full feasibility study into future access arrangements for St Helena, which assessed the effect of an airport on the economy and tourism. A copy can be found on the Saint Helena Access Project website at www.sainthelenaaccess.com.

Asked by ***Lord Jones of Cheltenham***

To ask Her Majesty's Government further to the Written Statement by Lord Brett on 16 December 2009 (*WS 251*), what action and meetings are planned following that Statement; and with whom discussions will take place. [HL1000]

Lord Brett: The UK Government will seek information and advice from those with expertise and knowledge of the issues identified in the Written Statement and undertake our own analysis based on this information.

Sudan

Questions

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

To ask Her Majesty's Government when they next intend to raise in the United Nations Security Council the role of the Lord's Resistance Army in fomenting violence and instability in southern Sudan; and whether they will request the Security Council to increase the operational presence of the United Nations Mission in Sudan, establish a civilian protection and conflict monitoring system, and create rapid response capabilities for conflict-prone areas. [HL1275]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): We are deeply concerned at the continuing human rights abuses committed by the Lord's Resistance Army (LRA) and the tens of thousands of people who have been displaced by their activities in south Sudan.

We raise the LRA in the Security Council on a regular basis and it is likely to be discussed in the upcoming Security Council consultations on the UN Mission in Sudan (UNMIS), scheduled for 26 January 2010. The Government also provide humanitarian assistance to the displaced through the UN's Common Humanitarian Fund and the International Committee of the Red Cross.

UNMIS has around 10,000 uniformed personnel deployed in Sudan. We do not currently envisage proposing an adjustment to this number. We do however regularly review the performance of UNMIS, including how the mission is deployed. UNMIS and UN agencies in south Sudan regularly monitor LRA activities and assess the scope for redeployment of assets to counter these and other threats to civilian communities.

We have emphasised the importance of UNMIS working actively to help address conflicts at all levels in south Sudan and prioritise the protection of civilians. In my recent discussions with the Government of southern Sudan (GoSS) I emphasised the importance of GoSS taking the lead in reducing insecurity and taking strategic approach to reducing community level violence, including that perpetrated by the LRA.

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

To ask Her Majesty's Government what action they are taking following recent reports that the European Union embargo on the sale of arms to Sudan has been broken by shipments of armaments from Ukraine to Sudan which involved two United Kingdom-registered companies, a German shipping company, and a shipping agency run by a United Kingdom national in Mombasa; and what is their assessment of the admissions that those involved in brokering those sales were aware the shipments were destined for Sudan. [HL1276]

Baroness Kinnock of Holyhead: We are aware of reports regarding this alleged breach of the EU arms embargo to Sudan. We take any breach of sanctions or export licensing seriously and HM Revenue and Customs investigates any reports that are brought to our attention, but we can not comment on any current or potential future cases.

The Government are active in seeking prosecutions in cases where the embargo has been broken. For example, in November 2009, the owner of a UK company was sentenced to prison for selling military equipment to Sudan in breach of the embargo. Further details can be found here at http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/latest-news/notice-to-exporters/page53528.html.

Sudan: Darfur

Question

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

To ask Her Majesty's Government whether they will raise in the United Nations Security Council the effect on arms proliferation and insecurity of the sale of arms to African countries; and what action is being taken following the publication in October 2009 of the report of the United Nations panel of experts on the arms embargo on Darfur. [HL1277]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): We do not believe there is currently a need for a formal UN Security Council debate on the effect on arms proliferation and insecurity of the sale of arms to African countries, given ongoing discussions in the UN and other organisations on issues such as sanctions, protection of civilians, responsibility to protect, and the Arms Trade Treaty. The council also regularly discusses such issues as part of other debates; mostly recently during a debate on the UN Office for West Africa on 12 January 2010. We will, however, keep this under review.

We are deeply concerned by the continuing violence and insecurity in Darfur and by the widespread violation of the arms embargo reported by the UN Panel of Experts in its recent report. We raised these concerns during the UN Security Council's discussion of the experts' report on 15 December 2009. There was no consensus on how to take forward the recommendations made by the panel. A new panel of experts has recently been appointed and we will continue to encourage and support their monitoring and investigation of the situation.

In our contacts with the Government of Sudan and representatives of the armed movements, we continue to urge them to take urgent action to improve the security situation in Darfur. I raised this subject with representatives of the Government of National Unity during my recent visit to Sudan.

Uganda

Questions

Asked by ***Lord Chidgey***

To ask Her Majesty's Government what discussions they had at the Commonwealth Heads of Government Meeting held in Trinidad in November 2009 about the Commonwealth's human rights agenda in the light of the Ugandan anti-homosexuality Bill. [HL1231]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): The Commonwealth's human rights agenda was discussed at the Commonwealth Heads of Government Meeting (CHOGM) in Trinidad in November 2009. During the meeting, leaders agreed to adopt the Trinidad and Tobago Affirmation on Commonwealth Values and Principles which reaffirmed the Commonwealth's commitment to the Universal Declaration of Human Rights and human rights covenants and instruments. The affirmation also commits the Commonwealth to strengthening its work in implementing human rights through support for Governments, state institutions and civil society organisations.

The UK remains deeply concerned about the proposed introduction of a Private Member's anti-homosexuality Bill in Uganda. We used CHOGM as an opportunity to raise our concerns, including by the Prime Minister to President Museveni and I also raised it with the Ugandan Foreign Minister Sam Kutesa.

Asked by ***Lord Chidgey***

To ask Her Majesty's Government what discussions they have had with the State Department of the United States over representations from civil society to reduce the United States aid programme to Uganda in response to the introduction of the anti-homosexuality Bill in the Ugandan Parliament. [HL1233]

Baroness Kinnock of Holyhead: We have not discussed calls for a reduction in the US aid programme with the US State Department, but we are in close touch with donors to Uganda, including the US, on the anti-homosexuality Bill currently being considered by the Ugandan Parliament.

I made clear our concerns about the Bill to the Ugandan Foreign Minister in the margins of the Commonwealth Heads of Government Meeting in Trinidad in November 2009. My right honourable friend the Prime Minister also raised the issue with President Museveni of Uganda. Our High Commissioner in Kampala has lobbied the Ugandan Prime Minister and other Ministers and continues to raise our concerns in contacts with the Ugandan authorities.

War Crimes

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government under what circumstances they intervene or comment on cases in which a warrant has been issued by a court of the United Kingdom for the arrest of former ministers or officials of foreign states for alleged war crimes. [HL922]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): The Government fully respect the independence of the courts of the United Kingdom. In accordance with standard practice, the Government will provide to the courts information which they request for the purposes of the consideration of a case.

Arrest warrants can however, be sought and issued without any prior knowledge or advice by a prosecutor. This is an unusual feature of the legal system in England and Wales. The Government are concerned about the impact that the issue of a warrant in such circumstances may have on the international relations of the United Kingdom. It is important that the UK, as a permanent member of the Security Council, is able to talk to all leaders from around the world who are involved in conflicts and disputes, including current and former Ministers and officials. That is not in contradiction to our determination to uphold our responsibilities for so-called universal jurisdiction. We share the cross-party consensus to abide fully by our obligations to uphold international law on war crimes, which we did in 2005 in respect of an Afghan warlord.

Winter Fuel Payments

Questions

Asked by ***Lord Bradley***

To ask Her Majesty's Government how many claims for winter fuel payments were made by households in the City of Manchester in each of the last three years. [HL1272]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): Information on the number of claims made is not available. The vast majority of winter fuel payments are paid automatically without a need to claim.

The number of winter fuel payments made to households in Manchester is in the following table.

Year	*No. of Payments*
2008-09*	49,030
2007-08	48,860
2006-07	48,660

*the last year for which figures are available.

Notes:

1. Payment figures are rounded to the nearest 10.

Asked by ***Lord Bradley***

To ask Her Majesty's Government how many households in the City of Manchester are eligible for the winter fuel allowance. [HL1273]

Lord McKenzie of Luton: Information on the number of eligible households is not available.

49,030 households in Manchester received the winter fuel payment for winter 2008-09 (the last year for which information is available).

Notes:

1. Payment figures are rounded to the nearest 10.

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