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House of Lords

Monday, 15 March 2010.

2.30 pm

Prayers—read by the Lord Bishop of Ripon and Leeds.

EU: Financial Assistance to Member States

Question

2.37 pm

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

To ask Her Majesty's Government whether Article 122.2 of the Treaty on the Functioning of the European Union can be used to require them to provide financial assistance to another member state which is "threatened with severe difficulties caused by exceptional circumstances beyond its control".

The Financial Services Secretary to the Treasury (Lord Myners): Any request for financial support in accordance with Article 122.2 would need to satisfy the specific criteria set out in the treaty and would be considered on its individual merits by the ECOFIN Council, where it would be voted on by qualified majority.

Lord Pearson of Rannoch: My Lords, I am grateful to the Minister for that reply. I hope that he will forgive me if I say that illegality under the treaties has never bothered the Eurocrats. Will he give a clear guarantee that the United Kingdom will not, willingly or unwillingly, contribute to any out bail-out of the member states, including the proposed European monetary fund? Will he also confirm whether any such initiative would require a treaty change or whether it could be done by majority voting?

Lord Myners: I do not propose to comment on market speculation about the possibility of a European monetary fund. This is being discussed by the eurozone nations, but the UK is not part of those discussions. However, Article 125 of the treaty is very clear in stating:

"The Union shall not be liable for or assume the commitments of … governments … A Member State shall not be liable for or assume the commitments of governments … of another Member State".

Lord Waddington: Does the Minister agree that it would be grossly unjust if Britain finished up having to pay for the follies not only of those who joined the monetary union but of those who urged Greece's membership by bending the rules? Will he give a guarantee that we will not finish up paying for these follies?

Lord Myners: I think that the House would join me in encouraging Greece in the actions that it is taking to make the necessary fiscal adjustments to ensure that it is in a position to sustain the credibility of its borrowing and, importantly, to comply with the European growth and stability pact.

Lord Dykes: Did the Minister notice the defection on Friday of Edward McMillan-Scott, who joined the Liberal Democrats, emphasising over the weekend that there is no difference between the Conservative Benches and UKIP on European matters? Does he agree that the treaty and the ECOFIN mechanism provide a number of interesting options to help countries—Greece has a tiny GNP—for the whole Union? Above all, is he not perturbed and disturbed that the noble Lord, Lord Pearson, has not dealt with the priority in his party, which is to make sure—

A noble Lord: Too long!

Lord Dykes: The Conservatives should listen just occasionally to these points. Should the noble Lord, Lord Pearson, not make sure that Nigel Farage apologises for his unseemly outburst recently and—

Noble Lords: Too long!

Lord Dykes: Was he not described by another MEP as a lout?

Lord Myners: It really is not necessary for me to comment on the statements made by Mr Farage or another member of UKIP in the European Parliament. I do not think that it made any of us feel very proud to be British to hear that sort of language being used in the European Chamber. We know that there are differences between UKIP and the Conservative Party on matters of Europe, but they are no wider than the differences within the Conservative Party. There will be plenty of opportunities in the remaining four and a half minutes for Members on the Conservative Benches to evidence their support for the European Union.

Lord Forsyth of Drumlean: My Lords, given that the Government are borrowing £1 in every £4 that they spend, would it not be better to take a leaf out of Greece's book rather than to give it advice?

Lord Myners: Rather than giving advice, I said that we were pleased to see the steps that Greece is taking. We have already set out clearly in the Fiscal Responsibility Bill the actions necessary to reduce government spending and the deficit as a percentage of PBR to a sustainable level by halving it in less than four years once economic recovery is established. We are committed to waiting until recovery is firmly established, rather than snuffing it out as the Tories would do by premature cutting of public expenditure at a time when the economy cannot bear that cost.

Lord Tebbit: My Lords—

Lord Stoddart of Swindon: My Lords—

Baroness Royall of Blaisdon: My Lords, I think that we should hear from the noble Lord in the corner.

Lord Stoddart of Swindon: I am sorry to cross the noble Lord, Lord Tebbit—we are great friends normally. Does the Minister recall that, when he answered a

[LORD STODDART OF SWINDON]
Written Question from me on this subject, the Answer was an unequivocal no? However, this afternoon he appears to be equivocating about whether we would be required to bail out Greece in any way. Does he agree that, if Greece had not joined the eurozone, it would have been able to tackle the financial problems in the same way as Britain has?

Lord Myners: My Lords, I do not think that I equivocated at all. I do not think that I in any way deviated from the Answer that I gave to my noble friend in reply to his Written Question. I am sure that a careful reading of *Hansard* would prove that to be the case. As far as a hypothetical question is concerned, I do not propose to answer it.

Lord Tebbit: My Lords—

Lord Anderson of Swansea: My Lords—

Baroness Royall of Blaisdon: My Lords, I think that we have had two from the Benches opposite and I do not think that we have had one from this side.

Lord Anderson of Swansea: My noble friend gave a challenge to the Conservative Party a few moments ago. A substantial part of the four and a half minutes has elapsed and no one from the Conservative Benches has risen to say anything positive about the European Union. Does my noble friend draw any conclusions from that?

Lord Myners: I would like to allow the full seven and a half minutes. I look forward to hearing from the noble Lord, Lord Tebbit.

Lord Tebbit: My Lords, is the noble Lord aware that I acquit him of equivocation? Can he confirm that in his earlier answers he made a statement that would cause us to believe that, should any costs fall on the British taxpayer in respect of the bail-out of Greece, he would forthwith resign?

Lord Myners: We are talking about European Union support and I have been very clear in my response about that; I have been very clear in my response about what the treaty says.

Domestic Violence

Question

2.44 pm

Tabled by ***Lord Morris of Handsworth***

To ask Her Majesty's Government what progress they have made in tackling domestic violence; and how the United Kingdom compares with other countries in that respect.

Lord Dubs: My Lords, on behalf of my noble friend Lord Morris of Handsworth, and with his permission, I beg leave to ask the Question standing in his name on the Order Paper.

The Attorney-General (Baroness Scotland of Asthal): My Lords, we continue to make significant progress in addressing domestic violence, including expansion of specialist domestic violence courts, multi-agency risk assessment conferences and independent domestic violence advisers. The British Crime Survey indicates a 64 per cent decrease in the number of incidents of domestic violence between 1997 and 2008-09. Domestic violence is a volume crime accounting for one in seven—14 per cent—of violent incidents in 2008-09. This represents a 9 percentage point decrease from 1997. Prosecution rates have nearly doubled since the introduction of specialist domestic violence courts, to an average of 72.5 per cent, and continue to rise. I am not aware of any other country achieving such significant outcomes.

Lord Dubs: My Lords, I am grateful to my noble and learned friend for her Answer and congratulate the Government on the enormous progress that they have made in this very difficult area. I put to her one specific and detailed point. Can she confirm that the new domestic violence protection notices, which I believe will be very helpful in this area, will be introduced quickly, at the very least on a pilot basis?

Baroness Scotland of Asthal: My Lords, efforts are being made to introduce these orders as quickly as possible. I assure my noble friend that every opportunity will be made to introduce them quickly.

Lord Thomas of Gresford: The Home Office statistical bulletin published last year showed that, in the 10 years from 1997 to 2008, 361 homicides were perpetrated by partners or ex-partners as opposed to 253 homicides that were perpetrated by a stranger. Clearly, domestic violence leads to homicide. Why is it that, as reported by the Hestia Fund's report last November, support from independent domestic violence advisers, to whom the noble and learned Baroness referred—a service introduced in 2005—is available to less than half the women in this country, given that it has proved to be successful where it has been used?

Baroness Scotland of Asthal: My Lords, we now have more than 700 domestic violence advisers. I tend to refer to them as "divas", because that is what they are—both male and female. They are being rolled out right across the country, on a stage by stage basis. The noble Lord is absolutely right: they make a real difference. Every pilot that we have had demonstrates that difference, which is why we are making sure that there will be independent domestic violence advisers in every corner of our country.

Lord Ashley of Stoke: Is my noble and learned friend aware that some time ago in the House of Commons a group of us got together and decided on a campaign on domestic violence? We had met some of the women concerned, who had been beaten and bruised and shattered and battered. We were appalled at this, so we started a campaign, with some limited success. Is my noble and learned friend aware that the present picture is very unclear? For example, how many people are subject to domestic violence? What provision do we make for them? Do policemen still comment on it as a perk of marriage? Could my noble and learned friend inform us on that?

Baroness Scotland of Asthal: My Lords, unfortunately, one in four women will be subjected to domestic violence at some stage in their lives, with 89 per cent of them subject to repeat victimisation—meaning that one to four additional assaults are on women. We have

made a real difference to that figure; we have almost halved the repeat victimisation figures and have saved £7.5 billion in terms of pain, injury, loss and suffering. That is making a significant difference. We have the lowest level of domestic homicide rates at any time for the past 10 years.

Lord Elystan-Morgan: Does the noble and learned Baroness agree that it is both right and proper that the criminal courts should regard domestic violence as, if anything, more serious than other species of violence, while remembering at all times that all unlawful violence tends to undermine a civilised society?

Baroness Scotland of Asthal: My Lords, I certainly agree that domestic violence should be treated more seriously—noble Lords will know that I have appeared in the Court of Appeal myself in the past few weeks to make that point. The Court of Appeal has been very clear to endorse the sentencing guidelines provision, and in the case that I appeared in the court doubled the sentence and made it clear that domestic violence is wholly unacceptable and will not be tolerated.

Lord Skelmersdale: My Lords, I think that the noble and learned Baroness has told the House that reported domestic violence is the lowest in our history. Can she explain why, according to the Home Office statistical bulletin entitled *Crime in England and Wales*, it has flat-lined since 2005?

Baroness Scotland of Asthal: My Lords, it has not flat-lined. There has been a 64 per cent reduction in domestic violence since 1997, and the trajectory is downwards. I said that the domestic violence homicide rate is the lowest it has been in 10 years.

Baroness Gale: My Lords, does my noble and learned friend agree that many young girls and boys witness domestic violence on a weekly, if not daily, basis and could learn a pattern of inappropriate behaviour? What efforts are being made to ensure that young boys learn that this behaviour is totally unacceptable, and that young girls learn that they can say no and there is no need for them to accept this form of behaviour?

Baroness Scotland of Asthal: My Lords, my noble friend is right: about 750,000 children in our country will see domestic violence in any given year. In February, the Government launched a £2 million campaign to raise awareness in relation to teen dating and teen violence. This is specifically targeted to help our young people understand that domestic violence is unacceptable and they should not participate in it.

Personal Finance: Home Credit Market

Question

2.52 pm

Asked By ***The Lord Bishop of Ripon and Leeds***

To ask Her Majesty's Government what plans they have to cap charges made in the home credit market.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): My Lords, I acknowledge the right reverend Prelate's concern regarding home credit and his desire to protect vulnerable people. Evidence suggests that caps on charges could be detrimental to those on low incomes by risking a contraction in the supply of licensed credit, leading to an increase in the use of loan sharks. The OFT is reviewing the high-cost credit market, including caps on interest rates, and the Government will respond quickly when the results are published.

The Lord Bishop of Ripon and Leeds: My Lords, I am grateful for that Answer and for the promise of thought and action in the future, because a large number of people are driven into deep debt by the home credit market. What action will the Government take to make it easier for credit unions to make loans, as they are a far better way of helping those in debt than home credit can ever be?

Lord Young of Norwood Green: My Lords, I wholeheartedly agree with the right reverend Prelate about credit unions. We strongly support credit unions and we have taken steps to make them more accessible to vulnerable consumers, helping them to move away from high-cost credit. The growth fund has enabled credit unions and CDFIs to make over 230,000 loans worth £100 million to financially excluded people. We have also laid a legislative reform order which will put credit unions in a better position to grow and provide a wider range of services.

Lord Elton: My Lords, I was surprised to hear the Minister dismiss the idea of capping charges, which can be astronomic. Can he tell us what is the highest rate that a person in the clutches of these lenders can be charged? Also, can he give us the Government's definition of "usury"?

Lord Young of Norwood Green: I cannot say what the highest rate is, but it could be something like 500 per cent—they are huge figures. We have looked carefully at introducing interest-rate caps, and we recognise that vulnerable consumers sometimes have little option other than to use high-cost credit products. However, the case for a rate cap is not clear-cut, and is not supported by consumer bodies—even though I have some personal sympathy with the idea. Introducing a cap could lead to lenders withdrawing from the market, denying vulnerable consumers legitimate sources of credit and leaving them no option but to resort to illegal, unlicensed lenders, exposing them to much higher borrowing costs and potentially violent methods for obtaining repayment.

Lord Campbell-Savours: My Lords, how can a loan at a rate of 500 per cent be described as legitimate?

Lord Young of Norwood Green: My Lords, I do not think that I was describing it as legitimate. I was asked to give an estimate of the highest possible figures and I went on to say why we have not yet acted to introduce a rate cap. Research tells us that that would not particularly solve the problem. In countries such as France and Germany, where they have introduced rate caps, more borrowers than in the UK admitted that they or someone in their household had used an illegal lender.

Lord Newby: The Minister referred to violence being used by loan sharks at the bottom end of the market. Is he satisfied that trading standards officers and the police have the resources that they need to crack down on loan sharks where they are known to operate?

Lord Young of Norwood Green: My Lords, since 2004, the Government have committed £16.5 million to tackling illegal money lending. Initially, that covered two pilot areas—Glasgow and Birmingham—but was rolled out in 2007 to cover every region of England as well as Wales and Scotland. The Government will continue to fund an anti-loan-shark team in every region until March 2011.

Lord Elystan-Morgan: My Lords, is it not the case that district and circuit judges have a wide discretion to brand as unconscionable high rates of interest and indeed any other oppressive condition in such a contract? Is it not time that every opportunity should be made to exercise that discretion, which enables courts to clamp down considerably if they are so minded?

Lord Young of Norwood Green: I would not demur from the point made by the noble Lord.

Baroness Hollis of Heigham: Will my noble friend encourage our ministerial colleagues in the Department for Work and Pensions substantially to increase the loan facility of the social fund, which makes credit available to people on lowest incomes, including benefit incomes, at virtually nil rate and reasonable terms of repayment? That would surely be an appropriate way to drive out some of the completely hazardous and disgraceful rates—not just 500 per cent but 1,000 per cent at the lower end of the market.

Lord Young of Norwood Green: I agree with my noble friend. There has already been some increase in the social fund and we will continue to try to ensure that that provides an opportunity for people to ensure that they get loans at a reasonable rate, especially at the vulnerable end of the market.

Lord Clarke of Hampstead: My Lords, in the continuance of support for credit unions, do the Government have any initiatives to assist in their start-up in localities and communities? One of the most difficult periods is in the earliest months of a credit union. It would be a great help to the public-spirited people starting them up if the Government could show some initiative in helping them, perhaps with preferential council tax on the premises that they often have to take at expensive rates in high streets.

Lord Young of Norwood Green: I agree with my noble friend. We have taken some steps, as I said in Answer to the right reverend Prelate, to support credit unions. We have taken steps to make them more accessible to vulnerable consumers. As I said, the growth fund has enabled credit unions and CDFIs to make more than 230,000 loans worth £100 million to financially excluded people. We will do everything we can to assist the establishment of credit unions.

Earl Attlee: My Lords, what is the most extortionate example of a home credit agreement in the Minister's brief?

Lord Young of Norwood Green: I have already answered that, as best as I can. The figures available tell us that rates of interest are extortionate. I have suggested 500 per cent, some have suggested that they are even higher than that and they may be right. These are illegal activities and, with a range of measures, we are doing our best to stamp them out.

Lord Teverson: Is it not the point that even credit card companies, which are supposed to be respectable banks, are still charging extortionate rates in double digits—up to 20 per cent APR—when we have a base rate of only half a per cent? Is that not even more outrageous in the terms of financial services?

Lord Young of Norwood Green: It might be a high rate of interest, but I think if we could reduce it from 500 per cent to the rates the noble Lord suggested, that the people concerned might find that a considerable improvement.

Asylum Seekers: Support Payments

Question

3 pm

Asked By ***Lord Avebury***

To ask Her Majesty's Government whether they will make a statement on the reductions in support payments to asylum seekers while they are awaiting a decision on their application.

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): My Lords, on 5 October 2009, we removed the distinction between rates of asylum support provided to single adults aged 18 to 24 and those aged 25 and over. The new unified rate was based on the lower rate provided to 18 to 24 year-olds, uplifted by 5.2 per cent. The rates paid to children and couples were also increased by 5.2 per cent. We continue to provide the over-25 rate to those who were in receipt of it prior to 5 October 2009, so no individual saw a reduction in their rate of support.

Lord Avebury: Is it still the Government's policy to provide for the essential living needs of asylum seekers awaiting their decisions? Can the Government give the calculation on which the reduction from £42 to £35 for an adult over 25 was based? Would the noble Lord agree that following the consultation on asylum support, the unfettered discretion of the Secretary of State to decide these amounts should be replaced by a process of scrutiny by Parliament to make sure that they are adequate to meet essential living needs?

Lord West of Spithead: My Lords, the reasoning behind the change was that asylum seekers who otherwise would be destitute are given access to rent-free accommodation, plus all utilities paid and council tax included. Therefore, we felt that the difference between being 24 and 25 was nothing—it was exactly the same. All of those things are provided, and this is an addition of money on top of that.

As regards the other point, it is fair to say that it is something that needs to be looked at. I cannot give a promise that we will do that, but I certainly believe it is something that should possibly be looked at.

Lord Skelmersdale: Will the Minister confirm that by the end of next year, 2011, the UK Border Agency aims to conclude 90 per cent of new asylum cases within six months of application—in other words, to try and make this subvention as short as possible? There have been criticisms by the UNHCR and the Centre for Social Justice that six months is far too long. What is the noble Lord's response and what guarantees are in place to ensure that this target will be met?

Lord West of Spithead: My Lords, as the noble Lord says, our aim is that we will conclude all such cases within the six-month target. At the moment we have reached about 60 per cent, and we are marching towards achieving the target. Also, we are doing very well getting rid of the backlog that we had in these cases. It is very important that we look at these people very carefully and accurately, and I think we do that. The tightening of our borders has reduced the number of asylum seekers who are not real asylum seekers—people who are coming here because they want to work here and for other reasons—to about 24,000 in 2009 compared with 84,000 in 2002. This is a dramatic reduction in numbers. We have a very fair system. Real asylum seekers who deserve asylum are looked at very thoroughly and carefully and get asylum in this country. Those who come here for other reasons do not, as is appropriate.

Baroness Falkner of Margravine: My Lords, the Minister, in answering my noble friend Lord Avebury, justified increases for all categories by 5.2 per cent but not for people aged over 25. He did so on the basis that utilities costs did not apply to this category. Do they not apply to other categories as well? In other words, he can uprate for all other categories but this category. His explanation does not work.

Lord West of Spithead: My Lords, perhaps I did not make myself clear. The reasoning behind it was that it made no real difference whether a single asylum seeker, who was already getting his accommodation, council tax and all utilities paid, was 21 or 22, or 26 or 27. It made sense to have that as one amount of money. That was the basis on which it was done.

The Lord Bishop of Ripon and Leeds: My Lords, does the Minister support the sanctuary pledge, promoted by Citizens for Sanctuary and based on the findings of the Independent Asylum Commission, so that people seeking sanctuary can have access to essential support and public services?

Lord West of Spithead: My Lords, I have to admit to being not absolutely au fait with that specific issue. I think I can promise that we always make sure that we look after people who come here to try to gain asylum. We give asylum to genuine asylum seekers. That is something that we can be proud of in this country. I will write to the right reverend Prelate on the specifics of his question.

Lord Foulkes of Cumnock: My Lords, is my noble friend aware of the tragic case of the three failed asylum seekers in Glasgow, who committed suicide? Can he confirm that Glasgow is the only local authority taking on the huge burden and responsibility of looking after asylum seekers in Scotland? Will his department now reopen discussions with other Scottish local authorities to make sure that that responsibility is spread more widely?

Lord West of Spithead: My Lords, I cannot speak in detail on that case because what exactly happened is still being looked at. It is incumbent on all parties to make sure that these things are looked at closely and are dealt with. It is necessary for all of us to look at these things closely to make sure that such horrible events do not happen.

Lord Pearson of Rannoch: My Lords, of the figures given by the noble Lord, how many applicants are successful every year and how many applicants are returned overseas?

Lord West of Spithead: My Lords, I do not have that specific figure at my fingertips, but I think around 13 per cent were being returned and around 30 per cent were successful. Any expert in mathematics can work out that that is not 100 per cent. That is because many of these cases involve dual counting, duplication, wrong names and so on. There are a huge number of those. We have to take into account all of the backlog as well as the people currently coming in. If I have a specific figure for those coming in now, I will write to the noble Lord.

British Airways: Industrial Dispute

Private Notice Question

3.07 pm

Asked By ***Baroness Hanham***

To ask Her Majesty's Government whether they have taken or are considering any urgent action to avert the proposed strike by British Airways cabin crews or its impact on travellers.

The Secretary of State for Transport (Lord Adonis): My Lords, passengers will be seriously inconvenienced if a strike goes ahead. The Prime Minister and I have urged the union to call off the strike and urged both sides to seek to reach an agreement. We continue to do so. However, British Airways is a private company and the resolution of the dispute is a matter for the company and its staff. The Government have no powers to impose a settlement.

Baroness Hanham: My Lords, I thank the Secretary of State for that reply. While we welcome his words and those today of the Prime Minister in roundly condemning Unite's action, we want to know what else can be done to prevent the lives of millions of passengers being badly affected. Is not the real problem over this and the Government's ability to handle it that the Government have turned a blind eye for months to the growing crisis because the Labour Party

[Baroness Hanham]
has been funded by Unite to the tune of more than £11 million since the Prime Minister became leader, and Mr Charlie Whelan—one of the so-called forces of hell identified by the Chancellor of the Exchequer—is political director of Unite and up to his elbows in Labour's general election campaign? Will the Labour Party now stop taking donations from that trade union? Are the Government hampered in taking any action because of these donations?

Lord Adonis: My Lords, the noble Baroness's remarks were well below the level of events. This is an industrial dispute; it is not a political dispute. I deeply regret the attempt by the Conservative Party to politicise the dispute, which will make it so much more difficult for it to be solved in the way we all wish it to be. The Prime Minister's statement this morning could not have been firmer. My statement yesterday could not have been firmer. We wish to see this dispute resolved by negotiations, not by strike action. I continue to call on the union to lift the threat of the strike and get back to the negotiating table.

In respect of arrangements made for passengers who stand to be severely inconvenienced, British Airways has put out a statement setting out how it intends to handle flights if the strike goes ahead. The statement on its website at the moment says:

"We plan to operate all British Airways' flights from London City airport, including long-haul services to New York. From Gatwick, we plan to operate all long-haul services and about 50 per cent of short-haul. From Heathrow, we plan to operate a substantial part of our long-haul and short-haul schedule … We are also in the process of obtaining seats on flights operated by other carriers to enable thousands of customers to fly to their chosen destinations".

BA will give further details later today or tomorrow about precisely which flights will operate and which ones will not. BA is clearly therefore doing all it can to get early information to passengers. In this House, we should do all we can to urge both sides to reach a settlement so the strike does not take place.

Lord Bradshaw: My Lords, I thank the Secretary of State. We support the statement he made over the weekend which has been endorsed by his right honourable friend the Prime Minister today. Reports in the press indicate that the RMT union is planning serious disruption on the railways at Easter. This sort of action both in British Airways and on the railway is an attempt to blackmail employers, using the travelling public as a weapon. I know the difficulties which exist with private companies but I want the Secretary of State to exert every effort possible to ensure that disputes such as these are dealt with through arbitration rather than through the unacceptable measures that the unions are taking. These are not down-trodden and exploited workers. Many of them are among the better paid people. I really think that they and their unions have a duty to provide the public with the service they pay for.

Lord Adonis: My Lords, I entirely agree with the noble Lord that passengers should not be held to ransom in seeking to resolve industrial disputes. That applies to the railways as much as to the airlines.

Lord Clinton-Davis: My Lords, I speak as the president of BALPA. Does my noble friend agree that the Government should use their influence on both sides so that they abandon their preconceived views which are not helpful? It is imperative that they engage urgently in talks designed to resolve this absolutely stupid dispute.

Lord Adonis: My Lords, I entirely agree with my noble friend on the importance of both sides talking. They were close to a settlement last Thursday. If they could return to the negotiating table it might well be possible to avert this strike. I urge them to do so immediately.

Baroness Trumpington: My Lords, I declare an interest as a past chairman of the Air Transport Users Council. What part has the present Air Transport Users Council played in this strike?

Lord Adonis: My Lords, it has been urging that flights should continue. I am not sure that it has any locus to help bring the sides together or enable them to reach an agreement but I know it has spoken up strongly on behalf of the interests of passengers.

Lord Ryder of Wensum: My Lords, can the Minister explain what the Unite union is doing in its dispute with British Airways that is inconsistent with its overall responsibilities as a trade union and duties to its members?

Lord Adonis: My Lords, the question is whether it is possible to reach a settlement which meets the concerns of the unions without needing strike action. The two sides came very close indeed to such a settlement last Thursday. If they return to the negotiating table there is every reason to believe that it would be possible for them to reach a settlement which meets the interests of the members of the union without requiring strike action and the massive inconvenience and disruption that will be caused to the travelling public.

Lord Richard: My Lords, my noble friend has made his position and that of the Government perfectly clear as regards their attitude towards the union. Do the Government feel that British Airways should now retable the proposals it tabled last week and withdrew? I may be wrong but I understand that those proposals got within a whisker of being agreed by both sides. Should we not therefore be pushing British Airways, as well as the union, to do something?

Lord Adonis: My Lords, if both sides come together for negotiations, I am sure that the offer that was on the table last Thursday will be one of the matters that they wish to discuss. However, they need to get round the table and start negotiating seriously before that is possible.

Lord Hamilton of Epsom: My Lords, does not the fact that Unite is such a major donor to the Labour Party, which is very significant in the run-up to the imminent election, make it very difficult for the Government to condemn the trade union in the way that perhaps they should?

Lord Adonis: My Lords, if I may say so, that is a ridiculous question. It is equivalent to saying that, because some noble Lords opposite give very large sums of money to the Conservative Party, the Conservative Party should not be regarded as a legitimate force in this House. There is a proper system in place for party funding; everything is done within the law; and, as I said, this is an industrial, not a political, dispute.

Lord Stoddart of Swindon: My Lords, is it not better that the parties be allowed to settle their dispute in the proper way? The TUC has already been involved, as is perfectly proper, but surely it does not help if the dispute becomes involved in party politics. As the Prime Minister did this morning, we should be urging the parties to get together to have realistic negotiations, leading, it is to be hoped, to the resolution of a very difficult problem.

Lord Adonis: My Lords, that is precisely what the Prime Minister and I are urging both sides to do.

House of Lords: Members' Conduct and Expenses

Statement

3.16 pm

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My Lords, with the leave of the House, I wish to make a Statement.

Last year, when the House came under some scrutiny in relation to both Members' conduct and Members' expenses, I undertook to keep the House informed about major and relevant developments in this area. That is the purpose of my Statement today.

Although uninformed criticism seeks to paint this House as resistant to change, this House has embraced sensible change, including the Life Peerages Act 1958, proposed by the party opposite, and the House of Lords Act 1999, proposed by this side of the House. I can confirm the Government's intention to bring forward proposals for further reform of your Lordships' House.

In relation to financial support for Members of this House, a week today the House will debate proposals from the House Committee for long-term and permanent reform of the designation and declaration of Members' principal residences. The proposals are drawn from the work of the all-party ad hoc group established by your Lordships' House and chaired by the noble Lord, Lord Wakeham, following a review of financial support for Members of this House carried out by the independent Senior Salaries Review Body. The ad hoc group has been dealing with some very difficult issues and is now considering further matters referred to it by the leaders in this House and by the Clerk of the Parliaments. As a result, the group's examination of these issues is unlikely to be available until after the forthcoming general election. However, in advance of that, the House will have before it next week a rigorous definition of what constitutes a Member's primary residence and associated requirements on declaration.

As the report from the House Committee putting forward the new proposals states, a main weakness of the current system has been the inadequacy of the definition of what constitutes a Member's principal residence outside London. The proposals from the House Committee detail new arrangements for the future but, at the same time, the Clerk of the Parliaments has been considering a number of complaints against Members of the House under the current arrangements for Members' expenses, which the new proposals will replace. As part of his consideration of these complaints, the Clerk of the Parliaments set out some general principles for what the minimum threshold of residence might be and he sought the endorsement of the House Committee for these principles, including what the minimum frequency of stays in a Member's main residence should be. The criteria that he proposed were endorsed by the full House Committee on 26 January on behalf of the whole House. It is these criteria that were cited by the Director of Public Prosecutions last week in relation to a decision that he had taken in respect of a Member of this House following an investigation by the Metropolitan Police. There has been considerable media criticism following the decision by the DPP, including unfair and unjust criticism of the Clerk of the Parliaments in this House.

Noble Lords: Hear, hear.

Baroness Royall of Blaisdon: My Lords, I deplore the media criticism of the Clerk of the Parliaments, who is a fine, conscientious and distinguished public servant.

The changes that we will be considering next week will replace and supersede any and all previous definitions or criteria and will give this House a clear and robust system. I believe that they are valuable and important improvements and I will be strongly recommending them to the House. The systems that I hope we will have in place will be reinforced by the decision before this House tomorrow on new guidance for the code of conduct for Members of the House, which the House approved last year following the report of the Leader's Group chaired by the noble and right reverend Lord, Lord Eames. I look forward to the House approving the new guidance tomorrow.

I know that these are difficult issues. They are issues that make many Members, including me, feel uncomfortable. However, just as we took clear and decisive action last year on issues of conduct, which led to the suspension, unprecedented in modern times, of Members of this House, so, too, we are now taking clear and decisive action on the issues surrounding Members' principal residences. At all stages, all sides of this House have acted in concert and in agreement. I thank the leaders of the principal political parties in this House and the Convenor of the Cross Benches for their positive, constructive and consensual support. I undertake again to continue to keep this House informed of developments and I look forward to the important steps that I hope the House will now take.

3.21 pm

Lord Strathclyde: My Lords, I thank the noble Baroness for making that Statement and keeping the House informed. We face an enormous issue of public

[LORD STRATHCLYDE]
confidence in the House as a result of the actions—and perceived actions—of a few. It is a terrible day when the reputation of your Lordships' House is dragged through the mire. The overwhelming majority of Members of this House are honourable and act as such. I support the noble Baroness in the programme of action that she has outlined, which also included last year's unprecedented exclusion of two Peers found not to have acted in accordance with the code of conduct.

We will, indeed, debate a new code of conduct tomorrow, which I trust will be supported. I also support the debate that we shall have next week on the new proposed definition of a main residence, although I regret that we will be unable to introduce a new regime for expenses this side of a general election, albeit for reasons that I understand. The expenses system that we currently have was recommended not by the House but by the SSRB. As noble Lords know, we on this side proposed a system of reform of expenses that would have swept away the regime of second homes and shut down scope for abuse, but the SSRB, in its recent report, did not support it. I therefore do not accept that all wisdom on this subject lies outside this House and I reject the widespread attacks on your Lordships' House.

When abuse was uncovered, we moved with speed to put matters right. We must of course pay heed to public indignation and apologise for the causes, but the public should not underestimate the anger that most Peers—in what, let it not be forgotten, is an unpaid House—will feel against those guilty of abusing the trust of the House. There is a limit to what further comment I can make. Some cases will now be brought before the sub-committee on interests, where they must be heard with fairness but with the utmost rigour. I join the noble Baroness in rejecting the public attacks on the Clerk of the Parliaments, an outstanding servant of this House and a public official of the highest integrity. The Clerk of the Parliaments has, I know, tolerated no abuse; indeed, it was he who advised the House that it could revive its ancient powers to exclude Members guilty of misconduct.

As a lay man, not a lawyer, I find it hard to see how a jury would not have taken a view on the whole range of factors on what constitutes a main residence, rather than a single point that, taken out of context, has received such publicity. I think that most of us know what constitutes a home and what does not. There will be grey areas, especially in a part-time, unpaid House, many of whose Members lead very different lives in recess. However, I venture to conclude with this: whatever the rights and wrongs in the small print, noble Lords who may have abused the system in any way should now examine their consciences and consider making amends for any profit that they have made in relation to what they will know, in their own minds, was not a main residence. I thank the noble Baroness the Leader of the House for keeping us informed of these matters.

3.24 pm

Lord McNally: My Lords, I associate myself and these Benches with both the Statement of the Leader of the House and the remarks of the Leader of the Opposition. This House has been well served by the fact that there has been no attempt by either the government or opposition sides to get into a nuclear arms race of indignation. Instead, we have addressed the difficult problem of moving from what I once described as a vaguely drawn and lightly policed system to a more precise and fit-for purpose system, which we have done with due concern for the issues at stake. We have been well served by the Leader of the House, the Lord Speaker and the Clerk of the Parliaments. I thought that the attacks on him were outrageous; the House has already indicated its feeling about those unworthy statements.

3.25 pm

Baroness D'Souza: I wholly support the Statement of the Leader of the House and the actions that have been and will be taken. I also look forward very much to the debates on the reports from the Privileges Committee and the House Committee that will take place this week and next week. I look forward to contributing at that time.

Sunbeds (Regulation) Bill

First Reading

3.26 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Child Trust Funds (Amendment) Regulations 2010

Motion to Approve

3.26 pm

Moved By ***Lord Myners***

That the draft regulations laid before the House on 20 January be approved.

Relevant Document: 6th Report from the Joint Committee on Statutory Instruments. Considered in Grand Committee on 8 March.

Motion agreed.

Health and Social Care Act 2008 (Regulated Activities) Regulations 2010

Health and Social Care Act 2008 (Consequential Amendments No. 2) Order 2010

Tobacco Advertising and Promotion (Display of Prices) (England) Regulations 2010

Protection from Tobacco (Sales from Vending Machines) (England) Regulations 2010

Motions to Approve

3.27 pm

Moved By ***Baroness Thornton***

That the draft order and regulations laid before the House on 19 and 27 January and 2 February be approved.

Relevant Documents: 7th and 8th Reports from the Joint Committee on Statutory Instruments and 11th Report from the Merits Committee. Considered in Grand Committee on 8 March.

Motions agreed.

Building Societies (Insolvency and Special Administration) (Amendment) Order 2010

Motion to Refer to Grand Committee

3.27 pm

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

That the draft order be referred to a Grand Committee.

Motion agreed.

Building Societies (Financial Assistance) Order 2010

Motion to Refer to Grand Committee

3.27 pm

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

That the draft order be referred to a Grand Committee.

Motion agreed.

Digital Economy Bill [HL]

Third Reading

3.28 pm

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My Lords, before we begin the debate it may be helpful for me to say a few words about Third Reading amendments. In line with the procedure agreed by the House, the Public Bill Office advised the usual channels on Friday that two amendments on the Marshalled List for Third Reading today fall outside the guidance in the *Companion* on Third Reading amendments. On the basis of that advice, the usual channels recommend that Amendment 1, in the name of the noble Earl, Lord Erroll, and Amendment 6 in the names of the noble Earl, Lord Erroll, and the noble Lord, Lord Whitty, should not be moved. As ever, this is ultimately a matter for the House as a whole to decide.

Amendment 1 not moved.

Clause 4 : Obligation to notify subscribers of reported infringements

Amendment 2

Moved by ***Lord Whitty***

2: Clause 4, page 7, line 40, after "subscriber" insert "which have been the subject of notifications sent after the effective date of an order made by the Secretary of State under section 124H"

Lord Whitty: My Lords, I am allowed to move Amendment 2, and in doing so I declare my usual interest as chair of Consumer Focus.

The amendment, which is fairly straightforward, is intended to ensure that notification of apparent breach of copyright by subscribers in a notification letter should not count towards any subsequent imposition of technical measures until after Parliament has decided that we should move to technical measures. However, I need to put this in a rather wider context. Those of your Lordships who have been present during earlier stages of this debate will know that I am not enamoured of Clauses 4 to 18, both from my concern as a consumer representative and from my concern about human rights. The Minister may be pleased to hear that I owe him an apology in relation to one aspect of the Bill where I misunderstood the intention. However, in general, although the Government have ameliorated some aspects of the Bill in the course of the Committee and Report stages, the basic problems still remain. So although this is a specific amendment, it goes to the heart of the way in which the Government propose to deal with the issue of online copyright infringement.

3.30 pm

I regret to say that during the course of our consideration of the Bill, we have seen one of the worst examples in my memory of the political parties being captured by a producer interest. That applies not only to the Government and the bringing forward of the Bill, but to the opposition Front Benches as well. Indeed, we had the extraordinary position of the Liberal Democrat Front Bench, including the noble Lord, Lord Clement-Jones, who I know to be a decent and liberal chap in most of his political endeavour, bringing forward an amendment—which is now Clause 18—that is actually more draconian than the Government's Clause 17. I hope that at some point, when we reach that stage, they will recognise the error of their ways.

Unfortunately, in terms of the balance of debate within this House, we seem to have a near unanimous position in support of the government proposals. Apart from the noble Earl, Lord Erroll, the noble Baroness, Lady Miller, myself and one or two others who have appeared maverick in this debate, this House seems to have accepted the wisdom of going through a whole range of changes in our approach both to the law and to the way in which our digital media operate. We have imposed police powers on ISPs which are reluctant to accept them. We have threatened several millions of our citizens with exclusion from the internet by administrative decree, with dubious means of identifying who was actually the perpetrator of the alleged

[LORD WHITTY]

infringement. We have seen the Government, putatively this House and other political parties backing protectionism rather than competition and innovation, moving towards an exclusion of people from digital access rather than the inclusion that the rest of the Bill—which I fully support—provides. It has landed us with a pretty much unenforceable law that will get a penny back to the rights owners whom the legislation was intended to support.

Out there, however, there is no unanimity at all. There is a very widespread opposition to the Bill from individuals who feel threatened, from parents who are concerned that measures will be taken against them because of their children's use of the internet and from employers who are worried about the same thing in relation to their staff. Surveys conducted by my organisation, Consumer Focus, indicate that 75 per cent of the population do not understand what is lawful and unlawful in this context and that a rather higher proportion, when told what is lawful and unlawful, do not support those laws.

There are alternative ways of moving to a different system of accessing copyright material on the internet. Lawful systems of file-sharing exist in the music industry and elsewhere; it is just that they have a very low recognition by the public. The survey that we conducted showed that, of the 20 such systems that are or have been in operation, none has received an awareness level above single figures in percentage terms. Yet, ultimately, at various points in this debate, we have all agreed that a move to lawful systems of file-sharing is the aim of this measure.

Anxieties about the throttling or suspension of their internet connections have been expressed by people who will not be perpetrators. This includes not only businesses and parents, as I mentioned, but also the hotel trade—which provides access to the internet as part of its services to guests—libraries, colleges and other institutions whose students use the internet and wi-fi facilities. The Government have sort of acknowledged those anxieties but they have done nothing about changing the Bill to recognise them. They say that it will all be taken care of in the wash, as Ofcom develops its code with the industry, and that all these things will be clarified and no one needs to be anxious about them.

However, despite a few ameliorations, this is still a bad Bill. It is bad for the digital rights holders to press their interests in this way, when there are alternatives, and it is bad for the Government to risk alienation of a very significant part of the population by enforcing these measures. My noble friend Lord Puttnam—who probably takes a different view from me in terms of supporting the digital rights owners—said a very wise thing earlier in the debate, namely that the Bill would clearly have benefited greatly from pre-legislative scrutiny in which we could have looked at all the options.

Instead we have a Bill that does virtually nothing to encourage ways of bringing together the rights holders—the ISPs and lawful file-sharing operators—so that new business models could be developed. It could provide to the punters, and certainly to the casual users who are not making any money out of their copyright infringement, the ability to access cheaply, freely and flexibly through the new business models provided by those systems.

Surely that is the road that we should go down, to move from the impossibility of pursuing millions of people under these arrangements to a situation where there are lawful means of gaining access and the only people who will continue to be accused of infringement of copyright are those who are making money out of it or who are such mega-multiple-serial offenders that some punitive measures are necessary.

If we are to move to a more positive arrangement where most file-sharing is done lawfully, then an educational process will have to take place. All sides of the House have recognised that. My noble friend the Minister, like others, has said that stage 1 is an educational stage. However, it is not simply an educational stage. It is the beginning of measures whereby a subscriber can be designated and accused of an apparent infringement of copyright, which can eventually lead, through proceedings under the Bill, to a situation where draconian measures to throttle, cut off or suspend digital access are imposed.

As I said, I have an apology to make to the Minister. I misunderstood the provision on the second-tier appeals procedure, which I thought was another part of the body to be set up by Ofcom; in fact it is a separate body and has a quasi-judicial function. However, I am not entirely clear that that meets all the requirements of European law on the telecoms package. Even if it does, it does not alter the fact that, at the beginning of this process, an administrative body will be threatening and imposing a sanction that is not subject to due process and where the subscriber is effectively regarded as guilty until proved innocent.

I know that the Government and others in this House do not accept that, but that is how it will seem to millions of subscribers. The Government would have a more positive story to tell were they to accept that stage 1 is genuinely an educational stage and to say that they will use it not only to inform people of the copyright situation but to encourage the various parties to get together to develop and provide lawful means of accessing copyright material. That period should be tried for at least 18 months or a year after the Bill is passed and the code is drawn up. We will in practice need a somewhat longer period to assess that, but that at least gives a clear-cut distinction between stage 1, which is educative, and a decision by affirmative resolution of Parliament that we should move to stage 2, with all the penalties involved.

This amendment therefore says that those notifications to individual subscribers, who may or may not be the actual perpetrators, should not count towards the accrued total which would trigger the sanctions in stage 2—the technical measures by which we mean cutting back or cutting off access to the internet—until Parliament has decided that that is necessary because we have not made sufficient progress towards reducing unlawful copyright infringement or developing lawful means of accessing copyright material. Until Parliament has said that, no notification should count towards a subsequent penalty. After that point—when Parliament has decided on an affirmative resolution based on the

Secretary of State's assessment of the situation, which will itself be based on a detailed Ofcom report—if we need to move to technical measures, any notification letter should count.

This amendment will ensure that they do not count at the first stage and that they will be regarded, as my noble friend the Minister has said, as educational and informative. That would remove many anxieties among the public and it would certainly remove a significant number of my own. I have put this in a wider context which needs to be borne in mind, partly because this is the last opportunity to do so—and I promise not to speak at great length to subsequent amendments. The Government have an opportunity, if they were to accept this amendment, of allaying some of the anxieties, including, to some degree, some of my own. That would put this section of the Bill on a much more positive note. I would therefore hope, and expect, that my noble friend the Minister will be able to accept the amendment. I beg to move.

Lord Razzall: My Lords, I did not intend to speak on this amendment, but I cannot allow the remarks of the noble Lord, Lord Whitty, or rather the chairman of Consumer Focus, whose interests he is clearly representing here today—

Lord Whitty: My remarks represent my personal view. In fact, Consumer Focus may be slightly more conciliatory, so I ask the noble Lord to withdraw that remark.

Lord Razzall: I think the noble Lord, Lord Whitty, should withdraw the remarks he made about my noble friend Lord Clement-Jones. A number of us have spent many years trying to wrestle with this problem. I understand that the noble Lord, Lord Whitty, has obviously come to it relatively late.

The Government have engaged in an extensive consultation to try to find the right balance between the rights of the copyright owners and the rights of the consumer. What concerns me about the comments of the noble Lord, Lord Whitty, is that a number of the things he has said about this Bill are simply not true. I am sure that the Minister will deal with that.

What worries me more particularly, apart from the intention of delaying the provisions, is that despite the fact there has been extensive consultation and significant movements by the Government to try to get the right balance between the rights of the copyright owner and the rights of the consumer, no proposal comes from the noble Lord, Lord Whitty, as to how the interests of the copyright owner should be protected.

It is a perfectly sustainable position that a lot of people take that everything on the internet should be free and that everyone should be allowed to download for free; most 18 to 23 year-olds take that view. I completely share the noble Lord's view that this requires a significant educational process. The creative industries have now spent three, four, five or six years endeavouring to get a structure in place that will get the right balance between the interests of the copyright owners and the rights of the consumer, and we cannot suddenly now say, "Let us tear that up and start again". That is essentially what this amendment says. I am afraid we cannot support it from these Benches.

3.45 pm

Lord Puttnam: My Lords, I very much hope that this is the last time I will speak in what has been a very protracted series of debates seeing this Bill through to its passage down the corridor. I find myself in a very odd, paradoxical situation. The noble Lord, Lord Whitty, is right: I bow to no one in my defence of the rights of legitimate copyright owners and also in maintaining that—in my judgment—the creative industries will eventually atrophy unless adequate protections are created and a respect for copyright is developed.

Having said that, I disagree with the noble Lord, Lord Razzall. I do not believe that enough has been done, or enough intelligence brought to bear, in creating a serious balance between what I would refer to as free-use protocols and copyright protection. The ball was dropped badly early on by the failure of the Government to understand that, in exchange for a firm commitment to protect copyright, a review should have been undertaken of those areas in which copyright could be freed up. We have done a pretty good job in this House in the area of orphan works, but there are many other areas where copyright unnecessarily prohibits educational use as well as any number of other uses—clip rights, for example, in the film industry. A trade-off should have been orchestrated early on between firm protection on the one hand, and optimum free use as advocated by the Creative Commons movement on the other. That was the first missed opportunity.

As to the other missed opportunity—I would be grateful if the Minister would help me on this—why on earth were the ISPs early on allowed to wriggle off the hook of their obligations as part and parcel of the value chain by which copyright material creates revenues and reaches customers? What kind of strange double think was it that allowed the ISPs to believe they were not part of that value chain? I used an analogy on the radio the other day which is not unreasonable: it is rather like the owners of chemist shops deciding that they have no responsibility for what prescription drugs are or are not sold over their counters. Every chemist understands that if you open a chemist's shop you immediately take on a series of clear responsibilities—not only health and safety responsibilities but responsibilities for the products you sell. How was it that the ISPs managed to convince the Government that they were not part of a legitimate value chain with all the responsibilities that come with it? This is what puzzles me most. I sincerely believe that it lies at the core of the problems with the Bill, and I would be grateful if, at this very late stage of Third Reading, the Minister could explain to the House exactly how this occurred.

Baroness Miller of Chilthorne Domer: My Lords, the disquiets I had at Second Reading have not been dissipated, and I join the noble Lord, Lord Whitty, in many of his remarks. My disappointment is that normally this House is assiduous in making sure that due process is seen to be done in Bills. The fact that we are not going to be allowed to debate and come to a conclusion on Amendment 6 reflects poorly on the Government, but I accept that the usual channels have no doubt agreed that it will not be debated. However, the amendment encapsulates some of the principles that the noble Lord, Lord Whitty, was talking about. The

[Baroness Miller of Chilthorne Domer]
Bill refers to a study of the efficacy of techniques, but this House will not be allowed to take a view on whether an economic and social impact assessment should be undertaken. That is the heart of the matter.

People like me who worry about what is in the Bill have never disputed that the creative industries need protection—I thoroughly agree that they do. However, I have felt all the way through the Bill that there are not sufficient checks and balances to protect the consumer. In particular, when a person, an institution, an internet café or a university is accused of transgressing these rules, it will hit the individual very hard. How will they disprove the accusations? They will have to employ a computer expert to counter the argument but there will not be legal aid for this; the money will not come forth. We should have debated these issues in this House. I believe that we would have come to the conclusion that we should protect the consumer better.

The real problem is that the other House also will not be able to come to any conclusion about this issue; its Members will get only a Second Reading. They will not have a chance to put amendments forward on behalf of their constituents to make the Bill better balanced. Given the imminent election, it is incumbent on the Government to include the checks, balances and concessions for which we have asked.

The Earl of Erroll: My Lords, I wish to make a couple of remarks, as I have my name down to this amendment. I thank the Minister for being so patient with us for raising so many points as we went round and round certain issues several times, seeking different ways of trying to get consumer protection. I know that this has been a difficult time for the Minister. I am sorry when he half rises to his feet and then has to sit down again. I wondered whether we should excuse him from doing so because of his hip. Perhaps he could just stand back from the Dispatch Box if we interrupt his speech and we could—in our courteous way—allow him a slight degree of latitude as regards our conventions.

This Bill is supposed to be based on the *Digital Britain* report produced by the noble Lord, Lord Carter, which encapsulated a vision of a future based on a digital economy. However, it contained considerable consumer focus; this Bill does not. A couple of issues that helped the consumer could have been included, but unfortunately I received notice earlier this afternoon that they lay outside the rigorously rigid rules for Third Reading, and therefore the usual channels had disallowed them. I had notified the Bill team of them because they might have helped to clarify some points for the general public, who will be watching this debate with interest. It may interest your Lordships to know that "Panorama", at 8.30 pm tonight—

Lord Williams of Elvel: My Lords, I apologise for intervening, but the noble Earl must remember that we have a *Companion to the Standing Orders*, which is agreed by the whole House. It is not just a question of the Government or the usual channels; Third Reading amendments are subject to the guidance which has been agreed by the whole House. It is not a matter for the Government at all.

The Earl of Erroll: The noble Lord has not seen my e-mail in which I argued that I thought the issues were just within the bounds for various reasons. However, we should not be debating that now, for the very reasons that the noble Lord has just given. That issue might be worth taking up because they were different in emphasis. My Amendment 6, which has been refused, was not the same as the others, which offered enforceable protections to the consumer. Amendment 6 sought purely to produce a report and impact assessment for the same class of people through Ofcom. It did not have the same force as the previous amendments that we had tabled. Perhaps that is not allowable; perhaps it is. It is the sort of debate that this House should have. The matter should not be decided by just a small cabal of Front-Benchers.

The real trouble with the Bill is that it is highly unusual. We should not pass legislation in this way. The Bill is entirely a product of your Lordships' House. It will go to another place and will receive a Second Reading. One is told that no amendments will be permitted to it. Many Members of the other place are extremely annoyed about that and are very upset that the Bill cannot be amended at all. The form in which the Bill leaves this place is that in which it will pass into law. Therefore, our rules at Third Reading should be much less rigid considering that this is the last time that amendments can be put down. It is a very dangerous way in which to pass legislation; in fact, it is unethical. As I have said before, if we were directors of a company we would probably be locked up for failing to undertake proper governance. Parliament should not behave in this way.

As I say, noble Lords may be interested to hear that "Panorama" at 8.30 pm tonight on BBC1 will be devoted entirely to this Bill. It will be interested to see what balance is struck in the arguments. I have no idea what is in the programme—

Lord Fowler: Watch Sky.

The Earl of Erroll: The channel is 101 on my Sky machine, and it is at 8.30 pm tonight, if that is of any assistance to the noble Lord.

There has been an escalation in notifications being sent out—without this Bill being in place—from various law firms, particularly American law firms. If these notifications are already piling up and are counted from day one, some people will have a huge handicap at the starting blocks. This amendment is essential as it would enable us to say, "We are drawing a line. We now have new legislation. We are going to move forward under the rules of this legislation. Therefore, notifications issued under previous legislation that might have existed will not count towards the various measures that might be introduced under this legislation". It is entirely sensible to have a proper start point. I would be very surprised if anyone wanted to turn this down.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): My Lords, I do not believe that we should accept the amendment. It is very clear under new Section 124G(2) of the Communications

Act 2003, inserted by Clause 10, that technical obligations can apply only in relation to relevant subscribers, and relevant subscribers are those who are included on a copyright infringement list. It would not be sensible, therefore, to suggest that copyright infringement reports produced prior to the order imposing technical measures should essentially be set aside; they are the basis on which the subscriber is "relevant".

It was neither helpful nor even fair of my noble friend Lord Whitty to suggest that everybody else was captured by external interests. We have had long, serious debates on these issues which have examined every facet of the legislation. It is untrue that the Government are backing protectionism as opposed to innovation; indeed, we have taken the opportunity time and again to say that there is a duty on copyright holders to produce legal means of access. My noble friend pointed to a poll indicating that 75 per cent of the population do not understand what is lawful and what is not. About that, I would say that it depends how you put the question.

My noble friend needs to make up his mind about stage 1. First, he said that you were more or less found guilty at stage 1; the next minute, he described it as an educational stage. He is right in the latter description: it is of course educational. Moving towards any possible sanctions under technical measures would be a long process. I shall not reply to every nuance of my noble friend's argument, because we have debated the points time and again. Unfortunately, we must agree to differ.

My noble friend Lord Puttnam said that we had missed opportunities. He may be right, but we have tried as hard as we can. The Government have recently published a copyright strategy which looks at copyright broadly and the balance between owners, users and consumers at a European level. It may not be the total answer to what my noble friend requested. We perhaps do not have time today fully to debate the role of ISPs, although we will perhaps touch on it in later clauses. Attempts have been made to encourage ISPs to recognise that they have a role to play, certainly in relation to pornographic and paedophile material, where they have been expected to take action.

The noble Baroness, Lady Miller, again said that she was disappointed. Her analysis was similar to that of noble friend Lord Whitty. She does not agree with the direction that we have chosen to take. I am afraid that it is not possible to satisfy her in those circumstances.

I thank the noble Earl, Lord Erroll, for his concern. I assure him that I can rise to the occasion today.

When it was said that we had not given the matter enough scrutiny, I could not help but wryly reflect that a 48-clause Bill that has had about 430 amendments tabled to it seems to me a fair amount of scrutiny. If we took the time and trouble to look at how many times we have debated the same issue, I think that we would refute that charge.

I return to the amendment. As I have said, it is not a question of imposing technical measures immediately. We have already made a number of amendments, one of which included a year's interval before such measures could even be considered. However, this does not mean that everybody who thus qualifies as a relevant subscriber will suddenly find themselves subject to a technical measure once an order has been made. New Section 124G(2), in Clause 10, defines a "technical obligation" as,

"a technical measure against some or all relevant subscribers".

This should be read in conjunction with new Section 124H(3) and (4) in Clause 11, which say that the order must specify the date from which the technical obligation should have effect and the criteria for taking the measure.

4 pm

This gives the Secretary of State the flexibility to make an order that can be targeted—ensuring that those posing most threat can be tackled and those who may perhaps have been unfortunate or have changed their behaviour will be outside such technical measures. In short, while it is clear that copyright infringement reports produced prior to any order being made under Clause 11 remain relevant in terms of whether a subscriber is on a copyright infringement list and is therefore a relevant subscriber, there is sufficient flexibility in the system to ensure that any technical measures are imposed fairly and with fair warning. On this basis I hope that the noble Lord can feel able to withdraw this amendment.

Lord Whitty: My Lords, I am obviously disappointed in that. This Bill, as my noble friend recognises despite his calm and patient dealing with the long scrutiny we have gone through, makes me quite angry. It is true, as the noble Lord, Lord Razzall, said that there was a lot of consultation prior to the publication of the Bill when this issue was being discussed. However, the representations made by consumer interests, educational interests, the ISPs and many others were not taken into account.

For the sake of future peace and harmony and good relations, I withdraw any implication that individuals are captured by producers. If people interpreted that personally, I apologise. It is nevertheless the case that the views, particularly of the music industry, have been pressurising Government over the past few years throughout this whole process. When the Government modified their position slightly, following the report of the noble Lord, Lord Carter, the pressure came back on and it was tightened up again.

I think there is an imbalance in this Bill. The amendment was not intended to destroy the structure of the Bill—I do not agree with the structure of the Bill but we have debated all that. It was intended to say that the first stage, which the Government themselves have said again today is an educational stage, should indeed be an educational stage. It should not be the start of a process that could end in very substantial sanctions. That would seem to me, if you were starting from scratch, a very sensible way of proceeding. As the Bill stands, it is only an 18-month delay that I am talking about and that is already built into the Bill. It would simply be that when you are sending notification letters to subscribers, who may be utterly unaware that any infringement has taken place, the letters should not accumulate until this House, and this Parliament, have decided that technical measures—namely, heavy sanctions—are actually required.

[LORD WHITTY]

In normal, calmer circumstances certain Members of the House at least may well have accepted that argument. I certainly think that it would have been a major argument in another place. Given the present circumstances, I felt it necessary to make my case for this relatively minor amendment which accepts the general structure the Government have now put in place to ensure that we did in fact get a positive outcome; that is, a lawful system under which consumers can access copyright material. I agree with the noble Lord, Lord Razzall, that digital rights holders have rights in the digital system. We want some return to them but actually this system does not give any return to rights holders. Closing down a significant number of subscribers does not mean that any money whatever goes to the creative artists. The only people who will immediately benefit from it are perhaps a few well-heeled organisations and their rather unscrupulous lawyers. It is not beyond imagination that those who are hit by this sanction will immediately go out and buy a copy of the original work. Quite where the £200 million that the Government expect to go back to digital rights holders emerges from this process, I am not clear—whereas, if we move to what my noble friend Lord Puttnam described, with the ISPs, file-sharing systems and digital rights holders getting together to create a lawful system, which would be accessible, a guaranteed income would go to the digital rights holders. This Bill does not guarantee income for the digital rights holders.

As we go down the line, that may become more apparent. I am hoping that in the process of the code with Ofcom, some of these things may be clarified in a direction that I can support. At the moment, I cannot support this Bill. I recognise, from the opinions expressed around the House, that I should not break the habit of a lifetime and ask the House to vote against the Government. However, I deplore the Bill and am afraid that there is nothing that the noble Lord can say—or my noble friend the Minister, who I hope soon recovers from his affliction. I apologise if this Bill has made his affliction worse and commend his patience and that of his colleagues in dealing with this and other legislation. However, nothing will convince me that this is right. I suspect that, further down the line, we will find that it is horribly wrong and we will be back here in three or four years' time, trying to find some other way of dealing with this situation. Until that point, I withdraw my amendment.

Amendment 2 withdrawn.

Clause 8 : Contents of initial obligations code

Amendment 3

Moved by ***Lord Young of Norwood Green***

3: Clause 8, page 12, line 12, leave out from "relate" to end of line 13

Lord Young of Norwood Green: My Lords, I am proposing this group of seven amendments, which are needed for the purpose of tidying up the Bill rather than for any new policy purpose. For example, the first amendment, which removes text from new Section 124E(5) in Clause 8 is because it is otiose for paragraph (d) of that subsection to cover "any other matter" when the opening words of the subsection already refer to "any matter" at page 12, line 8. All the other amendments do a similar tidying up job.

It is inevitable, given the number and the pace of the amendments that we considered at Report, and following a very full debate in Committee, that these sorts of things are picked up later. While they do not effect any policy changes, it helps the readability and understanding of the Bill if we put these things right when we spot them. On that basis, I beg to move.

Amendment 3 agreed.

Amendment 4

Moved by ***Lord Young of Norwood Green***

4: Clause 8, page 12, line 23, after "disputes;" insert—

"( ) that there are adequate arrangements under the code for OFCOM to obtain any information or assistance from internet service providers or copyright owners that OFCOM reasonably require for the purposes of administering and enforcing the code;"

Lord Young of Norwood Green: My Lords, in earlier debates on these provisions we have discussed, and agree, the need for Ofcom to be able to require information and assistance from both internet service providers and copyright owners in their assessment of the need for technical measures. It goes without saying that Ofcom will need similarly to be able to require information and assistance from the same parties in carrying out their duties in administering and enforcing the codes. Section 135 of the Communications Act gives Ofcom wide powers to require information to carry out its functions under that Act. However, it is possible that a copyright owner might consider that the provision does not apply to them or that a copyright owner or ISP would argue that these functions of Ofcom under the codes are not covered by the existing power and would seek to challenge a request from Ofcom for advice or information. It is that possibility, and any resulting difficulties in administering or enforcing the code, that we are seeking to avoid by putting this obligation clearly and explicitly on the face of the legislation. I believe this is a sensible and uncontroversial point and I beg to move.

Amendment 4 agreed.

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

Amendment 5

Moved by ***Lord Young of Norwood Green***

5: Clause 10, page 14, line 24, leave out from "subscriber" to end of line 25 and insert ", within the meaning of section 124B(3), in relation to the provider of the service and one or more copyright owners."

Amendment 5 agreed.

Amendment 6 not moved.

Clause 12 : Code by OFCOM about obligations to limit internet access

Amendment 7

Moved by ***Lord Young of Norwood Green***

7: Clause 12, page 15, line 38, leave out "made"

Amendment 7 agreed.

Clause 13 : Contents of code about obligations to limit internet access

Amendment 8

Moved by ***Lord Young of Norwood Green***

8: Clause 13, page 16, line 41, after "disputes;" insert—

"( ) that there are adequate arrangements under the code for OFCOM to obtain any information or assistance from internet service providers or copyright owners that OFCOM reasonably require for the purposes of administering and enforcing the code;"

Amendment 8 agreed.

Clause 14 : Subscriber appeals

Amendments 9 to 11

Moved by ***Lord Young of Norwood Green***

9: Clause 14, page 18, line 5, after "done" insert "(or, if there is more than one such report, as respects each of them)"

10: Clause 14, page 19, line 15, leave out "or abandoned any appeal"

11: Clause 14, page 19, line 17, after "determined" insert ", abandoned"

Amendments 9 to 11 agreed.

Clause 16 : Sharing of costs

Amendment 12

Moved by ***Lord Whitty***

12: Clause 16, page 20, line 18, at end insert—

"and shall, in relation to any provision for payment by subscribers and the funding of their own costs, first be subject to an economic and social impact assessment confirming that relevant subscribers are not in practice, by reason of such provision(s) or the incidence of costs, prohibited from effectively exercising their rights under section 124K (subscriber appeals)"

Lord Whitty: My Lords, Amendment 12 is much more straightforward and I hope that the Government will be prepared to accept it. At some stage during the Bill it was determined that not only should the ISP share the cost with the digital rights owners, but also, in certain circumstances, the subscriber should. I can conceive of situations in which this would be legitimate and in which the subscriber's behaviour could lead to them sharing the costs. However, in general it is not legitimate. It is certainly not fair and it is not due process that the subscriber should be charged the cost of what is, effectively, the digital rights owners trying to pursue their rights.

My amendment would not delete the possibility of the subscriber being asked to meet part of the cost, but it would mean that the imposition of that cost would not inhibit the subscriber from taking forward an appeal against the sanction. In other words, the share of the cost imposed by the tribunal should be assessed in terms of its economic and social impact on the subscriber and whether or not their potential share would prevent them from taking this further and being able to make an appeal. As the noble Baroness, Lady Miller, said, this is not subject to legal aid, so the cost of an appeal is a very relevant consideration. If this imposition of cost inhibits people from taking their right to appeal, that is a very dangerous road to go down. This does not alter anything else that the Government have in the Bill; it would simply protect more vulnerable consumers from the imposition of costs. In that respect, I would have thought that the Government could accept it. I beg to move.

The Earl of Erroll: My Lords, I have put my name to this amendment because I have seen how the threat of costs has been used to blackmail people into not appealing, particularly in employment, with very small employers. For example, an employee may leave for whatever reason; the employer may have done nothing wrong but it does not dare to defend itself because of the threat of costs. I would hate to see that read across into this Bill. We have previously discussed the behaviour of certain firms of solicitors. I understand that that cannot be stopped immediately—it is not simple and the whole thing would be very long-winded. However, something like this amendment would be a sensible way of stopping abuses from day one.

Lord Young of Norwood Green: My Lords, this amendment addresses an important issue. It is essential that subscribers have the ability to appeal against notifications and decisions, both in terms of the appeals structure being in place and in terms of the ability to utilise the appeals process without undue financial concern. Thus far I am happy to agree with the noble Lords. However, I am not convinced that the sort of social and economic impact assessment advocated is proportionate, nor do I think that we need to see this in the Bill. Rather, this is exactly the sort of issue that should be raised as part of the consultation that we would conduct on a statutory instrument on the sharing of costs in the event of technical obligations being imposed.

I understand that we need to look at this in the round and that the issue is not just the refundable fee, which we have discussed before in this House. We have given assurances on that front: there should not be costs that would inhibit the process of appeal. However, because this is such an important issue, it will certainly be part of the consultation on both the statutory instrument that would introduce technical obligations and the statutory instrument that would be needed to order the sharing of costs in—I stress this—the event of technical measures being applied.

The consultation that we will shortly launch applies purely to the regime under initial obligations. We will of course be asking within that consultation whether and how subscriber contribution should be dealt with, although, as I have said on a number of occasions, we

[Lord Young of Norwood Green]
have given our views about appeal charges not inhibiting an appeal at the initial obligations stage. That being the case, and with the assurance to my noble friend that I fully appreciate the importance of what the amendment is addressing, I hope that he will feel able to withdraw it confident that the issue will be fully and properly addressed when it becomes relevant.

Lord Whitty: My Lords, I welcome the assurance that this will be taken into account when the secondary legislation and the code are drawn up. On the basis of that assurance, I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

4.15 pm

Clause 17 : Interpretation and consequential provision

Amendment 13

Moved by ***Lord Young of Norwood Green***

13: Clause 17, page 21, line 46, leave out "for the time being"

Amendment 13 agreed.

Clause 18 : Preventing access to specified online locations for the prevention of online copyright infringement

Amendment 14

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

14: Clause 18, page 22, line 16, at end insert—

"(1A) The copyright owner applying for an injunction under subsection (1) shall first have given notice to the service provider in accordance with subsections (1B) to (1F).

(1B) The notice must be in writing, deliverable electronically, contain the name, registered address and contact details of the copyright owner claiming infringement, and prove, by digital signature or otherwise, that it comes from the said copyright owner.

(1C) The notice must be addressed to the address or agent designated by the service provider for the receipt of such requests.

(1D) The copyrighted work of the owner claimed to have been infringed must be stated, or, if multiple copyrighted works at a single online location are covered by a single notification, a representative list given of such works at that site.

(1E) Information must be included reasonably sufficient to permit the service provider to locate the online location to be blocked.

(1F) The copyright owner must also take reasonable steps to deliver a copy of the notice to the operator of the online location."

Lord Clement-Jones: In moving this amendment, I will also speak to Amendments 16, 21 and 22. There are different views about the merits of the Bill that we have so carefully discussed over the past three months and there is clearly much to discuss in the other place. Of course, there are still some unsatisfactory aspects. My noble friend Lady Miller mentioned the major problem that remains with use of the internet by libraries and universities. The noble Lord, Lord Puttnam, had some good points to make about the freeing up of copyright laws, which will mean the implementation of some aspects of the Gowers report that were not included in the Bill. Orphan works are another area that will leave this House in an unsatisfactory state.

However, I strongly disagree with the noble Lord, Lord Whitty, who seems to have suggested in today's debate that we have all been wasting our time for the past three months. I certainly do not accept that. I am quite clear that the Bill leaves this House in far better shape than when it arrived. The Government's willingness to listen and to make changes to Clauses 4 to 16 is partly responsible for that. On these Benches, we have played our part to help significantly alter the Government's original proposals relating to illegal P2P file-sharing and the possible introduction of technical measures. We take some satisfaction that there is now an explicit assumption, contrary to what the noble Lord, Lord Whitty, said, of innocence until proven guilty. None the less, the Government strenuously and rather bafflingly, throughout our deliberations on the Bill, insisted on the retention of Clause 17. These Benches opposed and helped to defeat the Government's proposals, which would have given them wide powers to change copyright law by order.

These amendments consist of a number of clarifications and improvements to the amendment that was introduced on Report to insert a new Section 97B into the copyright Act. I do not accept that the amendment that we voted on at Report is worse than Clause 17, but these amendments are much more targeted. I certainly do not accept that all this is evidence that we are in the pockets of the music industry. The music industry was mad keen—as indeed were many broadcasters and sports organisations—to keep Clause 17. I see that the noble Lord, Lord Triesman, is in his place. He made a passionate speech about Clause 17. The industry wanted Clause 17. New Section 97B is very much a second string in those circumstances.

We drafted new amendments as a result of discussions with the Open Rights Group and others, which we believe will go some way towards meeting the objections of critics. They may not be officially endorsed by the Open Rights Group, but we are grateful for its assistance none the less.

Amendment 14 would provide that a notice of a request for blocking must be given to service providers and online locations in the prescribed form. Amendment 16 would require courts to consider whether an injunction would disproportionately prejudice legitimate uses and legitimate users of the online location. This is to deal with any issue where an injunction could be used to disproportionately affect sites such as YouTube. Amendment 21 clarifies that the courts would determine costs where an injunction had been granted. In order to make the process more even-handed between an ISP and a rights holder, there is no presumption as to costs. Amendment 22 would create a remedy whereby innocent parties affected by requests for blocking where no court order was sought would have access to appeals via the courts and the ability to claim compensation.

These amendments would help to rebalance the clause and are worthy of support. Without wishing to pre-empt the noble Lord, Lord Howard, I indicate our support for the other amendments in the group. I beg to move.

The Earl of Erroll: My Lords, I assume that the noble Lords, Lord De Mauley and Lord Howard, will be speaking to their amendments in this group, which I support. I do not like Clause 18 at all, which is unclear in certain areas. I have tabled a set of amendments, which we shall debate immediately after this, to clarify the issue of search engines, which I am assured will be trapped by what is proposed. I asked for those amendments to be degrouped; I think that the issue needs to be looked at separately, as there may be some people who feel very strongly about it. It will be very brief. The amendments in this group go some way towards improving Clause 18. I still do not think that it would be perfect, but anything is better than nothing. Therefore, I will support the amendments. This clause cannot, however, be made perfect that easily. It needs a lot of thought, but these amendments are a good start in the right direction.

Lord Howard of Rising: The noble Lord, Lord Clement-Jones, has put the point that needs to be made on this clause extremely adequately, so I will not waste the House's time any further. I look forward to hearing what the Minister has to say.

Lord Lucas: My Lords, I am delighted that we are making progress in this direction. Whether the Government will listen to the siren voices of British Telecom and others saying that this is a step in the wrong direction, I do not know. It seems to me that that was where Clause 17 was aiming. The Government wanted to get away with something much broader and much less definite and, now that they are confronted with something specific, they seem to be running away from it. That shows how right we were to delete Clause 17. There are clearly major issues to be settled.

We ought to be making it inconvenient for people to find illegal material. There will always be people who will go to great lengths to find stuff that they should not. They are a small minority and it takes a lot of their time. We want to deal with the ordinary people who are finding it terribly easy to find illegal material. It is as if every street was lined with stalls selling counterfeit goods. If we can just take them off, yes, new ones will pop up, but they take time to get known and, when they are known, you knock them off. If you go in this direction with Clause 18, you deal with the bulk of the business.

Certainly in that way we begin to answer the questions raised by the noble Lord, Lord Triesman, in Committee, about people who are streaming football matches straight after the game or maybe during the game. These people have identifiable sites. People know where to go. You knock them on the head. Sure, a few will pop up elsewhere but, before they can do any damage, they become big enough to notice and you sit on them again. That seems to me the sensible approach.

We will need proper protection for search engines. We will need to think carefully to what extent they can be asked to block material. I think that they will have to be asked to block material to some extent. I looked for a copy of Stephen Fry reading one of the Harry Potter stories the other day, which he does beautifully. Listening to it is a wonderful experience. When I looked for it on Google, the first three pages were occupied by illegal material. It was extremely difficult to find something that was legal. It was easy enough to identify the illegal material because it all referred to BitTorrent. It would be easy enough to drop those services from the index, as they advertise that they are illegal.

I do not see why search engines should not be able to block these things. Taking them out of search engine results would be one of the most obvious ways of making life inconvenient and one of the easiest ways of doing so, compared with trying to block individuals' internet traffic. This will be a productive way to go. I suspect that it will require a lot more consideration than we have had time to give it, but I go back to my amendment tabled in Committee. This is where Clause 17 ought to have been heading. As has been suggested by the noble Lord, Lord Puttnam, if this gets struck from the Bill in the wash-up, we certainly ought immediately to begin discussions on how we can make a success of going down this route to deal effectively with piracy at source, rather than just prosecuting those who happen to be drinking the counterfeit rum.

Lord Triesman: My Lords, I thank the noble Lord, Lord Lucas, for his generous comments and record the fact that I agree with much of what he said. I add my voice in urging the Government again to have a discussion with the search engine companies. I know that it will not be the first time that an attempt at fruitful discussion with them has taken place. It seems a plausible argument to put to them that there are a variety of things which are illegal and undesirable in all sorts of different ways but which the technologies that they employ can open up to people. It is not beyond them to deal with that. It is certainly not beyond them to co-operate, because it is socially, let alone legally, right to co-operate. Without wishing either to hear things that the noble Lord did not intend, or to put words in his mouth, I urge that conversation to go ahead as soon as possible in light of the clause that is now in front of us.

Lord Razzall: My Lords, when the Minister responds, it would be worth him answering the question asked by the noble Lord, Lord Puttnam, although he is no longer in his place. Why are the ISPs so exercised about such issues? Why were they allowed to get into the position where this sort of thing was nothing to do with them? We debated that in Committee. As we know, the ISPs are strongly against this amendment because they have traditionally taken the view that they are like the Royal Mail. When you send a letter through the Post Office and the Royal Mail delivers it, nobody suggests that the Royal Mail should be responsible for the content of the letter, even if it is defamatory or in breach of copyright. That is how the ISPs regard themselves. Clearly, it is a major issue to get the balance right between the ISP in the role of the Royal Mail and the ISP taking down material that is illegal or in breach of copyright. This amendment is the first time that the issue has been addressed. The Minister indicated that the ISPs take down material relating to paedophilia and illegal hard pornography, but I understand that that is only by voluntary agreement among the ISPs and that not all of them sign up to it. This is a significant step forward and it explains why the ISPs are against it.

The Earl of Erroll: My Lords, with the permission of the House, it may help if I clarify that issue, which I know a little about. It has to do with Europe and the e-commerce directive. ISPs, in acting purely as a way of accessing the internet—as a pipeline to other content—and not delivering content themselves, are mere conduits. As such, they have an exemption. It is rather like the Royal Mail not having to censor all your mail to check that you are not sending bad stuff. If the ISPs tried to check everything that passed through them, it would kill the internet. There has to be a difference between people who host content and an ISP, which is just a conduit to get to content and does not check what is going through it. There has been confusion on that throughout the Bill. I have not worried about it in the past but it may help the noble Lord, Lord Puttnam, when he reads this later.

4.30 pm

Lord Young of Norwood Green: My Lords, I made the Government's view of this clause clear on Report. I certainly agree that we should have a way of tackling online copyright infringement that will not be susceptible to the provisions in Clauses 4 to 17, but I am afraid that this clause is not it.

I have already outlined our primary concerns. At a purely practical level, despite the drafting in subsections (6) and (7), this is not compatible with the technical standards directive and will not be capable of being enforced. Furthermore, as the industry, public and media response over the past 10 days has made clear, this measure needs careful design if we are to avoid significant disadvantages and unforeseen and unwanted consequences to the internet and the digital economy. I reassure the noble Lord, Lord Lucas, that although I am a former employee of BT, I am not listening to the siren voices. I always enjoy listening to the noble Lord's dulcet tones. We are no longer running away from this issue but, I hope, heading in the right direction.

As I said, there has been a lot of response in the media. I acknowledge that the noble Lords who proposed this clause share the Government's aim of addressing online infringement of copyright, which is the intention behind this clause. Our intention as the Bill moves to another place is to try to bring forward a clause that would ultimately achieve the same effect, but one which could be enforced, by proposing a power for the Secretary of State to bring forward regulations to achieve the desired effect in relation to site blocking. This would allow for not only proper notification under the technical standards directive but also—this is important—proper consultation and consideration of the evidence for the need for and proportionality of the measure.

This is a complex issue, as has been acknowledged even in this short debate. I thank the noble Earl, Lord Erroll, for the clarification he gave about the role of ISPs as a conduit and the fact that they cannot check everything. Given that and the fact that we do not believe that this clause as drafted could be legally enforceable, it does not help for the Government to take a view on the amendments. I do not believe that amending the clause would be particularly productive. We need instead to look at something that would work legally by giving the Secretary of State a power to bring forward regulations to achieve the desired effect, while taking into account all the points made during the House's consideration of the clause. That is a genuinely sincere commitment. This includes the need to ensure adequate protection for national security, which I am sure the whole House will agree is necessary.

On the points made by the noble Lord, Lord Clement-Jones, we recognise that these amendments are well intentioned. It can only be a good thing for subsection (4), for example, to be removed, though I am unsure about the proposed provision on costs. I acknowledge that the noble Lords have attempted to address the harm that could be caused by copyright owners seeking to get sites blocked by threat rather than by court action but I am uncertain that these amendments deliver that intention.

Amendments 19 and 23 seek to respond to a further concern, to which I alluded on Report, about the likely impact on the ability of our intelligence and law enforcement agencies to do their jobs properly. I am grateful to the noble Lords, Lord Howard and Lord De Mauley, for this attempt to resolve that concern. However, this amendment very much misses the point. We cannot support the notion that the Secretary of State should present evidence in relation to every injunction application when it may be possible to establish a consistent and foreseeable position. Separate consideration in relation to each application does not seem like a good use of taxpayer money, court time or, indeed, the time and money of the copyright industries, which might pursue any number of fruitless applications while waiting for a court to reach a different decision.

I reiterate the point that I made earlier. As the Bill moves to another place, it is our intention to try to bring forward a clause that ultimately achieves the same effect. That is a sincere and constructive commitment, and I have tried to address the genuine concerns that have been expressed. I give the noble Lord, Lord Triesman, the reassurance that a conversation and dialogue would of course be required to take place.

I think that there was one other point. Although my noble friend Lord Puttnam is not in his place at the moment, the noble Lord, Lord Razzall, rightly reminded me of the question of why ISPs are allowed to say that this has nothing to do with them. He rightly referred to the "mere conduit" defence from the e-commerce directive. In our view, ISPs are an important stakeholder and should be involved in taking this matter forward but within the e-commerce directive.

I trust that, in the light of the assurances I have given, the noble Lord will feel able to withdraw the amendment.

Lord Clement-Jones: My Lords, first, I thank all noble Lords who have taken part in the debate and, in particular, the noble Lord, Lord Triesman, who it is nice to see again in his place in a more positive frame of mind. I also thank the noble Lord, Lord Lucas, for his very useful, rather forensic comments.

In response to the noble Earl, Lord Erroll, I do not think that during the course of the Bill we have had confusion about the role of ISPs; I think we have all been very conscious of their limited duties. That is why, as my noble friend Lord Razzall indicated, this amendment is so controversial so far as concerns ISPs,

leading to a letter in the *Financial Times* from quite a number of them. Let us not forget that a lot of the proponents in this are in business. Of course, many copyright owners are businesses—some large and some small, such as photographers—but some on the ISP side are also very large businesses, so this is not simply a case of big business against the small person. That has needed to be emphasised in this debate.

I thank the Minister, in particular, for his reply. Of course, there is many a slip between cup and lip, and the debate will now move to the other place. I take it from the Minister—and hope that this is the case—that this is not a reintroduction of Clause 17 but a much more targeted approach to consulting over regulations with a specific target.

In view of the controversial nature of the proposals that we tabled on Report, which I more than discovered in the reaction of members of my own party, I hope that, when drawing up the new regulations, Ministers will be very keen to observe one or two points. Perhaps the Minister will find these reasonably useful, certainly as regards the available research. I hope that the regulations will be very rooted in the evidence of copyright infringement and of the amount of downloading that takes place from the prevalent overseas websites.

I also hope that, when they consult, the Minister and his colleagues will respond to the concerns of those who believe that site-blocking is a serious step, both technically and legally. I welcome his undertaking to have an extensive consultation on the regulations. However, it is incumbent on those who are absolutely dead-set against this kind of measure to demonstrate just how these new models can be set up unless there is adequate protection against copyright infringement. I think that we have debated that matter throughout the past three months but the noble Lord, Lord Whitty, is clearly unconvinced that some incentive, apart from pure education, is needed to persuade people to download legally. I think that we need to be fairly clear on that score as well.

I also hope that the Minister will make sure, when the Government consult, that the safeguards which we have tried to build into this clause—both in the original amendment and in these ones—will very much be reflected in the regulations in order to make sure that the operation of any web-blocking mechanism is proportionately applied. Most importantly, we on these Benches have had many representations from all sides of the argument that there should be a full and proper consultation period. I hope that this will not be just a quickie in the course of the next few months but that all stakeholders will be consulted. I accept that as a criticism of the amendments which we put forward from these Benches and I hope that the Government do not make the same mistake. I beg leave to withdraw the amendment.

Amendment 14 withdrawn.

Amendment 15

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

15: Clause 18, page 22, line 20, at end insert "and, in the case of online search service providers, the extent to which inclusion of, or access to, copyright infringing content is incidental to the main purpose of the search service,"

The Earl of Erroll: My Lords, I beg to move my Amendment 15, although I suspect that is a bit redundant after what I have just heard from the Minister. I need first to declare that I have a tiny interest in a search engine start-up that is for business purposes. It is not a rival to Google—it is not intended to be—and it is not worth a lot of money, but I have an association with search engines. Perhaps I may point out quickly that I agree with the noble Lord, Lord Clement-Jones. This is not one-sided—it is big business versus big business. Small business is not getting a look-in in this Bill at all. That is the problem which I, the noble Lord, Lord Whitty, and some others have with it.

My concern about the new clause—perhaps I may say this before moving straight on to Amendment 15, which encapsulates a principle, and I would like to know whether the Minister intends to incorporate this principle into whatever the Government are proposing—is that it will not be subject to any amendment, or discussion and then amendment, by either House. It will be inserted somehow between leaving this House and arriving at another place. Presumably it will be discussed on Second Reading there. I presume that it will then be dealt with during the wash-up. We have no idea what it looks like, and it seems to be an abuse of parliamentary process. I think that that is what I was hearing.

Lord Maxton: I may be wrong, but I thought that the convention on wash-up is that there has to be a Second Reading and one Committee stage on a Bill before it can be dealt with in the wash-up. Others may be able to give a better explanation of the position but I believe that that is the case.

Lord Davies of Oldham: My Lords, we are in somewhat deep waters here. However, if Second Reading follows on after one House has completed all stages, then the issues would be considered.

Lord Gordon of Strathblane: In that case, following my noble friend Lord Maxton, what mechanism do the Government have for introducing new material into the Bill? I appreciate that I am asking this question of the noble Earl, Lord Erroll, when it should probably be directed to the Government.

The Earl of Erroll: It might benefit the House if that question were dealt with. Perhaps I should first make my point on Amendment 15, which the Minister can deal with quite easily.

I asked for Amendment 15 and my other three amendments to be degrouped from the others—the noble Lord, Lord Lucas, has already spoken to my grouping—because I wanted them to be taken as a specifically different point. The point is slightly different and the amendments are very specific and targeted. There is a challenge for search engines. It became apparent after new Clause 18 was inserted into the Bill that most of the large search engines were worried they would be caught by it. This arose from the words,

"to prevent copyright infringement content"—

which is not really grammatically correct—

"being accessed at or via that online location".

They were automatically caught by that. It does not really matter what the Minister may say—there is nothing there about producing regulations to define

[The Earl of Erroll]
things more tightly; it is for the courts to decide later. It therefore seems important for this House to state whether or not we intend that general purpose, bona fide search engines should be caught by the clause. If they are to be caught, so be it, but it will affect Britain's ability to take part in a global economy.

I tried to produce something that would do with a lawyer who kindly volunteered his services pro bono. It was an extremely difficult task to perform at short notice, but we tried to do it by inserting two references that go back to the Electronic Commerce (EC Directive) Regulations 2002, which largely deal with the issue. I also put in a bit that says,

"in the case of online search providers, the extent to which inclusion of, or access to, copyright infringing content is incidental to the main purpose of the search service".

In other words, anything that was deliberately intended for the purpose of giving indirect access to copyright-infringing material would be caught. That is not excepted by this. The provision is supposed to exempt only the main search engines.

4.45 pm

Many people want to know what the House intended. Did it intend to cause problems for large search engines, or are these being caught inadvertently? It is difficult to define the boundary between them and a site which provides access to an indirect route or to an index of a whole load of copyright-infringing sites. The Government need to specify the provision far more tightly than they have done in their amendment. Will the Government be giving us a provision that neither House of Parliament can consider and amend? It would be useful if the Minister gave us a statement on the Government's attitude to search engines. I suggest that they should use the super-affirmative procedure, as proposed in Clause 17, if they intend to come back with a provision that will be active after the general election but which we will not have debated properly. I beg to move.

Lord Lucas: My Lords, I agree with the noble Earl that it is important to deal with the position of search engines, which are not directly addressed by Clause 18. Google is very good at blocking access to sites; it just relegates them to page 256. If it does not like something that comes up it just disappears in the rankings. There are mechanisms commonly used by search engines to make it inconvenient for people to find content that Google does not approve of.

To go back to what the noble Lord, Lord Puttnam, said, it is a question of taking ISPs and search engines and joining them in, so as not to let them think that in some way they are isolated and can act all on their own without any thought of how they fit into the mesh of copyright—the melding of the interests of the consumer and the producer that lies at the heart of it. All the players have a part and we should protect what search engines do assiduously. We must be careful not to start acting like the Chinese Government. On the other hand, as I am sure that they will not, they should not think that they can stand completely aside and act with complete freedom as if they do not have a role in how copyright is protected on the net.

Lord Young of Norwood Green: My Lords, I have already reminded the House of the Government's concerns on the legal status of Clause 18 and the lack of transparency and accountability with which it has been inserted into the Bill, and I have indicated our intention to bring forward a revised provision to deal with these problems. The usual channels will be dealing with that in the wash-up, when it has to be done by agreement. I also reassure the noble Earl, Lord Erroll, that we will ensure that the government amendment is compatible with the e-commerce directive.

These amendments seek to respond to a further concern: the need to ensure that search engines are not inadvertently affected by the measures proposed in this clause. The amendments highlighted potential risks that the service and public benefit offered by search engines may be at risk if, in the course of providing search results, they happen to inadvertently feature copyright-infringing material. The amendments proposed by the noble Earl, Lord Erroll, rightly address important points. Moreover, they underscore my initial point that this is a measure that needs careful design.

Again, a power for the Secretary of State to bring forward regulations to achieve the desired affect would allow for the full consultation, analysis and consideration necessary to ensure that we avoid these and other potential unintended side-effects or consequences. As I said in relation to the previous group of amendments, given that we do not believe that this clause as drafted could be legally enforceable, amending it is not particularly productive. In light of these comments and the assurances that I have given, I hope that the noble Earl withdraws his amendment.

The Earl of Erroll: I thank the Minister for those assurances. They go a long way to assuaging the fears of a huge swathe of the internet industry about what, as the Minister said, could come about as the result of the law of unintended consequences. The only thing that he did not answer that fascinates me is—what procedure is there for inserting or changing this legislation from now on? I am not quite sure how that can be done.

Lord Young of Norwood Green: I answered that. However, the noble Earl is clearly as unfamiliar with the procedure as, I confess, I am. Nevertheless, I am reliably informed that the usual channels will see the proposed new clause and that an amended clause will then be dealt with in the wash-up. I cannot give any more details. My noble friend the Deputy Chief Whip is nodding in the affirmative. I rest on the assurance that we intend to do this. It is a viable way forward.

Lord Clement-Jones: I am sorry to interrupt the Minister. He assumes, therefore, that the wash-up will take place at the very beginning of April. However, there may not be a general election until June.

Viscount Bridgeman: Will the wash-up take place in the other place or in this House?

Lord Young of Norwood Green: The other place.

The Earl of Erroll: I am in a difficult position. I am delighted that the Minister realises the shortcomings of this clause; that it has replaced the previous Clause 17, which I did not like either; and that, therefore, something better will appear. On the other hand, the method by which it is appearing is by a complete and absolute abuse of parliamentary process.

I am not quite sure why we bother to sit and debate any laws at all if the Front Benches in another place can get together and put whatever they like into a bit of legislation. That is for another time and another place. I have always found the whole area of wash-up very troublesome, particularly as a Cross-Bencher who does not get a look-in at all. I have seen some very funny things going through. When I see two Front Benches colluding, I usually think that we are in trouble.

With all those caveats, I welcome the Minister's movement on this clause. I hope that what they propose will look good. I hope that he has listened to what I said about the super-affirmative procedure and that they would insert something like that so that we could have proper parliamentary scrutiny. I beg leave to withdraw the amendment.

Amendment 15 withdrawn.

Amendments 16 to 23 not moved.

Clause 20 : Appointment of manager of internet domain registry

Amendment 24

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

24: Clause 20, page 26, line 16, leave out "any" and insert "one or more"

Lord Davies of Oldham: The Government accepted an amendment tabled in Committee by the noble Earl, Lord Erroll, when he sought to ensure that all the directors of a registry were not unnecessarily replaced by the manager. We agree that some directors might be on the side of the manager and that therefore it would be useful to retain their expertise, which is the burden of the noble Earl's contribution and amendment.

On reflection, we agree that the current text is unclear and could be read as meaning that we would replace either one director or the whole board. Therefore, we have tabled this small amendment merely to clarify the fact that the manager could retain the expertise of one or more directors if he so chooses. I beg to move.

The Earl of Erroll: My Lords, I added my name to this amendment, which shows perfectly what Third Reading is for. I was delighted that the Government accepted my amendment at the previous stage and saw that in principle it was good. But, quite rightly, they have spotted that it could be improved. With that, I am delighted to welcome the improvement and I thank the Minister for moving it in such a kind way.

Amendment 24 agreed.

Clause 39 : Payment for licences

Amendment 25

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

25: Clause 39, page 46, line 35, after "licence" insert—

"(i)"

The Earl of Erroll: My Lords, unfortunately, I have left my notes on this amendment downstairs because I was in rather a rush. From what I remember, it concerns a mismatch as regards spectrum and the spectrum cap. Spectrum released under the spectrum cap can be paid for in certain ways, but spectrum can also be divested voluntarily or under another arrangement. I sent a note to the Minister and the Bill team about this. There seems to be a mismatch between the two. In proposing these amendments, I am trying to be helpful and I hope that the two things will be brought into line. It would tidy up something which could otherwise be a block to the reallocation of spectrum in a sensible way. I beg to move.

Lord Davies of Oldham: My Lords, I am grateful to the noble Earl, Lord Erroll, for being more explicit in the note which he delivered to the department than he has been in proposing the amendment. We know exactly the point at which he is driving, although we are going to ask him to withdraw his amendment. I hope that he will listen carefully to the reasons why, because we have given it the fullest consideration.

Included in the Government's spectrum proposals, now before Parliament, are temporary spectrum caps that apply to the planned combined auction of 800 megahertz and 2.6 gigahertz spectrum. These caps are designed to ensure that the acquisition of valuable spectrum is spread more equitably between existing operators and new entrants. In certain circumstances, operators may therefore have to release existing spectrum to be able to bid in the combined auction. In those circumstances, costs will be incurred by the releasing operator in clearing their released spectrum. To offset these costs, it is proposed that additional payments are made by any operator acquiring this relinquished spectrum to the operator releasing it.

At present, this additional payment relates only to spectrum released in order to stay within the limits of the caps. However, these amendments would extend that payment to any spectrum released into the combined auction. In particular, it would potentially include spectrum being released by T-Mobile and Orange, required by the European Commission as one of the conditions necessary to gain its approval for the joint venture.

In effect, these amendments would allow the joint venture to receive a payment from another operator to subsidise the cost of its obligations to the European Commission, which we do not consider to be reasonable. The two companies involved are likely to benefit considerably from the joint venture. Indeed, they would scarcely have thought about it and have embarked upon the venture if that were not the case. But there are costs associated with the joint venture and in obtaining the approval of the Commission it is only

[Lord Davies of Oldham]
right that those costs are borne by the operators concerned and not by any other operator which will not benefit from the venture. That is why the Government have taken the position that they have. I hope that the noble Earl will feel that that is reasonable and that he can safely withdraw his amendment.

5 pm

The Earl of Erroll: My Lords, I thank the Minister for that extremely informative and useful reply. I now understand that this is quite a complex issue, and as usual it is like an onion—there are layers within layers. I fully understand the Government's reasoning. I beg leave to withdraw the amendment.

Amendment 25 withdrawn.

Amendment 26 not moved.

Clause 43 : Extension and regulation of licensing of copyright and performers' rights

Amendment 27

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

27: Clause 43, page 52, line 14, leave out "(within the meaning of section 116)"

Lord Davies of Oldham: My Lords, this group of clarifying amendments is intended to tidy up drafting and correct unintended errors in this clause.

Amendment 27 has been inserted because "copyright licence" is now defined for new Section 116B by Amendment 31. The wording deleted by this amendment is therefore superfluous. Amendment 35 makes a corresponding change to performers' rights. Amendment 32 inserts the words "by regulations" with the effect that the requirement to adopt codes of practice will indeed be by regulations. Amendment 39 removes the words "in accordance with regulations", this is to ensure consistency with the definition of orphan works in new Section 116C of the Copyright, Designs and Patents Act 1988. Amendment 40 has been tabled so that the sources searched to determine whether a performer's property right is orphan are sources which are likely to have details which can help trace the ownership of these rights. Amendment 41 corrects an error—the provision is dealing with performers' rights and not copyright works, so the reference here should be to "recordings" and not to "works", the amendment makes that necessary corrective change.

The substitution of "copyright owner" with "copyright interest" in Amendment 42 is again necessary because the provision is dealing with performers' rights and not copyright. Amendment 43 corrects a cross-reference. Amendment 33 applies the definition of "member" inserted by Amendment 31 to Schedule A1 to the copyright Act and finally Amendment 44 applies the definition of "member" in Schedule 2A to the Copyright Act where Schedule A1 applies for the purpose of paragraphs 1A to 1D of that schedule.

It will have been deduced by the House that these are technical and necessary amendments and I beg to move.

Lord Clement-Jones: My Lords, I briefly rise to recognise that these are drafting amendments. I very much hope that the Government's mind is still not completely closed under Clause 43 generally, and I mean in respect to the orphan works provisions. Clearly, there are issues which photographers are still very cognisant of. It would not be in order for me to put down amendments again on that area but I hope the Government will consider this in another place.

Lord Davies of Oldham: That is a good try by the noble Lord. Here I am dealing with technical amendments and there he is opening up the whole operation of wash-up. Let us be clear about wash-up—and I hear what the noble Earl, Lord Erroll, said just a few moments ago. I cannot really help him about the extent to which he, as a Cross-Bencher in the upper House, is able to influence the democratic will that will be largely exercised, he will not be surprised to hear, at the other end.

It is the case that there will be clarification of these issues and full debate, we trust, on Second Reading. If the noble Lord, Lord Clement-Jones, has got his way and the election is in June—of course, he might well be right— then we will have a great deal more time in the Commons for more stages of this Bill to be considered. If we assume, however, that we do not have too much time and that there may only be a Second Reading, of course the consequences of the deliberations through the usual channels with regard to wash-up will still need to be considered by both Houses.

The noble Earl, Lord Erroll, will fully understand that in those circumstances what will go forward is an agreed position between the parties and that therefore the obvious expectation will be that the process in the Chambers will be a relatively straightforward exercise. That is the concept of wash-up. I only say to the noble Earl, Lord Erroll, he might not like it but the alternative is that every Bill that has not completed all its processes would utterly and totally fall. I am quite sure he would regard that alternative as even more unacceptable than the concept of wash-up.

Amendment 27 agreed.

Amendment 28

Moved by ***Lord Young of Norwood Green***

28: Clause 43, page 52, line 21, at end insert—

"( ) The regulations must provide for the factors to be taken into account in deciding whether to authorise a licensing body to grant copyright licences in respect of works to include—

(a) the likely effect of the authorisation on—

(i) authors of the works,

(ii) members of the body,

(iii) copyright owners on whose behalf the licensing body would be entitled to act pursuant to the authorisation, and

(iv) licensees and potential licensees of the aspects of copyright that would be the subject of the authorisation, and

(b) the extent to which the licensing body is entitled to negotiate or grant copyright licences in respect of similar works, other than under an authorisation under this section."

Lord Young of Norwood Green: My Lords, during our debate on Report, I agreed that the Government would consider Amendments 155A and 155B tabled by the noble Viscount, Lord Bridgeman. The Government had always intended that extended licensing schemes should be run by representative licensing bodies. While we were not able to accept the drafting of the amendments tabled on Report for reasons I will explain, the government amendments in this group achieve a similar effect.

Together, this group of amendments prescribes that the regulations must require that certain factors are taken into account before a licensing body's application to carry on extended licensing is granted. These factors are, first, the likely effect of the authorisation on authors, rights holders, licensees, potential licensees and members of the licensing body applying for authorisation. This list is not exhaustive. The amendment will ensure that the interests of all those potentially affected by an authorisation under proposed new Section 116B of the Copyright, Designs and Patents Act 1988 will be properly considered before a decision to authorise is taken. I hope noble Lords will agree that this achieves the purpose of that Amendment 155A.

Paragraph (b) of Amendment 28 requires consideration of the extent of the applicant licensing body's existing repertoire before any extension is allowed through authorisation under proposed new Section 116B. This would require consideration of the extent to which the body was already acting for the copyright owner—that is, the extent to which it is representative of copyright owners in that class of works. It is designed to tackle the same ground as did Amendment 155B. There are corresponding amendments for performers' rights.

In exploring the amendments proposed by the noble Viscount, Lord Bridgeman, we encountered difficulties in having the requirement for the agreement of the majority of copyright owners in the Bill. There is no constant from which a majority can be defined as the number of works protected by copyright—and, therefore, the number of copyright owners—is constantly changing. The concept is also uncertain. We are doubtful that a simple majority would be in all cases equivalent to the critical mass of representation which the Government envisage would be required to extend a repertoire. We encountered the same problem with the concept of "substantial" in relation to Amendment 155B—this also applies to today's Amendments 29 and 37—that is, its application is unclear.

Amendment 30 requires the Secretary of State to be satisfied on a number of things in relation to any licensing body applying for an authorisation to carry on extended licensing. The government amendments already require the Secretary of State to consider the representativeness of a licensing body before granting an authorisation. There is also now a requirement for prior consultation on the criteria for authorisation in proposed new Section 116F(4) of the copyright Act. There is equivalent provision for performers' rights.

The government amendments also require the interests of member and non-member rights holders affected by an application for extended licensing to be taken into account before the application is granted. This may be achieved through consultation.

On fiduciary duties, licensing bodies are generally given mandates by their members. It follows, therefore, that they should already be acting in the interests of their members. The Government would certainly expect any well-run licensing body to be doing so. Where this is not the case, the Secretary of State can require a licensing body to adopt a code of practice. I hope that in the light of this explanation the noble Lords, Lord Razzall and Lord Clement-Jones, and the noble Viscount, Lord Bridgeman, will not move their amendments.

We have managed to find a workable solution which addresses the issues raised on Report in Amendments 155A and 155B, and those raised in Amendments 29, 30 and 37 today. I can assure the House that we absolutely agree that extended licensing should not be available in an area if it goes against the wishes of rights holders in that area. I hope that on consideration of the government amendments tabled today your Lordships will agree that we have managed to capture the spirit and effect of the amendments proposed by the noble Viscount, Lord Bridgeman. I beg to move.

Amendment 29 (to Amendment 28)

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

29: Clause 43, line 2, leave out from "provide" to end of line 14 and insert "that no extended licence under a scheme authorised by subsection (1) shall be granted if a substantial proportion of copyright owners and of authors affected by such a licence object to it."

Lord Clement-Jones: My Lords, it is always slightly disconcerting to get an answer before you have asked the question, but I shall do my best to respond on the hoof to the Minister's statements. I took my basic text—I do not think that he has deviated very strongly from it—from his letter to the noble Viscount, Lord Bridgeman, of 11 March. I think that the Minister was exercised by the phrase "the majority of copyright owners". He raised a number of points in the letter that were similar to what he has said today as regards authors not always being copyright owners but perhaps having an interest in the outcome of an application for extended licensing and the Government not believing that a simple majority would be equivalent to the critical mass of representation required. He said that including the concept of the majority of copyright owners in the Bill would not be right and that he had encountered the same problem regarding the concept of "substantial" in relation to Amendment 155B.

I understand some of those issues. However, the amendments that the Minister has put down may be similar in effect—the Minister used that phrase—but are not the same. In particular, the phrase,

"factors to be taken into account in deciding whether to authorise a licensing body to grant copyright licences"

is somewhat vague. Does it specify only factors to be taken into account before authorising a body to grant licences, or does it require consultation before an already authorised body grants a particular licence to a particular user? Certainly, many of those affected by these extended licences believe that both are required.

We disagree about the legal impact of "substantial proportion" in Amendments 29 and 37. Contrary to what the Minister thinks, we believe that these give

[Lord Clement-Jones]
clear instructions to the drafters of the regulations. For instance, in the context of the Copyright, Designs and Patents Act, "substantial proportion" has a clear meaning—for example, through judicial interpretation of Section 16. Therefore, we have a drafting legal issue but the more substantive point is that we do not believe that the government amendment fits the bill. I beg to move.

Viscount Bridgeman: My Lords, I again declare an interest as a non-executive director of the Bridgeman Art Library, a photographic archive. I am most grateful to the Minister for his very comprehensive letter to me, to which the noble Lord, Lord Clement-Jones, referred. I join with the noble Lord in feeling that the Government's amendment does not entirely fulfil their undertaking. There is too big an element of consultation and not enough of mandatory provision in it. Amendment 30, in my name, addresses the consent of authors, performers and licensees to each licence granted. This is an area in which the government amendment is seriously deficient. I hope that the Minister will be able to reassure me on that point. It is not sufficient to rely—as the government amendment does—on consultation at the stage when a body seeks authorisation because, from the point of view of a copyright owner, an individual author or performer or of a person holding an exclusive licence in a work, the effects of an extended licence being granted to different licensees can differ. I borrow an analogy from the film industry. It is one thing for an authorised body to negotiate and grant a licence to, for example, the British Film Institute. However, the Minister's letter explaining the Government's amendment appears to suggest that it would be all right to issue the same licence to, for example, Odeon Cinemas. The views of authors, performers and other rights holders would very likely differ on that point and should be taken into consideration when granting each licence.

Having said that, this group of amendments addresses a point with which I am sure the House is basically in agreement. I hope that the Minister will be able to reassure me on the points that I have raised.

5.15 pm

Lord Howarth of Newport: I welcome government Amendment 28, which is the Government's response to the important points powerfully put forward in Committee by the noble Viscount, Lord Bridgeman, and the Liberal Democrat Front Benches. It is clear that the Government's proposition in the amendment does not command complete assent from the other side of the House, but it none the less represents an advance.

This is an instance of the excellent quality of scrutiny that the Digital Economy Bill has received in your Lordships' House. I expect that, in a very few minutes, we shall send it to another place, but I do not have the same confidence that it will receive the same quality of scrutiny in the House of Commons; indeed, my noble friend Lord Davies just now anticipated that it was improbable that the Digital Economy Bill would proceed beyond Second Reading there.

I was startled by what my noble friends Lord Young and Lord Davies said about the wash-up, those negotiations between the Front Benches of the parties in the dying days of a Parliament before it is dissolved. I would like at least substantial elements of the Bill to go through on to the statute book, in particular Clause 43 as amended by the Government. We must contemplate the possibility that the view will be taken, as at the end of previous Parliaments, that measures contained in Bills which have not received a Committee stage in both Houses of Parliament should not be permitted to go forward on to the statute book. I would from the point of view of the need for this legislation be sorry if that were to happen, although I also recognise that there are important constitutional arguments as to why it should.

In the event that elements of the Bill that we want to see go forward and become law do not do so at the end of this Parliament, will my noble friend Lord Young instruct his officials to make the best progress that they can in the period following dissolution in continuing to refine the Bill, and in particular to draft the regulations that would eventually be published under the Bill so that they can be put out to consultation as soon as possible? We could then look forward to a new and improved digital economy Bill being published early in the first Session of the new Parliament—I do not think that there is any significant party political controversy in relation to it. All the interests affected would be able to have their concerns and views carefully considered in the consultation on the regulations. When the new Bill was introduced in the first Session, Parliament would be able to examine it with a great deal more assurance than has been the case this time around. We would look forward to the prospect of it relatively speedily and uncontroversially getting on to the statute book. It may be that the major parts of the Bill will go forward on to the statute book, but we should at least contemplate the possibility that they will not.

Lord Young of Norwood Green: My Lords, we believe that the government amendments address a number of the concerns raised by the noble Lord, Lord Clement-Jones, and the noble Viscount, Lord Bridgeman. The Secretary of State will be required to consider the likely effect of an authorisation on a number of groups, including authors, members of licensing bodies, copyright owners, and licensees and potential licensees before making a decision on whether to grant an authorisation for extended licensing. The Secretary of State will also have to consider the extent to which the body already represents rights holders in the sector for which it is seeking an authorisation. We may not have addressed every dot and comma of noble Lords' concerns, but we have tried to respond to them genuinely, and I am reliably informed that the consultation on which the noble Lord, Lord Clement-Jones, sought an assurance will take place.

On the point made by my noble friend Lord Howarth, we believe that we will be able to achieve the progress of the Bill. I do not want to hypothesise about a range of issues. To clarify the wash-up situation, I have been advised by someone very experienced that the Bill goes through all the stages—it is just in a telescoped manner. I cannot really say any more on that. I hope

that in the light of the assurances I have given, and the Government's amendments, the noble Lords will feel able to withdraw their amendment.

Lord Clement-Jones: What the Minister had to say was very interesting. I understand that the points we make will be heard, if you like, on consultation and I hope that they will be very much part of the Government's thinking when they consult. On that basis, I beg leave to withdraw the amendment.

Amendment 29 (to Amendment 28) withdrawn.

Amendment 28 agreed.

Amendment 30

Tabled by ***Viscount Bridgeman***

30: Clause 43, page 52, line 21, at end insert—

"( ) When exercising the powers under this section, the Secretary of State must be satisfied that—

(a) the licensing body is representative of authors, performers and rightsholders, as appropriate, of the type of works or recordings for which the licence is to be granted;

(b) the licensing body has a fiduciary duty to the authors, performers and rightsholders on whose behalf it issues licences;

(c) the licensing body has solicited views through an open consultation with authors, performers and rightsholders who are not members of the licensing body but would be affected by such a licence and has taken account of such views; and

(d) the licensing body seeking authorisation has the approval of its membership, through its governing body."

Viscount Bridgeman: I would like to add to the question of substantial. When the Minister is engaged in further refining this Bill, I suggest that this is carefully examined. It appears that the noble Lord, Lord Clement-Jones, and I have both received advice that Section 16 of the copyright Act is a valid test of proportionality. With that request, I shall not move the amendment.

Amendment 30 not moved.

Amendment 31

Moved by ***Lord Young of Norwood Green***

31: Clause 43, page 52, line 24, at end insert—

"( ) In this section—

"copyright licence" has the same meaning as in section 116;

"member", in relation to a licensing body, means —

(a) a copyright owner on whose behalf the body is authorised to negotiate or grant licences, other than under an authorisation under this section, and

(b) a person other than the copyright owner who is or would be entitled to royalties or other sums paid in respect of a copyright licence granted by the body."

Amendment 31 agreed.

Schedule 2: Licensing of copyright and performers' property rights

Amendments 32 and 33

Moved by ***Lord Young of Norwood Green***

32: Schedule 2, page 63, line 1, at beginning insert "by regulations"

33: Schedule 2, page 63, line 42, at end insert—

"(3) In this paragraph "member", in relation to a licensing body, has the same meaning as in section 116B."

Amendments 32 and 33 agreed.

Amendment 34

Moved by ***Viscount Bridgeman***

34: Schedule 2, page 63, line 42, at end insert—

"(3) Regulations under paragraph 1 must provide for such a code equally to apply to licensees, including provisions relating to their obligations to licensing bodies."

Viscount Bridgeman: My Lords, the Digital Economy Bill contains detailed provisions of a code of practice for licensed bodies. As currently drafted, it only provides obligations for a licensing body without any reference to licensees. Collective licensing is a commercial relationship between the licensing body and licensees. Given the nature of the relationship, obligations of the licensing body to licensees should be reflected by respective obligations of licensees to the licensing body, such as respecting the rights of creators, performers and rights holders and in particular, the right to receive fair payment for the use and exploitation of copyright material. Any code of practice should also oblige licensees to adhere to the terms of the licence and more broadly the provisions of the Copyright, Designs and Patents Act 1988 and other applicable legislation or other binding legal requirements as established by case law, conditions or guidelines. In other words, it is a two-way process. I beg to move.

Lord Howard of Rising: I support my noble friend. It would be quite illogical for conditions to be imposed on one level of the chain and for those conditions not to pass through to the next one. Otherwise you could license somebody, put conditions on that licence and the next person down could simply ignore them. I hope that the Minister will therefore listen to my noble friend's suggestion.

Lord Young of Norwood Green: My Lords, the purpose of the amendment is to apply a licensing body's obligations under a code of practice to those that it licences. This amendment misunderstands the purpose of the code of practice. Licensing bodies are natural monopolies; licensees are frequently individuals, small or micro businesses or sole traders, who lack bargaining power. The code of practice is designed to achieve a level playing field for licensing and to facilitate dispute resolution. When a licensee breaches obligations in its licence and infringes copyright, the licensing body has a right of action which it can pursue. It would be unusual for a customer buying a product—in this case, the licence—to be subject to regulatory

[Lord Young of Norwood Green]
requirements that are designed for its supplier. In the light of this explanation, I hope that the noble Viscount feels able to withdraw his amendment.

Viscount Bridgeman: I beg leave to withdraw the amendment.

Amendment 34 withdrawn.

Amendment 35

*Moved by **Lord Young of Norwood Green***

35: Schedule 2, page 65, line 25, leave out "(within the meaning of paragraph 1)"

Amendment 35 agreed.

Amendment 36

*Moved by **Lord Young of Norwood Green***

36: Schedule 2, page 65, line 32, at end insert—

"( ) The regulations must provide for the factors to be taken into account in deciding whether to authorise a licensing body to grant licences in relation to a performer's property rights to include—

(a) the likely effect of the authorisation on—

(i) the performer,

(ii) members of the body,

(iii) owners of rights on whose behalf the licensing body would be entitled to act pursuant to the authorisation, and

(iv) licensees and potential licensees of the aspects of rights that would be the subject of the authorisation, and

(b) the extent to which the licensing body is entitled to negotiate or grant performers' property right licences in relation to similar rights, other than under an authorisation under this paragraph."

Amendment 37 (to Amendment 36) not moved.

Amendment 36 agreed.

Amendments 38 to 44

*Moved by **Lord Young of Norwood Green***

38: Schedule 2, page 65, line 35, at end insert—

"( ) In this paragraph—

"member", in relation to a licensing body, means—

(a) an owner of a performer's property rights on whose behalf the body is authorised to negotiate or grant licences, other than under an authorisation under this paragraph, and

(b) a person other than the owner of a performer's property rights who is or would be entitled to royalties or other sums paid in respect of a licence in relation to the rights granted by the body;

"performers' property right licences" has the same meaning as in paragraph 1."

39: Schedule 2, page 65, line 37, leave out "in accordance with regulations"

40: Schedule 2, page 66, leave out line 9 and insert—

"( ) public funding bodies;

( ) trade unions and trade associations;"

41: Schedule 2, page 66, line 10, leave out "works" and insert "recordings"

42: Schedule 2, page 66, line 23, leave out "copyright owner" and insert "owner of the interest"

43: Schedule 2, page 67, line 24, leave out "(6)" and insert "(3)"

44: Schedule 2, page 67, line 30, after "rights," insert—

"( ) as if the reference in paragraph 3(3) to section 116B were a reference to paragraph 1B,"

Amendments 38 to 44 agreed.

A privilege amendment was made.

Bill passed and sent to the Commons.

Child Benefit Up-rating Order 2010

Motion to Approve

5.27 pm

*Moved By **Lord Myners***

That the draft order laid before the House on 10 February be approved.

Relevant Document: 9th Report from the Joint Committee on Statutory Instruments.

The Financial Services Secretary to the Treasury (Lord Myners): In moving this Motion, I shall speak also to the Tax Credits Up-rating Regulations 2010, the Guardian's Allowance Up-rating Order 2010 and the Guardian's Allowance Up-rating (Northern Ireland) Order 2010. We shall debate the four related regulations and orders together. Tax credits, together with child benefit, deliver financial support to the vast majority of families with children in the UK and are vital in our commitment to tackle child poverty. I am pleased to introduce these regulations and orders, which increase certain elements and thresholds of tax credits and raise child benefit and guardian's allowance. In my view, the regulations and orders are compatible with the European Convention on Human Rights.

I turn first to the Tax Credits Up-rating Regulations 2010. Tax credits play a major role in ensuring that work pays and in tackling child poverty. Overall, 6 million families containing 10 million children benefit from tax credits. These regulations increase the child element of the child tax credit by £20 above earnings indexation, which means that the child element will increase to £2,300 from April 2010. Since its introduction in April 2003, that element will have increased by £855, benefitting 7.5 million children.

For the first time in half a century, the retail prices index decreased, which means that all rates have increased in real terms. To provide additional support to households during the early stages of this economic recovery, the Government are bringing forward by a year a proportion of the increase expected in April 2011. From April 2010, rates will be increased by 1.5 per cent for those benefits and tax credits normally uprated by RPI. In April 2011, rates will be increased by the remaining amount necessary to make up the difference, locking in the real increase that arises from the fact that prices fell. These regulations

therefore increase the disabled element of the child tax credit and most of the other WTC elements by 1.5 per cent.

I turn to the Child Benefit Up-rating Order 2010 and the guardian's allowance orders. Child benefit is payable to around 7.5 million families for 13 million children and young people, providing almost all families in the UK with a worthwhile contribution towards the cost of bringing up their children. These instruments also increase rates by 1.5 per cent. From 12 April 2010, child benefit will be worth £20.30 per week for the first child and £13.40 for each subsequent child. Guardian's allowance will increase to £14.30 per week.

With the increases introduced by these instruments, we will be delivering even more support next year. We remain committed to the Government's goal on child poverty, of which tax credits will remain a key part. As a result of all the changes to the personal tax and benefits system since 1997, families with children in the poorest fifth of the population will be on average £5,000 a year better off. I commend these regulations and orders to the House.

5.30 pm

Baroness Noakes: My Lords, I thank the Minister for introducing these regulations and orders, which are among the highlights of the Treasury calendar. We shall not be opposing the instruments but I have a few points for the Minister.

As the Minister explained, these instruments, in one way or another, grant real increases in benefits and tax credits. Most but not all of the tax credits are being increased; because RPI fell in the year to last September, simply maintaining the value increases them in real terms. However, this analysis may not resonate with the average family. While prices fell in the year to last September, which is the reference period for the uprating, they are not falling at the moment. The latest year-on-year RPI figures show a 3.7 per cent rise and RPIX, which excludes mortgage payments, shows a rise of 4.6 per cent. The rate of increase is accelerating sharply, with annualised rates over a shorter period being very much higher. I would not like to be a Labour candidate, or canvassing for one, in a few weeks' time, explaining the great munificence of a 1.5 per cent increase in, say, child benefit against inflation rates perceived as very much higher than that—but that is very definitely not my problem.

I will start with child poverty, which the Minister mentioned. The Minister and I have been spared dealing with the Child Poverty Bill and I shall not repeat all the analysis that noble Lords spent many happy hours debating in the Moses Room. One thing is now crystal clear, and even the Government cannot escape this analysis: the Government have failed to meet their 2010 target to halve child poverty. That required the numbers to fall to 1.7 million. At the last count, 2.9 million children were living in relative poverty. The statistics have been going backwards since 2004, with particularly worrying increases in the number of such children in working, as opposed to workless, households. We do not rejoice in any of this, because it is yet another problem that a new Government will have to solve.

The Government have often used the granting of real increases in child benefit and the child element of tax credits as a way of claiming an advance in the war on child poverty. Since the 2007 Budget, the Government have been claiming that their plans would lift 500,000, or sometimes 550,000, children out of relative poverty. I read very carefully the 2009 Pre-Budget Report, in which the changes included in these instruments were first announced, but I found no claims about the impact of the PBR, either on its own or cumulatively, since the 2007 Budget on child poverty figures. Will the Minister say what impact the child benefit and child tax credit changes in the instruments before us will make on the child poverty figures? If he cannot give an up-to-date estimate of the number of children who will be in relative poverty in 2010-11, can he say what impact these instruments taken on their own will have? If he cannot give that analysis, will he say why a Government who have bragged so much about their policies to reduce child poverty cannot calibrate one of their flagship PBR announcements on tax credits in those terms?

The other area that I want to confirm with the Minister is how these increases will be clawed back next year. The Government have made it clear that the 1.5 per cent increases will not be permanent but will be offset against the inflationary increase that they expect on the basis of the September 2010 RPI figures. Let us take the basic element of the tax credit, which is currently £1,890 and is being increased by the tax credits regulations by £30 to £1,920—an increase of just short of 1.6 per cent. When they come to the calculations based on the September 2010 RPI figures, will the Government knock that 1.6 per cent off inflation for the year to September 2010 in calculating the increase allowed for the following year's tax credits? If, for example, inflation to September 2010 is 4 per cent, will tax credit recipients get 2.4 per cent? If we translate that into the basic element of the tax credit, a claimant will get £51 extra in 2011-12 rather than the £81 that inflation would indicate for the year. If inflation slumps to 1.6 per cent—it is unlikely, but let us assume that it does—will they get nothing? It is important to be clear about this: if this is happening, it is another of the poisoned wells being left for an incoming Government.

Lord Oakeshott of Seagrove Bay: My Lords, like the noble Baroness, Lady Noakes, we broadly support these orders and regulations, but again, like her, we have one or two questions and comments.

First, we need to recognise that the tax credits system has never worked properly. More than a third of all tax credits payments have been wrong since the system was introduced. The Government have overpaid on average 1.5 million families every year and in that time more than £16 billion has been overpaid or lost due to fraud and error. Even though most of the mistakes are made by the Government, they have dragged more than 50,000 families through the courts to draw back the money. More than half a million families, or about 1 in 10 receiving tax credits, are earning more than £40,000 a year. Does the Minister think that that is a sensible use of public money, with as desperate a deficit as we have now? Those families should not be stuck in the revolving door of complex

[Lord Oakeshott of Seagrove Bay]
means-tested benefits, having to claim back the taxes that they have paid. Instead, they should be paying less tax in the first place.

The noble Baroness, Lady Noakes, also talked about the Government failing on their child poverty target. That is right, but it is a relative target. The bulk of the reason why the Government have been failing on their child poverty target is the rapid increase, over the past few years, in inequality in income and particularly wealth. How is it possible to complain about the Government missing their child poverty target while being in favour of tax breaks at the very top? For example, did the Minister notice that inheritance tax was the tax that dared not speak its name in David Cameron's 40-minute speech at the Conservative Party conference? There was no reference to it at all. Can the Minister confirm that, under the Conservative proposals, the 3,000 wealthiest estates would get a tax break of about £250,000 each—far more than the owners of family homes, for whom this is intended? As always, the tax breaks are biggest at the top, which can only make the achievement of the child poverty target much more difficult.

I will not go through the retail prices index statistics as the noble Baroness did except to say that I am sure that the Minister will regard the past few months—as do I and almost all informed professionals, whether those who work in the City or economists—as a short-term spike in inflation. Certainly, it is nonsense to project up annualised rates from two or three months. Short-term inflation is painful, but we must be realistic. We are not at the moment in a situation where the economy has serious inflationary pressures. If anything, the risks are more on the other side.

Can the Minister tell us more—this has been something on which I have pressed him and his predecessors—about the change in the cost of living over the past year and how he sees it developing over the next year for different income groups? In particular, how has it affected people in the lower-income bands? Does he have any statistics for the relative change in the cost of living between households without children and households with children, which is clearly of particular relevance for these benefits and for these instruments?

Lord Martin of Springburn: My Lords, forgive me, but I do not have the full paperwork in front of me. I have a question regarding the guardian's allowance. If I picked up what the Minister said correctly, it appears that the child benefit allowance is higher than the guardian's allowance. Does that put guardians at a disadvantage? Obviously, a guardian comes about because of the changed circumstances of a child—a child could be left an orphan or with parents in long-term care in hospital. Form-filling is required for the potential guardian to get the allowance. What is the normal time specification from the date of the submission of the form until payment of the guardian's allowance?

Lord Myners: My Lords, as I said in my introduction, these regulations and orders increase certain rates and thresholds and are in line with the Government's commitment to make work pay and to tackle child poverty. Tax credits provide financial support to nearly 20 million people. It is a responsive system designed to tailor financial support to reflect families' current circumstances and to respond quickly to their changing needs, particularly in difficult times when income falls or needs increase.

From April to October last year, the flexibility of the tax credits system has given extra help worth on average £37 a week to 400,000 families whose income has fallen. Tax credits, together with child benefit, deliver support to virtually all families with children in the United Kingdom. Where in the 1980s and early 1990s the number of children in poverty more than doubled, tax credits have helped to lift around 500,000 children out of relative poverty since 1998, and the number of children in absolute low-income poverty has halved, from 3.4 million to 1.7 million. The fight against child poverty is, of course, not over and will require continued effort on behalf of government. These regulations and orders, together with other measures announced in the Budget 2007, will help to lift 550,000 out of poverty.

The noble Baroness, Lady Noakes, asked a number of questions relating to statistics on child poverty. I do not have the statistics available but I will, with great promptness, write to her with the information that she seeks, if such information exists. I will also copy that to the noble Lords, Lord Oakeshott and Lord Martin, who have participated in this debate.

The noble Baroness mentioned the pathway of retail prices inflation. RPI is definitely not falling at the moment, but the Bank of England, which has a good record over the past 10 or 11 years in forecasting inflation, suggests that it will fall back quite sharply as the year progresses. The noble Lord, Lord Oakeshott, referred to the current experience being a spike in inflation. I believe that that is correct. However, I am not in a position to give the noble Lord forecasts for inflation by household income or to differentiate between households with and without children. We all know that the experience of inflation for different subgroups of society will be different because of their differing expenditure plans. That is one of the reasons why it is so important in the current year that we anticipate how we think inflation will develop in accordance with the Bank of England's central projections and reflect that in some of the proposals that we are putting.

5.45 pm

Lord Oakeshott of Seagrove Bay: I quite understand what the Minister said about forecasts. However, I would be grateful for an answer, not necessarily now, on what statistics there are on the effects over the past two or three years on different income groups. Does he feel—it is a constant worry to me—that we have enough statistics in those areas? We have seen over the past few years that there can be sharply differing statistical effects of inflation on different groups. Will he look into that and see whether we have enough statistics, particularly when deciding on these benefit upgradings in future?

Lord Myners: I am delighted to tell the noble Lord, Lord Oakeshott, that I will do that. There is a danger with the news focusing on one figure for RPI, capturing whether it has moved by one-tenth or 1 per cent during a 12-month period, to miss the fact that there

will be differential experiences of inflation. We need to be alert to that particularly when it comes to issues of social policy as achieved through taxation, benefits and credits.

We are committed to tackling child poverty and our action to date has made a significant step forward in that process. The figure that I gave—550,000 children lifted out of poverty since Budget 2007—includes the impact of the changes announced in PBR 2009.

Baroness Noakes: Can I clarify that? The Minister said 550,000 would be taken out of poverty as a result of PBR 2009. The same number was given in the previous year. Do we therefore conclude that these orders take zero children out of poverty as a result of the increases that are proposed?

Lord Myners: My recollection is that the previous figure was 500,000. However, it would be wrong for me to mislead the House. I will therefore give the noble Baroness the precise answer that she seeks when I have the absolute data close to hand in order to inform her and Parliament on this matter. Rest assured, our commitment to the progressive eradication of child poverty is undiminished.

One cannot help, therefore, but note the observation from the noble Lord, Lord Oakeshott—who pays such close attention to these matters and regularly writes to me seeking information—about the contrast between the Conservative Party's position on issues relating to child poverty and the issue of inheritance tax. I believe that the figures given by the noble Lord were correct. The Conservative proposals, on which we now hear very little, as the noble Lord noted, would have the effect of removing 3,000 of the wealthiest families in the country from inheritance tax, with a benefit of £250,000 each. That is quite an extraordinary act of generosity, largely to the people of Kensington and Chelsea and Notting Hill. It is quite an outrageous set of priorities. I am sure that we will have many further occasions to discuss this including, possibly, in the upcoming economics debate.

The noble Baroness asked about the impact of the proposal that any increase in prices over and above the 1.5 per cent increase from September 2009 will be reflected in the 2011 rates of tax credit. These will lock in, in real terms, the increase of the rates of tax credits and child benefit. The RPI in January 2010 is still lower than the RPI for September 2008. Bringing forward this adjustment will be taken into account when setting the limits in 12 months' time.

The noble Lord, Lord Oakeshott, raised questions about HMRC and errors. I have information that the HMRC makes very few errors, but I have to say that it is an organisation which needs to constantly work to improve its user-friendliness and the accuracy of its processing. Many members of our population have suffered as a result of mistakes made by HMRC. I do not think anybody in HMRC should be content with its performance. I am sure that this is reflected in the urgency with which the senior management in HMRC addresses these matters. I myself have at times suffered from mistakes made by HMRC, so I fully understand the point that the noble Lord makes. Overpayments are too high. They cause great disturbance to those who receive overpayment and are then required to make adjustments, for which they have not made, or had an opportunity to make, appropriate plans. We must work hard to reduce that.

The noble Lord also asked about tax credits to those earning over £50,000 a year. This in fact only represents 0.02% of the entitlement in 2007. The answer is that the line has to be drawn somewhere and the Government believe that it is appropriate that we provide support for those raising and caring for children. The vast majority of the benefit paid is to those on incomes below £20,000.

The noble Lord, Lord Martin, asked about the Guardian's Allowance. My understanding is that a couple or an individual eligible for the Guardian's Allowance receives this allowance in addition to child tax credit. It is not either/or. Therefore, it is not a matter of the two necessarily being in line. Nor should one draw any great conclusion from the fact that one is higher than the other. I do not have information as to how long it takes between making the application and receiving the first payment. This is one of these dilemmas, however—we all believe that an honest and correctly completed application should lead to a fairly swift decision to start distributing payments. On the other hand, we have to have regard to the point made by the noble Lord, Lord Oakeshott, that we need to ensure that our processes are correct. There will always be a difficulty there. Some will say you are making too many mistakes, in part because you are rushing the process, on the other hand, an equally credible argument will be that an unreasonable delay can cause pain, stress and real financial distress to those entitled to the Guardian's Allowance.

I believe I have covered the majority of the points raised in the debate. If on reading *Hansard* I find others, I will of course write to those who participated in the debate. I commend these regulations and orders to the House.

Motion agreed.

Guardian's Allowance Up-rating Order 2010

Motion to Approve

5.54pm

Moved By ***Lord Myners***

That the draft order laid before the House on 10 February be approved.

Relevant Document: 9th Report from the Joint Committee on Statutory Instruments.

Motion agreed.

Guardian's Allowance Up-rating (Northern Ireland) Order 2010

Motion to Approve

Moved By ***Lord Myners***

That the draft order laid before the House on 10 February be approved.

Relevant Document: 9th Report from the Joint Committee on Statutory Instruments.

Motion agreed.

Tax Credits Up-rating Regulations 2010

Motion to Approve

Moved By ***Lord Myners***

That the draft regulations laid before the House on 10 February be approved.

Relevant Document: 9th Report from the Joint Committee on Statutory Instruments.

Motion agreed.

Social Security (Contributions) (Amendment) Regulations 2010

Motion to Approve

5.55pm

Moved By ***Lord Myners***

That the draft regulations laid before the House on 27 January be approved.

Relevant document: 8th Report from the Joint Committee on Statutory Instruments.

The Financial Services Secretary to the Treasury (Lord Myners): My Lords, I can confirm that in my view the provisions in the regulations are compatible with the European Convention on Human Rights.

The national insurance contributions rates and thresholds for the 2010-11 tax year were announced at the time of the Pre-Budget Report on 9 December 2009. These regulations are necessary in order to set the class 1 national insurance contributions lower earnings limit, primary and secondary thresholds and the upper earnings limit from 6 April 2010.

The class 1 lower earnings limit is increased from £95 to £97 per week from 6 April 2010. The lower earnings limit is legislatively linked to the level of the basic state pension and is the level of earnings at which entitlement to contributory benefit begins.

The class 1 primary and secondary thresholds for the 2010-11 tax year will be £110 per week, the same as in 2009-10. The primary and secondary thresholds are the point at which employers and employees start to pay class 1 national insurance contributions. The primary and secondary thresholds have in past years been increased broadly in line with prices. However, as the September 2009 retail prices index was negative, we have frozen the primary and secondary thresholds at the 2009-10 levels. Had we reduced the primary and secondary thresholds to reflect the reduction in the retail prices index in September 2009, low-paid employees in particular would have had to pay more national insurance contributions, as would their employers.

In the 2007 Budget the former Chancellor of the Exchequer announced a package of reforms to modernise the tax and benefits system. Part of the package included changes to national insurance contributions to align the upper earnings limit with the level at which the higher rate income tax becomes payable from 6 April 2009. I confirm that we will maintain that alignment for the 2010-11 tax year.

The upper earnings limit will be £844 per week for the 2010-11 tax year. This is the same as for the 2009-10 tax year. Earnings between the primary threshold and the upper earnings limit are liable to main rate employee contributions of 11 per cent. Earnings above the upper earnings limit are subject to the additional employee rate of 1 per cent. Employers pay contributions at 12.8 per cent on all earnings above the secondary threshold.

The Government Actuary published a report detailing the effects of both the national insurance contribution rates and thresholds announced for 2010-11 and the draft order uprating benefits laid by my right honourable friend the Secretary of State for Work and Pensions on the National Insurance Fund. The Government Actuary has confirmed that there is no expectation that the fund will need additional funding in the form of a Treasury grant for the 2010-11 tax year.

Northern Ireland has a separate national insurance scheme from Great Britain, but the two schemes are closely co-ordinated and maintain parity of contribution rates. The draft regulations cover both Great Britain and Northern Ireland. I commend the regulations 2010 to the House.

6 pm

Baroness Noakes: My Lords, I thank the Minister for introducing these regulations, which are also one of the highlights of the Treasury year. Social security contributions, otherwise known as national insurance, are a tax in all but name. They go into a rather arcane National Insurance Fund, but this is notional. The money is not held in a fund and the excess of receipts over payments each year funds the Government's expenditure. The effect of this order is that there will be an estimated surplus of receipts over expenditure of £1.4 billion. That is not a large sum in the context of borrowing £185 billion, but I imagine that every little bit helps.

It should be noted that one of the side effects of these regulations is that the Government will benefit from a £32 million decrease in payments for contracted-out rebates. This, too, is not a large sum, but its impact is on employers with defined benefit schemes and it is yet another small nail in the coffin for those schemes. I have lost count of how many adverse changes, starting with the ACT raid in 1997, the Government have introduced to pension schemes. The latest changes to the tax effect of contributions for the higher paid will simply deprive defined benefit schemes of their last corporate supporters. It has seemed like a 13-year war on pensions in which the casualties are private sector employees, few of whom now have access to a defined benefit scheme when they change jobs or enter the workforce. Increasing numbers of defined benefit schemes are also now being closed to future accrual. When the history of this Government is written, high on the list of their dubious achievements will be the decimation of defined benefit pensions for employees in the private sector, while protecting at taxpayers' expense public sector pensions.

These regulations for 2010-11 are a side show compared with next year's. Whether or not the thresholds and limits are tinkered with, if this Government are in power this time next year they will increase the employer and employee rates by 1 per cent. This was announced in two stages of 0.5 per cent in each of the 2008 and 2009 Pre-Budget Reports. This will be nothing more

than a tax on jobs, as all employer groups have protested. It will also be seen as a tax hike by employees. If we are elected to form the next Government, we have made it clear that we will try our hardest to manage the public finances so that at least the second 0.5 per cent can be avoided. We believe that economic recovery must be built on job creation in the private sector. The Government seem not to understand that. We do not object to these regulations but we have the very greatest objections to the future direction of national insurance on which the Government plan to embark.

Lord Oakeshott of Seagrove Bay: My Lords, we do not object to these regulations either. I am sure the House will be relieved to know that I have made all the party political points that I want to this afternoon. Can I ask the Minister one simple question? Why on earth do we persist in the fiction of a separate National Insurance Fund?

Lord Myners: My Lords, I thank the noble Baroness, Lady Noakes, and the noble Lord, Lord Oakeshott, for their contributions to this short debate and for their support—albeit, in the case of the noble Baroness, qualified support. A small number of issues were raised. In answer to the question of the noble Lord, Lord Oakeshott, I am sure that there is a good reason for maintaining the National Insurance Fund.

Lord Oakeshott of Seagrove Bay: Name it.

Lord Myners: The fact that I said I was sure there was one does not mean that I necessarily know what it is. I suspect that it might be one of those situations where dismantling the process may be more consuming of parliamentary time and taxpayer resource than maintaining the current approach. If there is an even more cunning answer to the noble Lord's question, I will write to him and send a copy to the noble Baroness.

We do not regard the proposed increase in NIC as a tax on jobs—far from it. Our approach to jobs has been commendably strong and effective, as evidenced by unemployment being so much lower than would have been anticipated—and, indeed, than we anticipated—given the way that the economy has gone through recession over the last couple of years. We have made many efforts and taken many steps to strengthen employment prospects through various allowances and schemes specifically targeted on benefiting small and medium-sized enterprises, which are the absolute rock of the UK economy.

The noble Baroness referred to pension schemes. The decline in defined benefit provision in the private sector is a global phenomenon which is not limited to the United Kingdom. Put simply, the world came to understand that the defined benefit promise was a more expensive one than it had anticipated—something which it came to realise in part because of changes in accounting treatment. Throughout the developed world, where the defined benefit scheme was offered by private sector employers, it is increasingly being limited to existing members and not extended to new joiners. They go into a defined contribution scheme where the employer and employee jointly share the investment risk and there is ample provision for employees to increase their contributions if they wish.

The noble Baroness referred to a 13-year war on defined benefit pension schemes. I believe that she has in mind the steps that the Chancellor of the Exchequer took to withdraw the tax credit benefit which was being received for no good reason by pension funds. It is worth reminding the House that that was the continuation of a policy step first taken by the noble Lord, Lord Lamont of Lerwick. The Conservative Party tends to wash over that fact when addressing this subject. I am delighted that these proposals have received the support of the Tory and Liberal Benches. I commend the regulations to the House for approval.

Motion agreed.

Financial Services Bill

Committee (2nd Day)

6.08 pm

Clause 2 : Proceedings of the Council

Amendment 14

Moved by ***Baroness Noakes***

14: Clause 2, page 2, line 25, at end insert "within 14 days of the date of the meeting"

Baroness Noakes: My Lords, Amendment 14 amends Clause 2(4). I remind noble Lords that Clause 2 concerns the Council for Financial Stability. Under subsection (4), the council must publish minutes of its quarterly meetings. The Bill is silent on the timeframe in which minutes are to be published. I find the lack of a reference to a timeframe very odd. When the Government set up the Monetary Policy Committee in the Bank of England Act 1998, a clear timetable was set out. Why is this Bill silent? The draft terms of reference say that the minutes of the Council for Financial Stability should be published within one month. I have already remarked in Committee that the statement issued by the Treasury under Clause 1(5), which is how the terms of reference come into being, says whatever the Treasury wants it to say from time to time. The Treasury could change its mind before issuing the terms of reference after Royal Assent, or indeed at any subsequent time. As with the Bank of England Act, this should be in the Bill.

That just leaves the time period that is appropriate. The Bank of England Act says that MPC minutes should be published within six weeks. Even when that Act was being passed, the practice was to do better than that. For a long time now, the Bank has routinely published the MPC's minutes 14 days after the meeting. That gives financial markets certainty about when information will be available and is sufficiently close to the actual decision to be useful to the markets. If the minutes of the Council for Financial Stability are to have any importance in the financial world, there has to be both certainty on timing and a timeframe which produces information to the markets as rapidly as possible.

My amendment suggests that the Council for Financial Stability should stick with the timetable that the Bank of England now achieves with ease for the Monetary Policy Committee—that is, 14 days. I do not believe

[Baroness Noakes]
that the minutes of the Council for Financial Stability are any more complex than those of the MPC or that this timeframe will be particularly difficult. In addition, the MPC has nine members among whom minutes must be agreed while the Council for Financial Stability will have only three. The task of agreeing the minutes of the council will therefore be simpler and much less time-consuming. I beg to move.

Lord Davies of Oldham: I share the view that it is important that there is the discipline and predictability of a deadline in the production of minutes after a council meeting, as the noble Baroness indicated. Clause 2(4) sets out that the statement of the council should make provision for procedure. In keeping with that concept of procedure, the draft terms of reference, which are available on the Treasury website, stipulate that a final minute is to be published no later than one month after the meeting. The noble Baroness proposes to halve that time so that a final minute should be published within 14 days. If the amendment were accepted, that would be a statutory requirement. To produce minutes in such a short time seems a little dramatic. It is unnecessarily short given that it is appropriate for the minute to be agreed by the parties as a fair record. There is a bit of work to be done. Surely the predictability of the release is most important, not how rapidly it appears. We consider one month a fair and reasonable time. We hope the noble Baroness will therefore withdraw her amendment.

Baroness Noakes: The Minister has failed to explain why a period of one month is reasonable when the Bank of England can do the minutes of the Monetary Policy Committee in 14 days. As I pointed out, there are nine people there to agree minutes with rather than three. Why is a whole month needed for the Council for Financial Stability?

Lord Davies of Oldham: The difference is that the Bank of England is one entity in one building. The council meetings comprise a membership which is more diverse than that. As I said, it would not be appropriate for a minute to be issued in the name of the council without consultation having taking place on it. The difference is simply that we think we need a slightly greater time than the noble Baroness has indicated that the Bank of England takes. A month seems reasonable.

Baroness Noakes: That seems extraordinary—that the Bank of England being in one building somehow makes a difference in this day of electronic communication. Is the Minister seriously telling me that buildings are a relevant factor? The Government are not really committed to keeping up with good practice in delivering minutes. They are refusing to place this in the Bill, leaving it to the Treasury's own discretion. They are also refusing to contemplate a timeframe which is perfectly achievable in the Bank of England. I shall think about this before any later stages of the Bill. For now, I beg leave to withdraw the amendment.

Amendment 14 withdrawn.

6.15 pm

Amendment 15

Moved by ***Baroness Noakes***

15: Clause 2, page 2, line 25, at end insert—

"( ) The minutes shall record the views of each of the members of the Council and the extent to which they are in agreement."

Baroness Noakes: Amendment 15 inserts a new subsection into Clause 2. This amendment also concerns the minutes of the Council for Financial Stability, requiring them to record the views of each of the members of the council and the extent to which they are in agreement. The Government have lauded the transparency associated with the new Council for Financial Stability and this amendment merely asks the Government to put their money where their mouth is.

The Minister will doubtless say that this should be dealt with in the terms of reference which will be issued under Clause 1(5). As the Minister knows, we are not impressed with leaving matters to this statement because in effect it leaves everything to the discretion of the Treasury from time to time, since it is for the Treasury to determine what goes in that statement. The draft terms of reference state that,

"as necessary, minutes will attribute comments to individuals".

Noble Lords will immediately spot the weasel words, "as necessary". Who is to say what is necessary? What criteria will be used when judging necessity? There is nothing in the Bill to insist on that.

The terms of reference also refer to attributing comments to "individuals" not members of the council. This appears to be deliberate. The terms of reference show that, apart from the three people who are members of the council, attendance can include a deputy or senior colleague for each member, who attend even if the key players also attend; a private secretary for each member; and the secretariat. In practice, it appears that even more attend. The minutes for the first meeting of the council in January show that 11 people attended in addition to the three principles. Seven of the 11 were, perhaps unsurprisingly, from the Treasury. I could not fit most of them into the categories described in the terms of reference.

The minutes of the first meeting of the Council for Financial Stability in January show views being attributed to many of these attendees. There is clearly no intention to confine the minutes to the council proper. It is interesting to learn that the noble Lord, Lord Myners, had a lot to say during the meeting but it is not a surprise. Yet the purpose of the minutes is to record what the members of the council said and agreed or otherwise. The Bank of England Act 1998 requires the minutes of the MPC to record the voting preference of each member. It does not require the views of individual members to be attributed. That issue has been debated from time to time. The important function of the MPC is to decide on the interest rate and, more recently, its approach to quantitative easing. It is that decision which must be in the public domain plus the balance of opinion within the MPC.

There is a less obvious decision point as regards the Council for Financial Stability—or if there was one, it would almost certainly not be published for being market sensitive. There is a case for knowing what the

views are of the top people at the Treasury, the Bank and the FSA on the issues discussed. Let us suppose, for example, that the Bank of England's financial stability review highlighted a new concentration of risks in financial markets. Are we not entitled to know what the Treasury and FSA think, or if they agreed with the Bank? That is all my amendment would require. I beg to move.

Lord Hodgson of Astley Abbotts: I rise briefly to support my noble friend. In our debate on the previous day in Committee we focused on Clause 1 and the role of the council. Various parts of the House, including the Minister, understood that there are issues about co-ordination, duplication and who is in charge. If we are to answer those clearly, and if people are to understand this matter beyond peradventure in the future, we need to know who said what about whom. I think that my noble friend's amendment goes to the heart of that issue and would do a great deal to strengthen and resolve some of our concerns about Clause 1 and the role of the council.

Lord Stewartby: My Lords, I, too, shall be brief but I should like to raise a general point. These procedures do not seem to have a great deal of pace built into them. There is plenty of opportunity for reports to be considered at the next meeting but the next quarterly meeting could be 90 days away. I get the impression that the Bill's treatment of the council's proceedings is a sort of construct in order to demonstrate to the markets and to the world outside that problems are being recognised and given due consideration. It seems to me that this is where the status of the council comes into question.

If the council has contentious things to discuss, the minutes will become a very active ingredient in the debate about monetary policy, regulation, supervision and all such matters relating to the market. However, because the council does not have executive responsibility and apparently does not have any powers, it will be difficult to establish where its deliberations are leading in terms of action. I do not get a feel of that from reading the text of this clause but I get a general feeling that something needs to be done to sharpen things up a bit and to ensure that there is some time pressure, as proposed in the previous amendment. I think that that was a sub-plot of what we were discussing. All these very high-powered people on the council will have a sort of authority among them collectively, and indeed individually, and that level of authority is almost looking for an executive function to which to apply itself. Because the council is specifically not intended to be an executive body, we have to wonder how initiatives will be channelled into action which may be needed. I should very much appreciate the noble Lord commenting on how this looks from the Government's point of view.

Lord Higgins: My Lords, I am somewhat puzzled by the structure of this clause. My noble friend—rightly, in my view—has suggested that the views of the various members of the council be made explicit and published, and that any disagreement between them be recorded. However, I do not understand why the FSA or the Bank of England publishes a report which then has to be considered and the Treasury prepares a draft report which also has to be considered. I am not sure why there is a distinction between the two. Apparently, there is no question of the Treasury suggesting that the minutes are a risk to the stability of the economy. Having said that, I am not at all clear what the minutes will look like. Will they be like those of the Monetary Policy Committee, from which one gets a very clear idea of where the balance is on a particular issue, or will they be more like ordinary Cabinet committee minutes, which probably record nothing at all except what decision is reached and therefore will not be very illuminating? It is right for my noble friend to suggest that the views of the members of the council should be made public.

Lord Newby: My Lords, when I first saw this amendment, my inclination was to suggest to the noble Baroness that she had not gone far enough. If you want to be as prescriptive as this and are so concerned about every word that is spoken by this body, why not open it up to the public? Why not allow people to turn up to its meetings? Indeed, I think it is such an interesting body that you will be able to charge for it. By allowing the council to function in a goldfish bowl, the deficit could be reduced—at least by a small amount.

My rather more serious point about this and all the other amendments to this clause is that today is likely to be the last day on which we debate this Bill in Committee. There may be another but certainly we will not get through the whole Bill. We know that the Conservative Party opposes this clause, as it does all the clauses in the first set, so we know that, even if any other parts of the Bill go through, the Conservatives will not allow this clause to go through in the wash-up. It is important that we get through other parts of the Bill, such as the schedule on the consumer financial education body, which we may get to, at least in part, tonight, and there are other aspects of the Bill which I think everyone in the House would like to see on the statute book. My point is that we are going into long and detailed discussions on amendments, which will not be moved to a vote or carried, to clauses which will then be struck out by the noble Baroness's party in a fortnight. Therefore, we should move on to the parts of the Bill which are of real value and which all noble Lords wish to see on the statute book.

Lord Davies of Oldham: My Lords, it goes without saying that I have some sympathy with that view but I imagine that I will have difficulty in persuading the noble Baroness and those behind her that that is the way in which we should proceed. Therefore, we are dealing with what look like minutiae.

The Government have already indicated how they intend these issues to operate. The first shadow minute of the council in January clearly set out the different views of the attendees at the meeting, which is the basis of the concern that all noble Lords have expressed. The noble Baroness was absolutely right when she anticipated that "the Minister will say that these should be in the terms of reference". So I do. I said that in the debate on the previous amendment and I am not going to change my view with regard to this one. That is where we think these issues should be placed.

[Lord Davies of Oldham]

Of course, I entirely accept her objective and the objective of all noble Lords who have spoken that the minutes should be clear about who says what. That is the real burden of the issue. I merely say to the noble Lord, Lord Stewartby, that this is not an executive body; it is a body concerned with strategy. What the individuals say in these discussions is of the greatest importance but it is not an executive body and does not have executive responsibility in quite the way that the noble Lord gave the impression of being the case.

In terms of objectives, I do not think that there is anything at all between us. We all agree that the record of the council's meetings has to be clear and open about who contributed what and who said what so that there is a very clear perspective of the deliberations. We have already provided for that in the Bill and I do not think that the noble Baroness's amendment adds significantly to it. Therefore, I hope that she will withdraw this amendment, as she did the previous one.

Lord Higgins: My Lords, can the noble Lord clarify the point that I raised? Will the minutes record only what the FSA or the Bank of England said were dangers for the financial situation or will they include the views of the Treasury as well? In addition, why is there is a distinction between a draft report and a report?

Lord Davies of Oldham: I am sorry that I did not comment directly on the point that the noble Lord raised. That was possibly because I recoiled in horror when he suggested that the council's minutes should be like Cabinet minutes, as that would be counter to the concept of how the council is to be reported. The views of the Treasury and the Chancellor will be clear from the council's minute. It will be quite clear what the participants have said.

There is not much between us either on the point that the noble Baroness emphasised as necessary, as if there was some kind of malign Treasury initiative to airbrush the discussion. That is not so. There is, simply, an enormous difference between a verbatim report—I hope that she is not actually canvassing that—and a report that accurately reflects and gives to the outside world a clear picture of how the participants conducted themselves at the meeting, without going to quite the point that the noble Baroness has stressed. I therefore hope that she will withdraw the amendment.

6.30 pm

Baroness Noakes: My Lords, I start by thanking my noble friends Lord Hodgson, Lord Stewartby and Lord Higgins for their support for this amendment. The noble Lord, Lord Newby, again raised his concerns that these Committee days should be used to discuss the bits of the Bill that the noble Lord thinks are important. As he is aware, we do not yet know when Parliament will be dissolved. Until we know that, we do not have an end time and do not know how many days we will sit in Committee. There is a working assumption that this may be the last or the penultimate day in Committee, but if there is not an election in May, we could sit for many happy days in Committee on this Bill. If the Government wish to focus on clauses to which they attach real importance, it is for them to propose the deletion of other clauses. Otherwise, so far as these Benches are concerned, we will scrutinise this Bill in the normal way and not make any assumptions about an election, or otherwise.

There is a difference of view between myself and the Minister in what he said about my amendment. The noble Lord emphasised how the minutes will record who said what and the views of the attendees, and that everything will be clear and open. My amendment is rather narrower. It says that the minutes should record what the members of the Council for Financial Stability said, not what any Tom, Dick or Harry who turned up to the meeting said. Of course, I am well aware that they are not any Tom, Dick or Harry but all fantastically important people, but the point is that the minutes do not differentiate between the members of the Council for Financial Stability, which is one of the points that I drew out in my opening remarks. However, it would not be worth pursuing that particular debate this evening, so although we may return to it later, I beg leave to withdraw.

Amendment 15 withdrawn.

Amendment 16

Moved by ***Baroness Noakes***

16: Clause 2, page 2, line 28, at end insert "or market sensitive"

Baroness Noakes: My Lords, I shall move Amendment 16 and speak to Amendments 18 and 24 which amend Clauses 2 and 3. These amendments are still on the theme of the minutes of the Council for Financial Stability, because it is such an interesting topic. Under Clause 2(5), the minutes of the quarterly meetings are not required to be published if one of three exceptions applies. They are: commercial confidentiality; non-interference with action by the tripartite authorities; and anything which is a threat to financial stability. We might conclude that there is enough wriggle room in those exceptions for the minutes to contain virtually nothing at all of interest, but I shall not pursue that theme.

My concern today is with the first let-out of commercial confidentiality. I have two different concerns, which my amendments address. Amendment 16 inserts "or market sensitive" into the first exception, so that matters would not need to be included in the minutes if they were commercially confidential or market sensitive. That is, I am offering the Government an even wider exception than that drafted. I am starting from the assumption that the Government would not want the minutes to contain market-sensitive material; if I am wrong on that, doubtless the Minister will correct me. Clearly, something can be commercially confidential and not market sensitive. The two might have the same meaning on a particular matter for a large organisation, but would likely not have the same degree of correspondence for a smaller organisation.

I was not sure whether Clause 2(5)(b) and (c) covered all the market sensitive bases either. Something that was market sensitive—in the sense that financial markets

would react to the information—might not stop the tripartite authorities from acting. Similarly, something might be market sensitive but would not itself pose a threat to financial stability and come within the terms of Clause 2(5)(c). My point is that if the Government want to prevent the release of market-sensitive information in those minutes, are they absolutely sure that they have the drafting of Clause 2(5) correct?

Amendment 18 addresses a different point; what is meant by "commercial confidentiality" in this Bill? As was pointed out in the other place, the Bill does not define commercial confidentiality—an excuse which the Government often use when there is nothing commercial or confidential at all. Anyone who has looked at responses to freedom of information requests will find how elastic the concept can be. My amendment merely requires that the council should set out what it understands by commercial confidentiality for the purposes of the permission not to include material in the council's minutes under Clause 2(5)(a) or the annual report under Clause 3(3). An alternative approach would be for the Government to add a definition to Clause 4, but that solution would be less flexible and I know how Governments always like to preserve flexibility. I have not yet mentioned Amendment 24, which is a mirror image of Amendment 16 but relates to the annual report rather than the minutes. I beg to move.

Lord Davies of Oldham: My Lords, the noble Baroness has made a good case for Amendments 16 and 24, and I propose to accept them. On Amendment 18, she pressed us on whether the Government felt secure about the issue of commercial confidentiality. I am grateful to her for that amendment and the chance to reinforce our position.

We are cautious about the council providing, on a one-off or a continuing basis, the explanation of what it considers is meant by "commercially confidential". A very high-level explanation is unlikely to add much to what is in the Bill, while a detailed explanation risks being insufficiently comprehensive and raising the prospect that it would have to be expanded to cover specific pieces of information that are not covered by the existing one. That would not be a desirable state of affairs. In this context, the definition of "commercially confidential" is clear. Many discussions of the council will involve the position of specific firms, and much of the information, and those discussions, may well be commercially confidential and be made available to the council in that expectation.

I accept that without a precise, on-the-record definition there is a degree of subjectivity, but we consider that to be necessary. The wriggle room provided allows some sensible judgment to be exercised, and to avoid the forced release of information that could be unhelpful to the firm concerned and therefore ultimately to wider financial stability. This is an area where it is right for the balance to be struck; I think that the noble Baroness was indicating that she understood that. We think that it needs to be struck in favour of not disclosing information, at least until we are satisfied that publishing it would not be prejudicial to any commercial interest.

I understand the point that the noble Baroness makes about how emphatic we could be on this issue. We are asking here for some element of flexibility and wriggle room, because we cannot predict all circumstances or where the commercial confidentiality of a particular organisation might be compromised. That is why I would like her to withdraw her Amendment 18, against a background in which I hope that she will recognise the generosity of the Government's spirit in accepting the other two amendments.

Baroness Noakes: My Lords, we appear to be back to the phenomenon we experienced on our previous Committee day when the Government tried to share out; if they accepted one amendment, I had to not move another one. Here, they have accepted two, so presumably I am somehow in debt to the Government if I withdraw the one remaining in the group.

I am grateful to the Minister for accepting Amendments 16 and 24. It is a pity that the Government have not accepted the possibility of setting down what commercially confidential means. I mentioned that those who had seen Freedom of Information Act requests would often be puzzled by the use of the commercially confidential reason for redaction. I remember one in particular, on Companies Act charges, where virtually everything had been redacted in circumstances where there was no commerciality involved because nobody else was in competition with Companies House and there was no confidentiality either. So the Government are not entirely to be trusted with the concept of commercial confidentiality. We shall see how that turns out in practice.

Amendment 16 agreed.

Amendment 17

Moved by ***Baroness Noakes***

17: Clause 2, page 2, line 33, at end insert—
"for as long as the conditions in these paragraphs are met"

Baroness Noakes: My Lords, Amendment 17 would amend Clause 2(5) so that minutes of the Council for Financial Stability which are withheld on the basis of commercial confidentiality or one of the other let-outs in Subsection (5) have to be published once the reasons for the non-publication cease to exist. We completely accept, as I made clear, that there are good reasons for non-publication of minutes, although we hope that the exemption will be used sparingly. I hope that the Government do not intend that such minutes, having qualified for exemption, will then be kept secret until the 30-year rule kicks in, or whatever shorter period is used in future. If the Government believe in transparency they will support this amendment. I beg to move.

Lord Myners: My Lords, the noble Baroness has taken notice of the comments of the noble Lord, Lord Stewartby, and we are speeding up. This amendment focuses on the release of information that was initially exempt from public minuting and therefore not included in the council minutes, but which no longer meets the criteria for exemption. The amendment is neither necessary nor appropriate. It is not necessary as it would make no practical difference. As currently drafted, Clause 2(5) does not prevent the publication of information when the conditions in that clause no longer apply. The key

[LORD MYNERS]
question is what is the most appropriate vehicle for releasing information that is no longer necessary to be withheld such that it maximises transparency and public benefit in the context of a piece of legislation that is designed to further transparency. It is quite possible that a number of matters could steadily and incrementally no longer meet the exemption criteria in the months after a meeting. I do not believe, however, that a steady series of updated tweaks to the minutes is the best way to communicate the relevant information. The annual report provided for under Clause 3 provides a much more appropriate vehicle for the coherent and informative release of financial stability information regularly. The Government believe that the annual report is the appropriate place for such subsequent release, so I urge the noble Baroness to withdraw her amendment.

Baroness Noakes: My Lords, I think that I accept the Minister's point; we would not want a drip-feeding of bits of minutes as the exceptions dropped away. I can see that the annual report may well be an appropriate place for the inclusion of that material. I shall reflect further on what the Minister has said. I beg leave to withdraw the amendment.

Amendment 17 withdrawn.

Amendment 18 not moved.

6.45 pm

Amendment 19

Moved by ***Baroness Noakes***

19: Clause 2, page 2, line 34, at end insert "and must publish minutes of these meetings"

Baroness Noakes: My Lords, Amendment 19 would amend Clause 2(6). Subsection (6) allows for the Council for Financial Stability to meet additionally to its quarterly meetings. This is obviously sensible as quarterly allows a long time between meetings even in times of relative calm. If there were real financial stability issues, we would expect the council to meet more frequently. Clause 2 provides for minutes to be published only of the quarterly meetings of the council. It seems to envisage that the quarterly meetings will consider strategic issues only, as set out in subsection (1). The additional meetings allowed for under subsection (6) could be either strategic or tactical as the subsection does not constrain them at all.

The schedule of meetings set out in the terms of reference tie the quarterly meetings to the different reports from the tripartite authorities that will be expected on a quarterly basis. But it must be possible that other strategic issues will arise outside that tidy schedule, for example some new rules from the EU or the Financial Stability Board. The draft terms of reference specifically allow for these extra meetings to cover both strategic and immediate issues. Furthermore, the draft terms of reference say that in the current financial market conditions the council will meet at least monthly. So it is puzzling to find that the clause provides for no minutes of the non-quarterly meetings to be made available, nor do the terms of reference seem to allow for this.

This issue was debated in Committee in another place in connection with a slightly different amendment. The Minister's reply was along the lines that if the council had to give minutes for every meeting but had to remove all items of substance, that could itself be harmful. He made the distinction strongly between quarterly strategic meetings and other meetings but, as I have tried to show, the terms of reference do not confine strategic issues to the quarterly meetings, and not every item on the agenda of non-quarterly meetings, even if of an urgent nature, will need to be removed using the criteria in subsection (5) which we debated in the previous group of amendments.

None of this makes sense except in the context of a Government who believe in only a bit of transparency but not enough to really embrace the concept. It may be that my amendment is not quite right because I can see that there could be circumstances when to announce that a meeting has taken place, even if it is a month later, but not to reveal anything about it, might be a problem. We should be able to redraft this so that the fact of a meeting, as well as its content, is capable of escaping publication using the subsection (5) let-outs. But we should not draft the Bill on the basis that everything that happens outside the quarterly meetings must be kept out of the public domain since it is clearly intended that the council will meet in addition to the quarterly meetings.

I hope that the Government will see that their half-hearted commitment to transparency will fool no one and could harm the credibility of the Council for Financial Stability. In another place the Minister was keen to say that the council was part of creating trust in the UK's financial stability. I have to say to the Minister that partial transparency is not a hallmark of trustworthiness. I beg to move.

Lord Northbrook: My Lords, I support my noble friend's Amendment 19. It is important that if there are emergency meetings of the council the minutes should be published, especially if there are special meetings because of new rules from the EU.

Lord Myners: Amendment 19 would require any additional meetings of the council beyond the quarterly ones to be covered by published minutes. In providing greater formality and transparency the Government have struck a balance between a public benefit of greater transparency and the need to maintain confidentiality in respect of operational matters relating to specific markets or firms. The proposals for the council, in particular the provisions for additional transparency and accountability, are therefore centred on the concept of the strategic quarterly meetings.

The Government believe that transparency over the council's forward-looking strategic discussions would be very much in the public interest. Agendas for these meetings are agreed in advance by the three participating members of the council. Therefore, it would be perfectly appropriate if one of the members of the council

wished to put on the agenda something which had been covered in an intervening meeting but which they felt had strategic relevance and which should be part of the published minutes.

The Government do not believe that it would be helpful to publicly minute all meetings. When the council needs to meet more regularly than every quarter it is likely that discussions will be dominated by operational matters that are likely to need to remain confidential. Minuting meetings that are dominated by confidential discussion would not be at all helpful. For example, publishing a minute which revealed nothing of substance could lead to damaging speculation about the stability of specific firms or markets. Such speculation may naturally be centred on firms or markets that are not in fact the subject of specific concern on the part of members of the council.

The Government believe that transparency over the quarterly strategic discussions is much more beneficial. Hence, the distinction we make between the quarterly meetings and, when necessary, other meetings. I hope, therefore, that the noble Baroness recognises that this is a significant step forward in terms of transparency compared to previous arrangements. I urge her to withdraw her amendment.

Lord Howard of Rising: My Lord, the noble Lord finished his remarks by saying that it would be a contribution to transparency. However, Her Majesty's Government propose exactly the contrary: to have meetings outside of the quarterly meetings that will not be minuted. If that is the case, all that will happen is that, if there is something that might possibly embarrass Her Majesty's Government or which the Government do not wish to be seen for reasons other than those of commercial confidentiality, they will simply postpone those until a discussion or a meeting between the quarterly meetings.

Lord Myners: I find it almost impossible to envisage a situation in which that might be contemplated. However, if the noble Lord allows me to answer his question for the benefit of the exercise before he comes back eagerly to give the House a further question; it would require the complicity of the Governor of the Bank of England and the chairman of the Financial Services Authority. That is why such a tactic would not even be contemplated, let alone take place.

Lord Howard of Rising: I am not sure that that is correct. I believe the noble Lord has led a very sheltered life.

Baroness Noakes: I do not know about that. Could I explore this difference between the quarterly and monthly meetings? As I understand it, the Council for Financial Stability in its shadow form is currently meeting on a monthly basis. It has presumably met subsequently to its first meeting. Can the Minister explain what the difference between its first two meetings was?

Lord Myners: The Council for Financial Stability has had two meetings in shadow form. One was a quarterly strategic meeting, the minutes of which have been published and are available on the Treasury website. They meet many of the tests that noble Lords have set in terms of clarity and clear attribution of comments, with a focus on the contributions made by the members of the council, including those of some of the bit-part players who have been allowed to make modest contributions and to have their moment in the sun. The council is meeting again this week in its shadow format. The two non-quarterly meetings—that is the one that we have held and the one that we are holding later this week—deal very much with issues of the moment relating to markets, individual companies and economies. I do not think that it would be right for me to go further than that, without undermining our very clear distinctions.

The quarterly strategic meetings will, importantly, focus on the reports published by the Bank of England and by the Financial Services Authority on financial stability and on financial risk. I note again that the discussion at the Council for Financial Stability takes place after the publication of those reports, so that there is no fettering of the ability of the Bank of England and the FSA to publish their views openly. The fourth major publication moment for the quarterly meetings will be the report published by the Council for Financial Stability under the direction of the Treasury.

So there is a very clear distinction and difference between the issues of the moment of the monthly meetings, as they are at the moment, which rather speak to at least some of the points made by the noble Lord, Lord Stewartby—although my noble friend Lord Davies of Oldham was correct in reminding the House that the Council for Financial Stability is not an executive body—and the quarterly meetings, which are more reflective in terms of their focus on the central risks to the financial system.

Baroness Noakes: My Lords, I am sure that that is now as clear as mud for everybody. I thank my noble friends Lord Northbrook and Lord Howard of Rising for their contributions to this short debate. It is very mysterious that you could have body which somehow divides itself up into an operational being—meeting other than quarterly—and a strategic being—meeting quarterly—when it is very clear just by looking at the first set of minutes that there was not just strategy discussed.

Lord Myners: I did not say—and would not have wanted to have said—that the monthly meetings are operational. I said that they deal with issues of the moment relating to specific companies, countries and markets. I did not say that the Council for Financial Stability is an operational or executive body.

Baroness Noakes: My Lords, I did not intend to say that the body was executive. We flogged that one to death on the first day of Committee when we found out that this is just a talking shop. Everybody knows that this is just a talking shop. This is another case of the Government being in fantasy land. They have invented the Council for Financial Stability—which is a way of dressing up some failed arrangements. They have elaborately put Clauses 1 to 4 in this Bill. They have people attending it; they have created a secretariat, minutes of two kinds of meetings, schedules and all

[Baroness Noakes]
kinds of things like that. They have a little bit of transparency, because they will tell us what is in some kinds of meetings, but not what are in other kinds of meetings. The more we hear about the Council for Financial Stability, the more it has no real meaning.

If something is as flawed as this, it is clearly very difficult to improve it. We will carry on trying to improve it, but perhaps not with this amendment. I beg leave to withdraw the amendment.

Amendment 19 withdrawn.

Amendment 20 not moved.

Debate on whether Clause 2 should stand part of the Bill.

Lord Lawson of Blaby: My Lords, I shall be very brief. I intervene particularly because I wish to apologise to the House. When I spoke on Second Reading on 23 February, I failed to declare an interest, which I now believe I should have declared, as chairman of Oxford Investment Partners, an investment company that is majority-owned by a number of Oxford colleges. It is regulated by the Financial Services Authority, as indeed am I personally as its chairman. I forgot about it because I was not talking about that at all; I was talking about the need for a structural separation between conventional banks, utility banks, narrow banks and investment banks—this sort of Glass-Steagall thing. I should have declared this interest and I apologise.

While I am on my feet, however, I think that the Minister also owes the House an apology of a different kind. On Second Reading, he said:

"Arguably, the only advanced economy able to largely withstand the banking crisis was Canada, and its regulatory structure is very similar to our own".—[*Official Report*, 23/2/10; col. 1000.]

When I heard that I was very puzzled, because I did not think that it was. However, I thought that I should check up on it first. I found that, in a fundamentally important way, it is not similar. Our structure—which the Council for Financial Stability, or whatever it is, enshrines—is a tripartite structure. The Canadian structure is quadripartite, which is fundamentally different. The Canadian system separates conduct of business regulation from prudential regulation. They are in two completely separate institutions, whereas our system puts them together. In my judgment, that is the single biggest mischief in the tripartite system that the Government have put into place. Conduct of business regulation is a totally different matter, requiring a totally different expertise and totally different kinds of people from those required for prudential supervision and prudential regulation. They have to be separate. You can separate them out in two ways: you can do it as the Canadians have done it, or you can do it as the Conservative Party has decided is the right way, by putting prudential supervision with the Bank of England and separating out the conduct of business regulation.

7 pm

The mischief is not just that these two activities are completely separate and require different qualities, skills and, incidentally, different pay grades; conduct of business supervision and regulation—which involves questions about mis-selling and consumer protection issues and so on—is constantly in the public eye. That tends to be the main focus of the people responsible for the regulator. That is one of the main reasons why they manifestly did not have their eye on the ball when it came to the need for prudential supervision and prudential regulation. This is of fundamental importance and a fundamental reason why the tripartite system is no good and has to go. It is also a reason why the noble Lord, Lord Myners, inadvertently misled the House on 23 February.

Lord Higgins: My Lords, I have always believed that affairs in this Chamber should be debates and not conversations. Therefore, I did not come back on my point to which, with great respect, the Minister did not reply. However, I am not clear why the reports under Clause 2(2) assessing the risk to the stability of the UK financial situation are to be made only by the Bank of England, on the one hand, and the FSA on the other. One might think that in a tripartite system there could be some issues which neither the FSA nor the Bank are immediately responsible for but which might be reported as a risk as far as the Treasury is concerned. I do not think that I have had an answer on that omission.

My only other point is rather more fundamental. On the whole, the failure of the existing tripartite system, and the past one, resulted largely from a lack of co-ordination between the three component parts. The Bill seeks to ensure that the three parts do co-ordinate their efforts in future, and that is very much to be welcomed. However, there are some dangers. If all these reports and so on are to be published under Clause 2 and it can soon be seen whether there has been an adequate response to them, it might have a destabilising effect rather than a stabilising one.

Baroness Noakes: My Lords, I spoke to the question of whether Clause 2 should stand part during our first Committee sitting, when we debated whether Clause 1 should stand part. However, perhaps I may just say how much I agree with my noble friend Lord Lawson on the split of conduct of business and prudential regulation, which is a point that I made during that sitting. It was one of the clear failings of the arrangements set up by the Prime Minister when he was Chancellor of the Exchequer in 1997, and it has contributed to the problems we found when the financial crisis hit the UK. That is why we proposing reversing it.

Lord Hodgson of Astley Abbotts: My Lords, when the Minister reflects on our debates on this clause and on the official and unofficial meetings of the council—the quarterly meetings, which are strategic, and the interim ones, which are "operational", which I think was the Minister's phrase—will he also reflect on the fact that knowledge that the council has met, knowledge which may well be spread abroad, while no minutes are being published, will have a far more destabilising effect than fessing up and explaining what is happening? If we are to have these meetings—some of which are to be minuted while others are not—people will draw the very worst conclusions from the meetings that are not minuted.

Lord Myners: My Lords, I shall address the points made by the noble Lords, Lord Lawson, Lord Higgins and Lord Hodgson of Astley Abbotts. When the

noble Lord, Lord Lawson, said that he should perhaps have made a declaration, I thought that it might even have been a declaration of his previous directorship of Barclays Bank. Earlier today, during Question Time, the noble Baroness, Lady Trumpington, declared an interest in a body that she had chaired some time ago. What noble Lords are meant to declare in debates seems a confusing matter. One of the strengths of this House is that everyone who participates in a Committee such as this one makes a contribution on the basis of extraordinary involvement and experience in the financial sector—in clearing banking, private equity, investment management and all other spheres. We draw great strength from the fact that Members of this House have such experience.

Perhaps I may make a conditional apology to the noble Lord, Lord Lawson of Blaby. If I was incorrect in what I said, of course I will apologise to the House. However, I am not at this stage convinced. The difference in regulatory responsibility which Canada reflects in the division of responsibility between prudential regulation and conduct of business—a difference which one or two other regulators also reflect either in their structure or in the fact that there are two different bodies—does not depart from the fact that Canada, like the UK, has a separation of responsibilities between the Treasury, the central bank and the bodies that are responsible for regulation. Specifically, I do not believe that regulation and conduct of business in Canada are the responsibility of either the Treasury or the central bank. It was on that basis that I suggested that Canada's structure was similar to that of the UK.

I would also argue, if time permits, that I was not suggesting that Canada was saved by its regulatory structure alone. There are a number of features to the Canadian banking market—in particular the guaranteeing of residential mortgages—which meant that many of the problems experienced in the United States and elsewhere with subprime mortgages were not visited on Canada.

Lord Lawson of Blaby: My Lords, I am most grateful to the Minister for giving way, I am grateful too for his conditional apology, and I hope that he will look more closely at this. The point is, however, that in every country the Treasury and the central bank are separate, so what we are talking about is the specific issue of the supervisory and regulatory arrangements for financial institutions. It is a fundamental difference whether you have one or two covering conduct of business and prudential.

The noble Lord was kind enough on Second Reading to say that he had put aside my memoirs for rereading. I love the "re"; I am most grateful to him for the "re". If he recalls, I described in my memoirs the White Paper on banking supervision, which I published a quarter of a century ago, in which I indicated how this issue could be strengthened. The one thing it had to be clear about is that prudential supervision and conduct of business regulation are two completely separate activities and it is damaging to put them together.

Lord Myners: I am familiar with the arguments that the noble Lord reflects in his contribution, and it is correct that I am rereading his memoirs. He quoted in Second Reading from something which appears quite early, in chapter 32, of his memoirs. This weekend, I saw a reference to an editorial which the noble Lord had written as a youthful editor of the *Spectator*. He had given guidance on a situation in which even the readers of the *Spectator* might have concluded that a change from a Conservative Government might have been the appropriate action. I will be digging in my archives to see if I can find this.

I see a look of puzzlement on the face of the noble Baroness. If I misread the Coffee House blog, as produced by the *Spectator*, I will not be able to find the article which the blog attributes to the noble Lord.

Lord Lawson of Blaby: It is more than 40 years since I was editor of the *Spectator*. Not only was there no Coffee House blog in those days, there was no blog anywhere in the world.

Lord Myners: I do not want to be detained on this subject, however the beauty of the digital media is its ability to allow us, at a couple of clicks, to find the pearls of wisdom produced by the noble Lord when he was editor of the *Spectator*, some 40 or 50 years ago. I, for one, am delighted that I am able to access such insights.

The noble Lord, Lord Higgins, refers to Clause 2(2), which relates to the publishing of reports. The reports to which this refers are of course the reports which are already produced by the Financial Services Authority and the Bank of England. The council will also produce a report on financial stability, and the Chancellor of the Exchequer will continue to account for the regulatory architecture and the Treasury's views on financial stability to Parliament and to the Treasury Select Committee. I see no need for an additional, formal report from the Chancellor; there is a danger that we might go from having very little transparency to being overwhelmed by it.

The noble Lord, Lord Hodgson, referred to the fact we will know that non-quarterly meetings have taken place and that in itself will lead to speculation as to what might have been discussed in those meetings. The markets and investors are already aware that the court of the Bank of England and the board of the Financial Services Authority meet on a monthly basis. That court and that board discuss issues which are confidential and market sensitive and are they not under an obligation to publish minutes. The fact that those meetings are taking place does not appear to pose any threat or speculation as to the issues which might have been discussed or conclusions which might have been drawn from matters which were on the agenda for those meetings.

Lord Hodgson of Astley Abbotts: This is of course called the Council for Financial Stability. It is a very central matter; it is concerned with co-ordinating the preservation and stability of our financial markets, so it is not like the sort of executive board the Minister describes; it is central to our financial affairs. Therefore when it becomes known that it has met out of sequence, people are bound to ask what it is meeting about; what is the instability threatened about which co-ordination is required? People will inevitably draw the worst conclusions, as that is human nature.

Lord Myners: I do not think it will necessarily be a matter of public record that the non-quarterly meetings have taken place, and therefore this concern which the noble Lord has should not arise.

Clause 2, as amended, agreed.

Amendment 21 not moved.

7.15 pm

Clause 3 : Annual report

Amendment 22

Moved by ***Baroness Noakes***

22: Clause 3, page 2, line 41, leave out "Treasury" and insert "Council"

Baroness Noakes: My Lords, I shall speak also to Amendment 23. We have now reached Clause 3, which deals with an annual report of the Council for Financial Stability. Under Clause 3(1) the Treasury is required to produce an annual report of the council's work. I have suggested amending this by Amendment 22 to say that the council should prepare its annual report. Amendment 23 would amend Clause 3(1)(b) so that the report is to cover the council's views of what is important about UK financial stability rather than the Treasury's views as currently drafted.

It seems to me that if the Government are serious about the council making a contribution to financial stability, with the three principals contributing on something near an equal basis, it cannot be seen as an outpost of the Treasury. If it is just the Treasury calling in the Bank and the FSA once a quarter, or even more frequently, to discuss their reports and then the Treasury writing up its version for the outside world and Parliament, the Government will soon undermine their own creation.

There is an important issue here. It is clear from the draft terms of reference and from the minutes of the first meeting of the shadow council, both of which I refer to today, that the Treasury is in the lead. Of the 14 people attending the meeting of the council in January, eight were from the Treasury, compared with three each from the Bank and the FSA. It seems the secretariat is provided by the Treasury.

This is a familiar syndrome. The Government have a problem—in this case it is the credibility of their financial stability arrangements. They then set up a body or a committee or, as in this case, a very grand council. Then they get some heavy hitters on it and then they swamp it with people from the Treasury who, being very clever people, can manoeuvre the body to their own ends. I will not name names today, but I can produce a pretty long list of people who have been sucked into these sorts of bodies only to find that they are a front for the Treasury doing its own thing.

The Treasury already has its fingerprints all over the Council for Financial Stability. It sets the terms of reference and the Treasury, in the form of the Chancellor or his deputy, will always chair it.

When this was debated in another place the Minister said that the Treasury had to have control over the annual report because it was the Chancellor who was accountable to Parliament and to the public. However, that is only partly true, as Parliament would expect to discuss the workings of the Council for Financial Stability with both the Governor of the Bank of England and the chairman of the FSA, both of whom are already regular attendees at the Treasury Select Committee in another place and in Select Committees in your Lordships' House. Of course we accept that the buck stops with the Chancellor—we teased that out on our first day in Committee—but he does not need a Council for Financial Stability in order to talk to the FSA and the Bank of England.

The Bill is predicated on there being some substance to the Council for Financial Stability and, if that is the case, it cannot be just a front for the Treasury. One way of demonstrating that substance is for the council to have its own annual report. The Bill is confused about the role and the real importance of the Council for Financial Stability. Our solution is not to have it at all because it would be redundant in our scheme for reuniting macro and micro-prudential supervision but, if it is to remain in the Bill, it ought to have logic and a consistency about it. I beg to move.

Lord Howard of Rising: In supporting my noble friend's amendment, I would point out to the Minister that if the council reported, it would have the advantage of the Governor of the Bank of England being involved. As he pointed out to me earlier, if the Governor of the Bank of England is involved it would give certain probity to proceedings that might not otherwise be there.

Lord Myners: In refining the tripartite through the Council for Financial Stability, the Government are keen to improve the transparency and accountability of the current arrangements. The publishing of minuted quarterly meetings forms an important element in this, as does the formal report on the council by the Treasury each year. The report will cover the activities carried out by the council and it will also describe significant regulatory actions taken and future developments proposed for regulatory legislation.

Amendment 22 would require the council and not the Treasury to prepare the report. The Government believe that it is appropriate for the Treasury to lead on the drafting of the annual report; the Chancellor is in the chair of the council and is ultimately accountable to Parliament and the public. We recognise the vital interest that other council members have in the report. As such, it is not the intention of the Treasury to produce a report without recourse to the other authorities. Indeed, Clause 2(3) provides explicitly that the draft of any report prepared by the Treasury must be considered by the council at one of its quarterly minuted meetings, and noble Lords will bear in mind that comments will and can be attributed to members of the council at those meetings.

The draft terms of reference also sets out a formal engagement process for the council prior to publication, and there will clearly need to be official-level engagement between the Treasury and other authorities prior to any formal discussion. In sum, the authorities will work closely on the production of the report and the council will formally consider and discuss a draft of

the report in advance of publication. That discussion will be publicly published with the comments of both the chairman of the Financial Services Authority and the Governor of the Bank of England minuted—as will be the comments of the Chancellor—if they wish to make minutable comments. However, it is right that the responsibility for producing the report lies with the Treasury. The Bank of England and the FSA will continue to produce their own regular reports on the risks to financial stability and their own annual reports on which they will be free to comment on the Council for Financial Stability.

Amendment 23 concerns the scope of the report as set out in Clause 3(1). The report is intended to cover the activities of the council in the previous year and, additionally, any matters that have special significance for the stability of the UK financial system. The amendment would change the scope of the report to being a matter for the council and not the Treasury. I do not accept this proposal for two reasons. First, the report is conceived as a report of the Treasury and, as such, provides an avenue for the Government to report more widely on financial stability. A Treasury report adds balance to the work of the council, with other members providing the financial stability report and the financial risk outlook. Secondly, other members will have the opportunity to be fully consulted, as I have set out previously. There is, therefore, scope for the views of all members of the council to be incorporated in the final report and transparently recorded.

On the clause stand part debate, the Government believe that the annual report provided for by this clause will provide for enhanced transparency about the work of the council, the risks to financial stability and the actions that are being co-ordinated to mitigate those risks. I cannot see how removing this requirement for greater transparency and accountability would in any way be beneficial to the maintenance of financial stability. I may well have led a sheltered life, but I do not think I have been so sheltered that I cannot see that the proposals made here represent a significant step forward in transparency and accountability. Accordingly, I urge the noble Baroness to withdraw her amendments.

Lord Northbrook: My Lords, it is a fairly weak sanction in Clause 2(3). It states:

"Where the Treasury prepares a draft report under section 3, the Council must consider the draft"—

but it cannot do anything about it. Coupled with my noble friend's comments on the balance on the council of eight, three and three, it is not going to have any ability to override in the final instance the Treasury's views.

Lord Myners: I can only repeat to the noble Lord, Lord Northbrook, what the noble Baroness has been saying: there are three members of the council. There may well be others in attendance providing support to the three principal actors, plus those responsible for minuting the meeting, but the council comprises the Chancellor of the Exchequer, the Governor of the Bank of England and the chairman of the Financial Services Authority. They will consider the report in a minuted meeting and if they were not happy with the report I am confident that the chairman of the FSA and the Governor of the Bank of England would make clear in their comments that they were not content, and they would, through the careful process we have set out for ensuring that there is adequate time to prepare and agree the minutes, ensure that those minutes reflected their views. I regard that as a powerful sanction. Indeed, I would suggest to the noble Lord, Lord Northbrook, that they are akin to the raising of eyebrows—a sanction to which the noble Lord has in the past referred to with some fondness.

Baroness Noakes: My Lords, the Minister gets ever more ingenious in his defence of the nonsense that is in the Bill. The Government are trying to pretend that the Council for Financial Stability means something and then, all of a sudden, it is the Treasury that takes the lead on drafting and produces the report. That is not covered by Clause 3, which states that the Treasury must prepare a report and include matters which in the opinion of the Treasury are significant. We are told that the really important sanction is that the Governor and the chairman of the FSA can have minuted the fact that they do not like what is in the report. This is worse than fantasy: it does not have coherence or logic; it is plain that this is a body which fulfils a Treasury civil servant's idea of what it will be like in practice to have three important people working together.

I shall not take any more of the Committee's time today. The points raised by my noble friends Lord Northbrook and Lord Howard of Rising are entirely to the point. We have not heard a single bit of sense from the Minister in his defence of the Treasury taking the lead and deciding what goes into the annual report of the council, other than to underline that the council is a piece of nonsense. I beg leave to withdraw the amendment.

Amendment 22 withdrawn.

Amendment 23 not moved.

Amendment 24

Moved by ***Baroness Noakes***

24: Clause 3, page 3, line 9, at end insert "or market sensitive"

Amendment 24 agreed.

House resumed. Committee to begin again not before 8.30 pm.

Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010

Motion to Approve

7.30 pm

Moved By ***Lord Brett***

That the draft order laid before the House on 27 January be approved.

Relevant Document: 7th Report from the Joint Committee on Statutory Instruments.

Lord Brett: My Lords, this order is designed to help tackle alcohol-related crime, nuisance and disorder, and to protect children as part of the Government's wider alcohol strategy. It sets out five new mandatory licensing conditions that will apply to all those licensed to sell or supply alcohol in the "on-trade", such as pubs, bars and members' clubs. In addition, the mandatory condition on age verification will also apply to the "off-trade", such as supermarkets, off-licences and convenience stores.

These conditions have been designed to bring an end to irresponsible promotions and practices in the retailing of alcohol; to ensure higher standards across all premises; to protect children; and to give customers greater choice in the size of drinks they can buy and the option to have free tap water. By making sure that all licensed premises across England and Wales meet these minimum responsibility standards, this order will help to tackle alcohol-related crime and disorder and will make the night-time economy a safer place.

The draft order sets out five new mandatory licensing conditions that will: ban irresponsible promotions; ban the dispensing of alcohol directly into the mouth; ensure that customers have access to free tap water so that they can space out their drinks and not get too intoxicated too quickly; ensure that an age verification policy is in place to prevent underage sales; and ensure that customers have the opportunity to choose small measures of beers, ciders, spirits and wine. I think there is widespread agreement that promotions such as "all you can drink for £10"; "women or under-25s drink for free"; or "speed drinking competitions" are not the types of promotions that responsible businesses should run.

Opposition to the code has been raised in a debate in the other place and in the licensing trade press. I would like to take this opportunity to address some of those points so that noble Lords are clear on the content and impact of the order. The criticism has been put forward that the order is not needed and would not work. That is not the case. According to the British Crime Survey, in 2008-09 there were 973,000 alcohol-related violent offences in England and Wales. Dealing with alcohol-related crime costs society between £8 billion and £13 billion per year. Alcohol-related crime and disorder has a huge impact on local communities. The recent economic downturn has seen premises in some areas competing more aggressively with each other in order to attract customers. Often this will involve attracting customers through various forms of alcohol promotions, which encourage drunkenness and then turn the problem out on to the streets of our towns and cities, making them "no go" areas for the responsible majority of citizens who want to be there.

That is why this legislation is needed—to rule out those types of irresponsible promotions and practices. The police, local councils and those working in accident and emergency departments tell us of the cost of having to deal with this problem, but simply adding more enforcement to our streets on Friday and Saturday nights is not the answer. Those selling alcohol have a responsibility here not only to their customers but to the wider communities that they are part of.

Two government consultations—one in 2008 and one in 2009—have confirmed that the public, the police, and licensing authorities have strong support for this mandatory approach and the conditions outlined in the order. Will this approach work? Our consultation showed that those involved in enforcement and licensing at local level believe that this will have a positive effect and warmly support its introduction. This has been reinforced by the Association of Chief Police Officers, which has recently sent us this statement of support. I shall read it in full so that I cannot be accused of misquoting. It says:

> "These conditions, if adopted, applying as they will universally, are a proportionate way forward to assist in driving up standards of trading across the sector. In reducing such headline clearly irresponsible promotions, as already mentioned, and by ensuring some of the best practice is applied across an industry sector, this mandatory code will help to create a balanced atmosphere and serve as an example to responsible drinkers going out to enjoy the highly valued sections of the entertainment economy that have alcohol as a constituent part".

In addition, we have supporting statements from individual police forces such as Nottingham and north Yorkshire. It is not just the police that support this action, the alcohol retail industry also supports it. Heineken, which operates more than 2,000 pubs in the UK and is the country's biggest brewer, has also sounded its support. It has told us:

> "Heineken UK welcomed the opportunity to participate fully in the consultation process on the Mandatory Alcohol Retailing Code. We found the Home Office to be open and responsive in taking on board industry concerns about some elements of the original draft, such as the local discretionary conditions. This partnership working approach has ensured the final version of the Code is proportionate, raising standards by banning the extreme end of promotions, such as drink all you can for £10. We do not believe this kind of deep discounting to drive footfall sits side by side with the promotion of responsible consumption".

We have similar supporting statements from other brewers—Greene King springs to mind. Heineken's statement continued:

> "We also welcome the requirement to ensure free tap water and smaller measures are available as another contribution towards making town centres and our night-time economy a welcoming environment for everyone and achieving our shared aim of reduced alcohol-related crime and health harms".

Criticism has been made of the costs attached to the introduction of the mandatory code. The £381 million figure used in the impact assessment is an estimate of the costs to businesses over a 10-year period and applies only to those who do not currently do what this order will require, so if you are running a responsible premises, offering a choice of measures and running a Challenge 21 scheme, you will not incur any new costs. Page 14 of the impact assessment sets out that the annual cost to an affected licensed premises for the first year is £703 and £544 for subsequent years. This equates to £1.92 and £1.49 per day respectively for those premises that are not already doing any of what is set out in the order. Let me be clear that these figures include the age verification condition. Data show that 68 per cent of pubs and more than 80 per cent of off-licences and supermarkets already run a Challenge 21 or Challenge 25 scheme and therefore will incur no cost by virtue of this condition. It is also important to note that not all the costs set out in the impact

assessment are "real costs" in terms of money paid out by a business. The impact assessment says that,

"all cost estimates presented are economic costs and not financial costs. A large proportion of the estimated costs are due to staff abstraction from other duties, which will not necessarily have any financial impact".

A number of on-trade businesses responded to the consultation saying that complying with the mandatory conditions would cost them nothing at all as they were already meeting these conditions. This was our intention when drafting the order—namely, to target only the irresponsible minority of alcohol retailers. It is important to reiterate that alcohol-related crime and disorder cost society between £8 billion and £13 billion per year.

As noble Lords will see from the draft order, the Government wish to delay the introduction of the conditions on age verification and ensuring the availability of small measures until October 2010 in order to allow businesses more time to prepare to comply with them. We are currently working with the licensed trade to make examples of suitable age verification policies available to businesses for them to use to help reduce the burden and to ensure that these policies are effective and of a good standard. I believe that this strikes the right balance between stamping out irresponsible promotions and practices in alcohol retail that contribute to crime and disorder and keeping the costs to businesses as low as possible. I beg to move.

Lord Skelmersdale: My Lords, if the whole country did not know that there was an election coming, it would on reading this order. As the Government have been spectacularly unsuccessful in reducing the amount of alcohol-related crime over the period of this Parliament, they have now decided that this is the moment to introduce five of the nine mandatory conditions we were promised during the passage of last year's Policing and Crime Act. Why so few? Why were the Government so adamant last year that nine were necessary, but now we see only just over half that number? Could the Minister's colleagues not come up with any more abhorrent practices in pubs, or is it a case of legislate in haste and repent at leisure? Not all practices in pubs and clubs are abhorrent, of course. There is no doubt—and as the Explanatory Memorandum shows, the Government agree—that, when used responsibly, alcohol can enhance social occasions and can have an important and positive role to play in society. In this connection, I congratulate on-trade and off-trade alcohol producers and Drinkaware on their smarter drinking campaign of the past couple of years.

However, it is when alcohol is taken to excess that serious problems occur. Not only were there almost 1 million victims of alcohol-related violence last year—astonishingly, almost half of all violent crime is alcohol-related—but also, as the Minister told us, the cost to the taxpayer can be as much as £13 billion each year. The Government are not alone in wanting to reduce these costs and the social implications of alcohol abuse, which is why I feel so strongly about clearing up some of the issues in the order. Once and for all, real action could be taken and real improvements seen.

I am content with two of the five mandatory conditions. For instance, the mouth-to-mouth transference of alcohol is positively revolting and, I suspect, carried out only when the donor is drunk—I might be wrong on that and the Minister may be able to correct me. The provision of free tap water is also sensible. However, I note that the order does not state that it has to be potable. There are many taps in your Lordships' House, but only a few of them are described as suitable for drinking. I am surprised that it is necessary to legislate for the latter in such a heavy-handed way.

Like my honourable friend in another place, I have a problem with paragraph 4, on age verification. This section states:

"The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark".

This is a very obtuse policy. We on these Benches are aware of the continuing, significant problem of under-age drinking and want to support any sensible measure to stamp out the problem. However, this section does little more than provide premises with more confusion and bureaucracy, which this struggling industry certainly does not need. Is the Minister aware that this section may result in the wide-scale removal of operators of Challenge 21 or Challenge 25 policies? The order requires premises to have in place an age verification policy. That is fair enough—I read that as a single-age policy. Should a pub choose to apply a policy that requires its staff to request age verification from, let us say, every customer who appears to be under 30, an offence would be committed if the policy were not fully applied. In that instance, if a member of staff inadvertently failed to challenge someone who appeared to be under 30, an offence would be committed carrying a fine of up to £20,000. The rational choice for the pub would therefore be to operate a policy that required challenge only to individuals who appeared to be under 18, to avoid the risk of inadvertently breaching a policy that challenges customers who appear to be between the ages of 18 and 21 or 18 and 25. We suggest taking out the phrase,

"or such older age as may be specified in the policy".

I am also slightly perplexed by paragraph 7.7(ii) of the Explanatory Memorandum, which states that,

"the Government has decided to include a mandatory licensing condition to ensure that all those selling or supplying alcohol have an age verification policy in operation that requires them to check the identification of anyone who appears to be under the age of 18"—

not any age, but 18—

"attempting to buy alcohol. The draft Order delays this condition coming into force until October 2010 to allow businesses"—

as the Minister said—

"time to prepare".

Is this not already a mandatory condition? I thought that it was already a legal requirement to check everyone who appears, at the very least, to be under 18; namely, the legal age for buying alcohol in pubs, clubs, shops and so on.

Furthermore, the Explanatory Memorandum states:

"Where the young person had attempted to buy alcohol from a pub or club in the last month, 82% had been successful".

A 2009 survey found that young people are now drinking twice as much as they did in 1990. Considering these statistics and other frightfully high, and ever

[Lord Skelmersdale]
rising, under-age alcohol abuse figures, is the Minister happy that this policy is effective?

This section also requires people to provide an ID with a holograph. Is the Minister satisfied that all forms of ID which are currently used and accepted in the UK carry a holograph? I am thinking, for example, of National Union of Students cards and cards specific to educational establishments.

I move to the provisions stopping irresponsible promotions. Paragraph 1(2) of the schedule states that,

"an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of lead.

It is followed by five examples. Can the Minister clarify whether the five actions are banned altogether, or are banned only if they are done in a manner,

"which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children"?

Paragraph 1(2)(a) covers,

"games or other activities which require or encourage, or are designed to require or encourage, individuals to … (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or … (ii) drink as much alcohol as possible (whether within a time limit or otherwise)".

I presume that these "games" include a pub quiz or darts, where the prize for the winner is a certain amount of alcohol. Is that permitted if it is not done irresponsibly or does not carry a significant risk of leading or contributing to crime, disorder and so on? The same goes for the other headings in the schedule, or are these situations banned altogether regardless? Can I see publicans buying chutney, for example, to give as prizes?

We agree that drinking alcohol plays a traditional role in British culture and generally it is a positive one. The Government are right to note that, ultimately, whether people drink and how much is up to the individual and that it is their role to make sure that individuals are able to make informed choices and to encourage the public and businesses to act responsibly. However, the Government state in the Explanatory Memorandum that imposing a large number of blanket conditions would not be appropriate. What then do the Government consider the order to be—a small number of blanket conditions?

The order is riddled with poor drafting and ambiguity. For the Government to prescribe what may or may not take place within licensed premises across the UK under one order is in complete violation of any principle of delegating power and authority to an appropriate level and fails to explore the use of powers already available to address the problem. We can't go on like this. Labour has announced countless initiatives to tackle binge drinking, despite poor enforcement of existing laws; for example, fines for drinking in public. Maximum fines for offences are not being used. Between 2003 and 2007, the last year for which figures are available, only two people were fined more than £250 for refusing to stop drinking alcohol in a designated public place. We need a tougher licensing regime, but the Government need to realise that top-down solutions are not the only answers. We need to give more power back to local communities to control the number of licensed premises in their area.

Councils and the police desperately need more powers to crack down on under-age and irresponsible drinking. For example, under the Licensing Act 2003, there is a general presumption in favour of granting an application to sell alcohol. It needs to go. The police need powers to object to a licence, which should be applied for regularly. The licensee, whether current or potential, needs to prove that the police are wrong in any assessment that the police have made against them.

The guidance to the magistrates' courts also needs tightening regarding when a council licensing condition can be allowed and when it should not be. It should be extremely rare to overturn a council's decision. I also believe that if publicans break the law it should be axiomatic that not only the landlord but the premises itself should be sanctioned.

I can think of other things to curb irresponsible drinking, but this strange order is like the curate's egg—only good in parts and likely to give licensees a stomach-ache, if only because of the drafting. Was it ever looked at by a lawyer outside the Home Office? I doubt it; it shows.

Baroness Hamwee: My Lords, when I first read the draft order I thought it was really rather poor. However, I then reflected on whether an order that seems to me to be poorly drafted and incomplete should be opposed for those reasons, unless given the subject matter it was also positively harmful. The order is seeking to address real harm. The Minister has referred to the cost to society and to individuals through alcohol abuse.

I do not want to sound pious about this and in case anyone thinks I should not be speaking because I drink so very little, I will acknowledge that on medical forms I should perhaps say "yes" to the question, "Do your friends comment on your drinking?" because they do. I have criticisms and some questions but from the Front Bench I will say now that we are not inclined to oppose the order.

My first concern is that as licensing has been transferred to local authorities the authorities should be left to set the conditions. Can the Minister tell the House what the response of the Local Government Association, or maybe LACORS, was to the consultation? I would have thought that a menu of possible conditions from which a local authority as a licensing authority could pick would have been preferable but I understand that national guidelines issued to councillors mean that their discretionary power to reject a licence application has been severely curtailed. This leads me to ask what the status of the good practice guidance will be—which I understand from the debate in the Commons the Government are to issue?

I conducted a very small straw poll of councillors who have licensing responsibilities and their response was that this might be useful but was largely irrelevant—irrelevant because of the wider considerations of whether

to grant the licence in the first place and the review of the licence. The detail of these conditions is not needed. There have been many occasions in your Lordships' House when I have proposed amendments to legislation and been warned of the danger of lists because of what is almost inevitably omitted. In addition, it seems to me not only is paragraph 1(2) of the schedule in danger of omitting descriptions of certain behaviour that should be there if the list were to be complete, the more detailed I think the more easily avoided or evaded.

We are not in a position to amend this order. Perhaps, and this would have answered the point raised by the noble Lord, Lord Skelmersdale, if paragraph 1(2) had simply stated "an irresponsible promotion means one or more activities carried on for the purposes of encouraging the sale" and so on, up to the word "children", without describing what those activities were, I think that would have met the point.

I have criticisms of some other detail in paragraph 1(1) of the schedule. The responsible person, let us call him the licensee for this debate is to take all reasonable steps to ensure staff do not carry out or participate in irresponsible promotions. I would have thought that a licensee should be under strict liability to ensure that the staff do not get involved in such promotions. Paragraph 3 refers to,

"tap water where reasonably available".

Where is it not available in the sorts of premises that we are talking about?

Paragraph 2 refers to disability, which is defined in the 1995 Act as "substantial or long-term". Concern has been expressed that that would catch somebody who is unable to drink, but not long term unable to pick up a glass, perhaps because of two broken wrists. I was in the position a few months ago of being offered operations on both hands at the same time, which I rejected. I would not have been able to pick up a glass at that point. The noble Baroness is laughing. My response to the surgeon was, "I would need a wife". More seriously, can the Minister meet that concern and explain just what that paragraph means?

The noble Lord, Lord Skelmersdale, referred to mouth-to-mouth transfer of alcohol. I do not think it is mouth-to-mouth; the word is "directly", which is a bit different. Can the Minister confirm that this does not catch the yard of ale which is a custom in some places? If one were to say to a friend, "What do you think of this? Taste this", would that be de minimis and not something which would cause a breach of the conditions?

Your Lordships will have had a good deal of lobbying expressing concern about age verification. I am perhaps not as troubled as others seemed to have been, but let me put the question this way. Can the Minister confirm that there is nothing to stop the higher age limit of, say, 21 or 25 being applied and that checking that someone was not under 21 or under 25 would actually meet this provision? Can he also say how formal the policy, which is the word used in paragraph 4, would have to be—a separate policy pub-by-pub, club-by-club? The largest cost by far for affected premises relates to this. It is important to know that this is as straightforward as possible for each of them.

Can the Minister also explain the extent of the term "premises licence holder"? Concern has been expressed, and it was in the Commons I think, about distance sellers being caught; for example, if you order a case of wine over the internet. I do not regard that as being caught. It does not seem to me that the term "premises" or "served alcohol" would apply, but it would be good to have that on the record.

The major criticisms are that the order does not entirely cover the off-licence trade and most of all that it does nothing to promote minimum pricing. I say that most of all because it would according to what I have seen of the lobbying and reporting of the issues generally and common sense, it would do most to help reduce binge drinking and drinking by children. It would also ensure that people whose consumption is moderate are not penalised as they are by increases in duty, nor would it penalise responsibly run pubs. I raise it although as far as I can see the underlying primary legislation does not allow for this and it could not be done by statutory instrument. The Minister may have a comment on that as well. Though we are not much persuaded by the draft order, that is not the same as opposing it and we will not do so.

8 pm

Baroness Finlay of Llandaff: I rise to bring a slightly different tone to this debate. I declare my interest as a member of the BMA and the Royal College of Physicians. I welcome this order, because, in all honesty, I welcome anything that tries to address the culture that we have of grossly irresponsible drinking. If I am right—and I hope that the Minister will be able to confirm this—the balance up till now, following the Licensing Act 2003, has favoured commercial operators over local residents. This, combined with parallel reforms in Section 33 of the Policing and Crime Act, will allow a swing back to people at a more local level, so that they can navigate review systems more easily when they live adjacent to premises in their community that are being adversely affected by the drinking habits locally.

As the noble Lord, Lord Skelmersdale, said, there have been an alarming number of alcohol-related hospital admissions and, indeed, deaths. The problem overall is one of public safety. It is not about stopping people doing what they want to do sociably; it is about protecting those who have not had a drink from being killed or maimed, seriously or even in a minor way, by somebody who has drunk completely irresponsibly. It is against that background that I welcome this order, which I hope nobody will oppose. I agree that it does not go far enough, but at least it goes some of the way, which is to be welcomed.

As the noble Baroness, Lady Hamwee, said, it is sad that we have not seen the introduction of minimum pricing. You can see students in the streets swigging on bottles of cheap spirits, especially vodka, which they have bought in the supermarket. They are getting "plastered" before they even start to go out for the night. They are drinking a lot of alcohol to get "front-loaded" before they go out elsewhere to drink. Student balls, of which I have attended many in my more senior years—no longer as a student—have sadly sometimes been a spectacle of the most awful drunken games, with students pouring spirits into the mouth of

[Baroness Finlay of Llandaff]
another student lying on the ground. That has had devastating consequences in the premises, from which that group of students is often banned. I welcome anything that will stop that happening. Some of those students are admitted with alcohol poisoning. It is the irresponsible behaviour of those around that pushed them further over the top when they were already severely intoxicated.

I think that the pubs would have welcomed minimum pricing, because their biggest threat must come from sales of very cheap alcohol in supermarkets. In a pub, those drinking are overseen and there is an onus to encourage responsible drinking. Landlords in a pub are much more likely to spot the underage than the supermarket checkout person will do. While there is a provision in the order about ID, I have a concern about fake ID, which is readily available over the internet and which fulfils all these criteria. Indeed, I have seen fake ID cards that look completely plausible. I can see that someone working at a supermarket checkout in particular, who is not familiar with the ways of some of these young people, would be completely taken in. It has become increasingly difficult to judge the age of young people, particularly girls, by their appearance.

I would appreciate it if the Minister could clarify that the tap water provision is to deal with things like pop festivals, where it may be difficult to have a tap out in the field—although one would hope that the organisers could run a hosepipe out across the field to a point, rather than sell water at very costly prices. They could certainly have a tank out there. I hope that there will be some imposition for pop concerts for drinkable water—"potable", from the French—to be supplied. With those reservations, I hope that nobody in this House will reject this order, because it will take us no further forward at all to do so.

Lord Redesdale: It was my intention to oppose the order, although not for the reasons given by the noble Baroness—that some of us support irresponsible drinking. My issue with this comes from having dealt with the Licensing Act 2003. I remember that the Government pushed the Bill because they said that we were going to go for a continental-style café culture. Many of us argued that that would not be the case and that 24-hour drinking was not such a brilliant idea. I speak as someone with an interest, as I own a pub, and I understand that many landlords do not want to be open all hours of the day and night.

The important issue, and the reason why I oppose the order, is that the 2003 Act was meant to be a liberalising measure whereby local decision-making could deal with local problems. As the noble Lord, Lord Skelmersdale, said, we cannot make rules top-down that would outlaw binge drinking; if we could, the major pieces of legislation that have been enacted would have had some effect. The noble Baroness, Lady Finlay, struck at the heart of the matter: pubs and clubs are usually a regulated environment. Some have problems, but usually they are a regulated environment. Indeed, under the 2003 Act, it is an offence to serve somebody who is drunk. The point that the noble Baroness made about people drinking before they go out is the real issue. The violence that takes place is often due to the very cheap alcohol that people can get from supermarkets. I was discussing this at a dinner party the other night and then counted the bottles afterwards. It is interesting what hypocrisy we all suffer from when talking about other people's drinking habits; we are a nation that drinks far too much.

I declare another interest as chairman of Best Bar None, a Home Office-funded scheme, which works with the pub and club trade to raise standards. The winner of the best scheme last year was Durham, where there has been a 36 per cent reduction in violent crime in the city centre. That is good for business as well, because there has been an increased footfall. Leicester won the year before; there was a 26 per cent reduction. Instead of bringing forward these mandatory codes, which cause an enormous amount of paperwork and bureaucracy for all involved—and the costs do not take into account the fact that there is an enormous amount of red tape for any landlord—we should make the system as simple as possible. However, we must make all those laws enforceable and all those people holding a premises licence act to the best of their abilities. That would bring down violent disorder.

One issue that I have with these mandatory codes relates to the question asked in the consultation process: why are we undertaking more mandatory codes rather than enforcing the laws that already exist? The answer reportedly given by the Home Office was that local authorities are not enforcing the laws. We have the laws in place; we just have to make sure that they are enforced. I very much hope that some of the issues raised here will not make life very difficult. It seems utterly ridiculous that, if you have a 24-hour policy on your books, you could have a problem, even if you are acting in a responsible manner, because you could lose your licence or be fined by the local authority, whereas someone who had only an 18-hour licence may not be. That is one problem that I have with the drafting.

I do not believe that there needs to be a vote on this, because I do not believe that it would take anything forward. We need to promote good practice schemes. Instead of having poorly drafted and draconian legislation, we need to work with the pub industry within the regulated environment and deal with the unregulated drinking that is taking place on every street corner in the country, including the underage youth drinking, which is a major problem. One issue that I have with this measure is that it talks about irresponsible pubs. In this House, I have heard people giving examples of massive drinking taking place in one pub or another. However, such drinking does not generally take place in responsible, regulated premises, because the measures in the 2003 Act mean that a pub could be closed down. I take on board entirely the point about the health implications, but we need to work with the industry, which is regulating, because we are not going to ban alcohol in this country in the very short term.

Lord Brooke of Alverthorpe: My Lords, I, too, was involved in the 2003 Act and was one of those who foresaw that there may be problems in a good many areas with the relaxation taking place. I look back now and see what has happened over the ensuing period and, while I support the measure before us this

evening, I tend a little towards the view expressed by the noble Lord, Lord Redesdale—I would be surprised if a great deal changed as a result of this order being put into force.

If there was ever a case for post-legislative scrutiny, this is it. We should be taking the 2003 Act and working through it, consulting the public directly about what they think. Wherever I go, there is a general feeling that what has happened since 2003 has been quite disastrous from a whole variety of standpoints, not least the wide-scale extension of the granting of leases to sell alcohol. It is easy now to get your hands on alcohol. The situation would have been beyond belief when we passed the Act in 2003.

I live in Brighton and I have a few statistics for the Minister. For every 84 households in Brighton and Hove, there is now a bar or an off-licence to supply alcohol. There are 1,362 places selling alcohol—one for every 150 adults in Brighton. The director of public health, Dr Tom Scanlon, states that 25 per cent of the 205,000 adults in Brighton are drinking hazardously, with alcohol-related admissions to local hospitals doubling between 2003 and 2008. Thirty-six men and women out of every 100,000 Brightonians are dying from alcohol-related issues. This is an epidemic. If it was under a different heading—"Accidents on the road", for example—people would be crying scandal and saying that something must be done about it.

We have some major problems. I am sorry that the Government have still not been prepared to embrace the minimum alcohol pricing per unit. My question to my noble friend is: when are we going to do something about pricing? Equally, I come back to the point about the granting of local licences. It appears that localism is operating in the granting of licences. However, when one examines what each of the responsible bodies involved with granting the licences is saying, they are all unhappy with the situation and are blaming each other—or someone—for having created this liberalism that means that virtually anybody who wants a licence these days can get one without too much trouble. In an area not covered by the debate this evening, we have seen the growth of the granting of licences to off-licence premises. The number that has been granted is phenomenal. If you walk down the street now and look at a shop, it will say not just "Grocer", but, "Off-licence", all tagged on. In the area where I live in Brighton, almost everyone now has a licence. Some of them are even open 24 hours a day, seven days a week and residents are complaining about the noise and activities that go on around them. This has to be addressed—and in a much stronger fashion than we have been willing to do so far.

As I say, I support the instrument before us. It is better having these provisions than nothing at all, but really we need a more fundamental review in the future, hoping that the Government are back in power. I trust that the Minister can give some indication of the areas that need further work and say where we might see far more effective policies brought to bear—perhaps even a piece of post-legislative scrutiny.

Lord Rea: I reply briefly to the noble Lord, Lord Redesdale. Does he not believe the words in the Explanatory Memorandum that the mandatory regulation has been made necessary because the voluntary code, agreed by the industry in 2005, has not been followed? The document states:

> "Whilst the majority of premises are well-run, the review revealed a disturbing level of irresponsible and harmful practice in significant sectors of the industry, along with evidence that the current social responsibility standards were not being consistently applied or were ineffective in promoting good practice".

I am sure that that does not apply to his own pub, which I am sure is run impeccably, but a lot of people out there are not sticking to that voluntary code of practice, which is the reason for these mandatory regulations. I do not think that it is enormously draconian—it is really quite a small raft of mandatory conditions. This is a useful, but not sufficient, regulation.

8.15 pm

Lord Brett: My Lords, as ever when we discuss orders such as this, the number of questions is legion. I will seek to do my best with all of them, or certainly most of them. If I fail, I will write to your Lordships. Also, there is always a bit of a disadvantage for the opposition spokespersons, who have to decide what they are going to say before they hear the Minister's speech. A number of questions raised by the noble Lord, Lord Skelmersdale, were dealt with in my opening statement.

I will deal with specific points. Why did we say nine and why have we only introduced five? The Policing and Crime Act allows for up to nine conditions. This would ensure that we got the balance right between central government setting out what licensed premises should be doing and leaving local licensing authorities in the driving seat. All the stakeholders and general public suggest that the issues set out in this order are those on which it is right to take action now. I turn to an important point that my noble friend Lord Brooke of Alverthorpe and others have raised. This does not mean that in the future more will not be added or, indeed, some removed. Having up to nine conditions set out in secondary legislation gives us flexibility to tackle any issues that arise in future.

For example, we can see the connection between binge drinking and health issues, but we are not in a clear position to see the relationship between drinking alcohol bought from supermarkets, for example, and crime-related issues. We all feel that we have seen something, but we need evidence. The University of Sheffield is undertaking a further piece of research for us, which will be available later this spring. If there were compelling evidence and the Government decided to introduce minimum unit pricing, there is no reason why that could not be done within the remaining four unallocated parts of the order. It would then be subject to affirmative resolution in this House, but this is not something that is set in stone.

On the question of whether drinking water would need to be of a potable standard, it has to be tap water and therefore by definition has to be of a potable standard.

Lord Skelmersdale: I do not know when the Minister was last on a train, but cold water comes out of a tap that firmly states that the water is not for drinking. Trains serve alcohol, after all.

Lord Brett: Trains also serve tea. As far as I understand it, non-potable water is not used for making tea. That is a tiny point. The truth is that in the past there has been a reluctance to provide tap water in some areas, but in the majority of cases it is provided without too much difficulty. A good point was made about pop festivals, which cover a large area. If the licensing law demands that something happens, it will be for the promoters to find a way of making it happen. They will not be relieved of that duty.

Another point about water was determining what was reasonable. If you suddenly lost your water supply at 10 o'clock at night in your pub, it would not be reasonable to expect you to provide tap water. But it would be totally unreasonable if you said, "We haven't had any tap water for three weeks and we are not bothering to get it repaired. When the man comes round to fix it we'll start giving you tap water but in the mean time, tough". It is a question of common sense.

There was another fear that this will impinge on the Challenge 21 and Challenge 25 schemes. There seems to be some worry in the minds of noble Lords that this could have a damaging effect. It does not bring an end to Challenge 21. Any business choosing to operate a scheme that builds in due diligence by asking those who may appear to be under 21 and could be potentially under the legal age of 18 would not be punished for not asking for the ID of a 20 year-old. The IDs that will be considered are the ones with holograms such as a driving licence, pass or passport.

I recommend a very useful piece of plastic—an ID card—which will not only provide the ability to go into clubs and pubs and prove your age but the ability to travel around Europe without carrying your passport. One of the difficulties of young people carrying passports, as I know to my cost, is that they get badly damaged by people carrying them to prove their age in pubs and clubs. They are carried in the back pockets of jeans which are then subject to rather violent dancing on occasions, so there is damage.

Lord Redesdale: Is the Minister saying that the licensing authority would have to run a challenge scheme to get their licence? If that is the case, there would be a problem.

Lord Brett: As I explained in my opening statement, we are working with the industry to ensure that we have verification schemes in place that meet the aims with minimum additional cost to the industry by the time this comes into effect in October. We are anxious to ensure that we put in place what is already in place for the vast majority of people. Many parts of the industry have already introduced these schemes, hence the requirement to carry your passport or ID. The short answer to the noble Lord's question is no.

Is it an offence to sell to under-18s if they do not have an ID? The offence at the present time is not the ID check but the selling of alcohol. The order will bring a requirement for the first time to check the ID. The noble Lord is also concerned about whether our response is disproportionate. We believe that it is not given the high level of public concern about alcohol-related crime and disorder—we heard some examples from the noble Lord himself. Some 26 per cent feel that drunken or rowdy behaviour is a particular problem in their local area. A key figure of 90 per cent of respondents to the public consultation supported a mandatory code of practice, which answers the question of whether what we are doing will bring confidence to the public. I believe that it will.

The five minimum standards that we have set out are not disproportionate. We believe that the costs are reasonable and will not apply to many business premises. We cannot leave local authorities to do it all by encouraging them to review every licensed premises because there are 130,000 of them. This way, by bringing in mandatory requirements, we achieve that end with a much smaller cost to local authorities. We argue that local authority enforcers should be making the most of the powers available to them. That is why we have a large training programme in place to ensure that police and licensing authorities are fully aware of the powers they have and how they use them. We are running a series of two-day alcohol enforcement training seminars in our 50 priority areas aimed at magistrates, court officials, elected members who sit on licensing committees and operational police officers. This training will ensure that those in the front line are aware of the tools and powers available to them and are confident in using those powers.

The noble Lord, Lord Skelmersdale, asked whether any lawyers outside the Home Office had seen the order. This went to the Joint Committee on Statutory Instruments, legal advice was given to that committee and the drafting was indeed amended to take account of and reflect those comments.

The noble Baroness, Lady Hamwee, also raised the question of the national application of mandatory standards over the localism of the licensing act. It cannot be seriously argued that this order shifts the balance of the licensing act in favour of central government over local discretion. What we hope it does is give new powers to individual councillors in the Policing and Crime Act to allow them to act as interested parties so that they can call for a licensing review themselves. We also recognise that local discretion is the right way forward in most circumstances. There are two mandatory conditions, however, for a licensed premises which supplies alcohol. This is right because it is right for Government to send out minimum standards that they expect all retailers to adhere to. This is what we are doing in this order. That is why we think—

Baroness Hamwee: My Lords, my particular question was about the response from the local government world to the consultation.

Lord Brett: I was going to come to that. The Local Government Association did not in fact support these proposals. However, many local licensing authorities and local authorities did. Somewhere here I have a list of them as long as your arm—from Northumberland to Birmingham. My noble friend Lord Brooke of Alverthorpe cited Brighton and the very large number of licensing establishments in one form or another there. Brighton, however, is not typical, because it is a

seaside resort. Brighton has an influx of visitors, both on a holiday basis and for the weekend or for just a day. You could apply the same criteria to Blackpool and a number of other seaside resorts that would not necessarily apply in smaller areas. He talks of the number of inhabitants per licensed premises. In my village, for example, there are 2,500 people and one licensed establishment—the pub—and no off-licence.

What we are seeking to do is support that localism because the conditions will change very considerably over the country as a whole. That is presumably why we have a variety of supportive statements from everything from Kensington and Chelsea, Birmingham City Council, Sefton council, Runnymede, Northumbria, Cumbria, Bury—my second favourite football team—Sandwell and Newcastle-under-Lyme. In those terms, we are seeking to look at and ban the extreme ends of the promotions.

The noble Baroness, Lady Hamwee, asked me if we were banning the yard of ale. The answer is that if the yard of ale is to be drunk in the time determined by the recipient or purchaser of it, that is one thing. If they are in a race to get it down their neck as quickly as possible, that we think is irresponsible.

The other basic issue, of course, is that when we produce the guidance, it will be in plain English to make it very clear what will fall clearly on one side and clearly on the other side of what is deemed to be responsible. The guidance will be encouraging those who seek to make a promotion, whether it is a regular one or just a one-off, to first approach their local authorities if they have any doubts.

As to the question about age verification in respect of mail order and online sales—like the wine clubs that some of us belong to—the answer is that it will make no difference there. There is a responsibility on the person who is selling the wine to verify that those who are seeking to buy it are over 18. That is normally done because they want you to pay by credit card. But there is no requirement at the present time on the person who delivers the wine. When it is delivered to your house, if your 14 year-old daughter or son signs for it, it will in no way be an issue.

Another question related to the licence-holder of the premises and who has the responsibility for the age verification. We believe that that belongs to the person who is responsible for the licence of the premises. Clearly, they will be responsible for their staff, who could be part-time. They will know how to advise their staff, having determined their own policy in line with the order. I believe I have dealt with minimum pricing.

I agree with the noble Baroness, Lady Finlay, that the order, with the new powers in the Policing and Crime Act, puts more power in the hands of local people. As I have said, local council members can call for reviews based on the concerns of local residents. On the question of minimum unit prices and cheap supermarket alcohol, I recognise some of those circumstances. That is why what seems to many people to be an esoteric issue is quite serious: people having alcohol poured into their mouths, usually, as the noble Lord, Lord Skelmersdale, says, when they are already inebriated. This can have serious effects on both their behaviour and their health.

On the question of forms of ID, we have given a list of those that will need to have holograms. I recognise that there is an industry out there that is always able to produce a fake of something you want to be genuine. There is a limit to how far we can go but our approach is as firm as it can be.

The noble Lord, Lord Redesdale, asked several questions, but I was rather disappointed in him today. I have been reading the *Morning Advertiser* and I know that he has had a survey done. He asked the readers of that august journal to support rejection of the order. I was interested to know what figures the noble Lord had but he did not give them.

Lord Redesdale: The responses showed that 63 per cent wanted the order shelved and 36.8 per cent wanted it kept. However, I was interested, on reading the responses, to see that a large number of health charities had taken part. There seemed to be a division between the publicans who responded and those who are involved in the health industry.

Lord Brett: I am not really surprised. I was rather disturbed that one of the questions said that local authorities and the police were opposed to the order when, in practice and at operational and national level, we can show that it is not true in the case of the police. It is also not true of local authorities and the public. There were several other questions, none of which, I think, would fundamentally change the debate. As I have said, the order has been scrutinised by the JCSI and the Merits Committee. We consulted and there was a 90 per cent response. We consulted twice, in 2008 and 2009.

Finally, one word that I do not think can be applied to the order, although it has been applied by the noble Lord, Lord Redesdale, is "draconian". The order is not draconian; it is proportionate. There is, I am sure, room for improvement in the future. I am sure we will return to this when further evidence is available. This is a proportionate measure to bring some relief to communities that suffer from the misbehaviour and anti-social behaviour of people who induce themselves to get drunk as quickly as possible in circumstances where they are behaving irresponsibly. Those landlords and others who do not support the responsible drinking patterns that most of us have make up the minority. I pay tribute to the noble Lord, Lord Redesdale, for his leadership of organisations that seek to support responsible drinking patterns. On this occasion, the order is required and I trust your Lordships will support that view.

Motion agreed.

Financial Services Bill

Committee (2nd Day) (Continued)

8.33 pm

Amendment 25

Moved by ***Baroness Noakes***

25: Clause 3, page 3, line 14, at end insert—

"( ) Where a matter has been omitted from either the annual report or the minutes published under section 2(4) and the action

[BARONESS NOAKES]
involves financial assistance as defined in section 257 of the Banking Act 2009, a report should be laid before Parliament when the conditions under subsection (3) no longer apply."

Baroness Noakes: My Lords, in moving Amendment 25, I will speak also to Amendment 28. Amendment 25 adds a new subsection to Clause 3. Amendment 28 adds a new clause after Clause 4. They both concern informing Parliament about financial support. Both focus on financial assistance.

Noble Lords may know that the inspiration for the amendments came from the late disclosure of the emergency loans of £62 billion given to HBOS and RBS in October 2008 by the Bank of England. The Treasury indemnified the Bank as this was clearly way beyond the capacity of the Bank's own balance sheet. This was made public only when the Governor of the Bank of England revealed it during evidence to the Treasury Select Committee in another place in November last year. The Chancellor of the Exchequer was then forced to make a Statement to another place setting out the facts. It was revealed not only that these extraordinary loans were kept secret for over a year from shareholders and Parliament but also that the Chancellor had not even informed the chairman of the Public Accounts Committee or the Treasury Select Committee on a confidential basis. This brings me to my two amendments.

Amendment 25 is concerned with the annual report and the minutes of the Council for Financial Stability. In any case of financial assistance, once the conditions of secrecy set out in Clause 3(5) and Clause 4(3) cease to exist, a report should be laid before Parliament. This report would obviously contain the information redacted from the minutes and the annual report.

Amendment 28 concentrates on financial assistance to the Bank of England, which would be the normal route for such assistance. This lays on the Treasury the basic obligation to report to Parliament. That report should be made as soon as possible but may be delayed if there is a threat to financial stability. There is no need for a commercial confidentiality let-out here. Parliament must be told if taxpayers' money is being put at risk unless there is a reason at the national level to withhold such information. Importantly, the amendment provides that, if such a report is delayed, there is a positive obligation on the Chancellor to inform Members of Parliament on a confidential basis. It is for him to determine which Members of Parliament that should be. This is the area where the Chancellor badly let Parliament down in relation to RBS and HBOS last year. We must not allow that to happen again.

These amendments overlap to some extent, but I hope that together they demonstrate the range of concerns that should be addressed in this Bill in response to the serious concerns arising from the non-disclosure of the RBS and HBOS arrangements. I beg to move.

The Financial Services Secretary to the Treasury (Lord Myners): Amendment 25 explicitly concerns information about financial assistance as defined in Section 257 of the Banking Act 2009. The amendment would provide for information of this nature that was discussed in a Council for Financial Stability quarterly meeting but not minuted or covered by the annual report of the council to be made public in a report to Parliament when the confidentiality concerns in Clause 3(3) no longer apply.

As I am sure the House is aware, there are already appropriate reporting mechanisms in place for financial assistance under the Banking Act 2009. It might be useful to set out these processes. First, under Section 228(6) of the Banking Act 2009, where funds for financial assistance are paid directly from the Consolidated Fund, the Treasury shall as soon as reasonably practicable lay a report before Parliament specifying the amount but not the identity of the institution to or in respect of which it is paid. This would normally take the form of a Written Ministerial Statement such as in the case of the £1.6 billion payment made under Section 228(5) in March 2009.

Secondly, under Section 229(6), where a loan for financial assistance purposes is made from the National Loans Fund, the same reporting requirement as under Section 228(6) applies. No financial assistance loans have been made from the National Loans Fund to date.

Finally, under Section 231, the Treasury is required to lay before Parliament a report about any arrangements which may involve or require reliance on Section 228(1). This will include financial assistance payments made from voted money or directly from the Consolidated Fund under the Banking Act. It will also cover guarantees and commitments entered into as financial assistance where the making of future payments could require reliance on the Banking Act. The report must not specify individual arrangements or identify, or enable the identification of, individual beneficiaries.

These arrangements provide the right framework for reporting financial assistance under Section 257 of the Banking Act. There is no need, therefore, for further reports as part of the reports made by the Council for Financial Stability on its activity, especially as the council would not itself be taking any decisions about the giving of financial assistance.

In terms of disclosure of financial assistance to the Bank of England, the Government are in discussion with the chairs of the Public Accounts Committee and Treasury Select Committee about how extremely sensitive information would be notified to Parliament in the unlikely event of additional confidentiality being needed in the future. As Sir Nicholas Macpherson, the Treasury's Permanent Secretary, indicated to the Public Accounts Committee when he appeared before it on 14 December:

"The Chancellor and indeed the official Treasury are acutely aware of the importance of parliamentary accountability".

We would work to establish an arrangement for exceptional cases, such as the assistance that the Treasury made available to provide emergency liquidity against security—not a giving of benefit, as suggested by the noble Baroness—to HBOS and the Royal Bank of Scotland.

These arrangements are in addition to the normal processes for managing public money, which require the department to notify Parliament of statutory liabilities in the form expected by the legislation and any other

major non-standard liabilities using a standard form of minute. These departmental minutes describe the amount and expected duration of the proposed liability; they explain which bodies are expected to benefit and why; and they explain how the authority for any expenditure required under the liability will be sought. As well as being laid in the House 14 sitting days prior to the liability being taken on, they are copied to the chairs of both the Public Accounts Committee of another place and departmental committees. In cases of particularly large or unusual liabilities, a ministerial Statement accompanies the minute. The Government are in discussion with the chairs of the Public Accounts Committee and the Treasury Committee to agree a process that will work effectively and ensure appropriate confidentiality. That will ensure that no action places at risk the very financial stability that we are seeking to achieve. Accordingly, I invite the noble Baroness to withdraw her amendment.

Baroness Noakes: My Lords, I thank the Minister for that response. He said that the Council for Financial Stability would not get involved in any such decisions and that Amendment 25 was therefore not necessary. We have pretty well established that the Council for Financial Stability does not have any real meaning, so perhaps Amendment 25 is not relevant.

However, I am less clear about Amendment 28. We know that the Government did not inform Parliament about the HBOS and RBS arrangements until the Governor of the Bank of England had informed Parliament. That clearly did not work, and the fact that the Permanent Secretary at the Treasury is acutely aware of parliamentary accountability seems not to have achieved a result that many would have found satisfactory. I am not sure whether we can leave it to Ministers of the day, as advised by their Permanent Secretaries. I shall withdraw Amendment 25, but I give notice that, in a minute or so, I shall press Amendment 28 formally.

Amendment 25 withdrawn.

Clause 3, as amended, agreed.

8.45 pm

Clause 4 : Definitions

Amendment 26 not moved.

Clause 4 agreed.

Amendment 27 not moved.

Amendment 28

Moved by ***Baroness Noakes***

28: After Clause 4, insert the following new Clause—

"Disclosure of financial assistance to the Bank of England

(1) Where the Treasury provides financial assistance to the Bank of England in order to facilitate actions by the Bank of England in pursuit of its financial stability objective under section 2A of the Bank of England Act 1998, the Treasury shall lay a report setting out details of the financial assistance before Parliament.

(2) A report under subsection (1) shall be laid as soon as possible after the provision of the financial assistance but may be delayed for as long as the Treasury considers that there would be a threat to the stability of the UK financial system if such a report were laid.

(3) Where the laying of a report is delayed, the Chancellor of the Exchequer shall ensure that information is given on a confidential basis to those Members of Parliament whom he considers should be informed.

(4) "Financial assistance" includes giving guarantees or indemnities and any other kind of financial assistance (actual or contingent)."

Amendment 28 agreed.

Amendment 29

Moved by ***Baroness Noakes***

29: After Clause 4, insert the following new Clause—

"Bank of England's financial stability objective

After subsection (1) of section 2A of the Bank of England Act 1998, insert—

"(1A) In considering that objective, the Bank must have regard to—

(a) the economic and fiscal consequences for the United Kingdom of instability of the UK financial system;

(b) the effects (if any) on the growth of the economy of the United Kingdom of anything done for the purpose of meeting that objective; and

(c) the impact (if any) on the stability of the UK financial system of events or circumstances outside the United Kingdom (as well as in the United Kingdom).""

Baroness Noakes: Well, my Lords, I am at a loss for words. As noble Lords will be aware, that does not very often happen. I shall move Amendment 29 and speak to Amendment 32. Both of these amendments concern the differences between the financial stability objective for the Bank of England, which was created in last year's Banking Act, and that for the FSA which is created in Clause 5. The Bank of England's financial stability objective is set out in Section 2A of the Bank of England Act 1998, which says that the objective is,

"to contribute to protecting and enhancing the stability of the financial systems",

in the UK. We had several discussions during the passage of the Banking Act last year about whether a more precise definition should be given, but the Government refused to budge on that.

When we come to this Bill, the FSA's new financial stability objective in the proposed new Section 3A(1) of FiSMA is phrased in much the same way as it is for the Bank, but new Section 3A(2) goes on to say that the FSA has to "have regard to" some very sensible things; namely:

"the economic and fiscal consequences for the United Kingdom of instability",

in,

"the UK financial system; … the effects … on the growth of the economy of",

the UK and,

"the impact … on the stability of the UK financial system of events or circumstances outside",

the UK. My Amendment 29 simply adds those sensible things to which the FSA should have regard to the financial stability objective for the Bank of England. I

[Baroness Noakes]
cannot think that the Government would want the two bodies to be working to substantially different terms of reference for financial stability, so I am sure that the Minister will agree with my amendment.

The second amendment in this group, Amendment 32, adds a new clause after Clause 4. It also probes a difference between the wording used for financial stability in last year's Banking Act and in this Bill. Last year, the wording referred to the financial systems of the UK, while this year the parliamentary draughtsman has used, "UK financial system"; that is, last year, there was more than one system, and this year there is one. If the courts ever come to interpret this Bill and last year's Act, there would be a prima facie case that the Government intended different things, since they have used different language. The normal interpretation from that is that the difference was deliberate. Amendment 32 says:

"For the avoidance of doubt",

the financial systems wording means the same as this year's wording. I beg to move.

Lord Myners: Amendment 29 would give the Bank of England a list of factors to which it must have regard when considering its financial stability objective. These three factors are identical to those set out for the Financial Services Authority by Clause 5. They are the economic and financial consequences of instability for the UK, any effects on economic growth of the FSA's stability-enhancing measures and any impacts of overseas events or circumstances on UK financial stability. I understand why the noble Baroness might think that it is sensible for the FSA and the Bank of England to have their financial stability objectives framed in precisely the same way. However, I will explain why this is neither necessary nor appropriate.

The amendments to the Financial Services and Markets Act proposed by the Bill follow the existing style of that Act. As noble Lords are aware FiSMA sets out a detailed legislative framework by which the FSA must operate. Section 2(3) of the Act lists a number of matters to which the FSA must have regard. The list of factors to which it must have regard when pursuing its financial stability objectives have been drafted to be consistent with this approach. FiSMA currently focuses on providers and consumers of financial services and does not mention taxpayers or the wider economy. The style of FiSMA offers no flexibility on the FSA's objectives and "have regard to". The list inserted by new Section 3A(3) in Clause 5 requires the FSA to consider these wider factors when undertaking its detailed statutory functions and operations.

The Bank, on the other hand, is generally not constrained in the same way. Although the Bank of England Act 1998 goes into some detail it is not the case that all the Bank's operations are set out in detailed statute. For that reason, the Government do not believe that it is appropriate to give the Bank the same parameters as the FSA for its financial stability objective. The Bank and the FSA have different roles and different tools. Until the financial crisis, the FSA was focused on micro-level regulation. We are now giving it a wider set of factors to consider, but the Bank has always had a wider macroeconomic approach. I agree that it should consider the factors set out in the new clause to the extent it judges appropriate, but it can already do so. In contrast, it is an extension of scope for the FSA to be asked to look beyond the narrowly defined financial services sector. I hope that I have explained why the proposed new clause is not necessary and urge the noble Baroness to withdraw her amendment.

I now turn to Amendment 32, which would include specific provision such that where the Bill refers to "the UK financial system", it means the same as,

"the financial systems of the United Kingdom",

as in the Banking Act 2009. That expression is not defined in the Banking Act but is used in a number of places, mainly in Part 1 in relation to the special resolution regime. Under normal principles of statutory interpretation as set out in the Interpretation Act, words in the singular include plural and vice versa unless the contrary intention appears. Accordingly, we do not consider that there is any need to include a provision in the Bill along the lines of the amendment that has been tabled. I therefore ask the noble Baroness not to press it.

Lord Howard of Rising: Many people have voiced their differences on the tripartite government system, and we are all concerned with that. Are not the Government building into this system further potential problems by having different definitions? The Minister explained it by describing what was required of the FSA but I cannot see that by putting in the definition of what the Bank of England has to look at in any way binds or changes what the FSA has to look at. Perhaps the Minister can explain that. He explained it via the FSA but the amendment has to do with the Bank of England.

Lord Myners: I thank the noble Lord, Lord Howard of Rising, for his contribution. However, I have already addressed his point. I made it very clear that the Bank of England already has very wide powers to take into consideration macro factors and does not need these to be further memorialised in statute. The Bank of England has made no request to us when we were drafting the Bill that that should be considered.

Baroness Noakes: I am a bit mystified. Which sections of any of the Bank of England Acts contain these macroeconomic factors that they have regard to? I cannot remember which sections he is referring to.

Lord Myners: I did not say that I was referring to the Act. I said that they already take into consideration a wide range of macro factors.

Baroness Noakes: I am mystified by this. The Bank of England Act is not specific on this. The only broader references might be in relation to the specification of the Monetary Policy Committee's objective in the 1998 Act. However, I do not think that the 1948 Act—if that is the right year—the 1998 Act or last year's Banking Act specified these broader aspects. We continually refine what the Bank of England is supposed to do. Surely it is right to use best practice from other parts. We have the FSA with the financial stability objective expressed in different ways from the Bank of

England. Are they not supposed to be achieving the same thing? Are they achieving different things? The Minister has not explained why they should be expressed differently.

Lord Myners: I can only go over the ground that I have already covered. No one is suggesting that there are any weaknesses at the moment in the authorities and powers of the Bank of England or its approach to the management of the stability of the financial system. The Treasury has come across no situations in which it believes that the Bank might be inhibited or restricted by statute from performing the function which we would look to the Bank of England to carry out, nor has the Bank of England in the representations that it has made to us in connection with the Bill cited this as an area where it would suggest that it would be appropriate to mirror the wording which is used for the FSA.

Baroness Noakes: Well, My Lords, I am sorry about this. The creation of tripartite authorities gets messier and messier. As the Government try to tidy one bit up—the FSA—we get other bits of untidiness. We cannot allow this to continue. I would like to test the opinion of the House.

8.57 pm

Division on Amendment 29.

Contents 27; Not-Contents 48.

Amendment 29 disagreed.

Division No. 1

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9.08 pm

Amendments 30 to 32 not moved.

Clause 5 : Financial stability objective

Amendment 33

Moved by ***Baroness Noakes***

33: Clause 5, page 4, line 8, at end insert—

"( ) proceedings of the Council for Financial Stability as set out in section 2 of the Financial Services Act 2010"

Baroness Noakes: My Lords, I thought that the Committee might like to move on to Clause 5. Amendment 33 is the first of a small series of amendments which will tease out the relationships between the Bank, the FSA and the Council for Financial Stability.

When we looked at amendments to the earlier clauses we were looking at the interrelationships from the perspective of the council, which is where they come together. I now seek to probe the interrelationships when seen from the other end of the telescope, namely from the perspective of the FSA or the Bank.

Clause 5 amends the Financial Services and Markets Act 2000 and sets out a new objective for the FSA to contribute to financial stability. Clause 5(3) expands on the financial stability objective, and sets out in subsection (2) of new Section 3A of FSMA various things to which the FSA must have regard. My amendment adds to that list and says that in considering the financial stability objective, the FSA must have regard to the proceedings of the Council for Financial Stability.

In another place, the Minister said that the amendment was unnecessary and that nothing was to be gained by it. He said:

"The FSA will clearly take account of the discussions in the council when considering how best to meet its objective of contributing to financial stability".—[*Official Report*, Commons, 25/1/10; col. 632.]

This is a traditional ministerial defence of government drafting. First you say that it is unnecessary and then say that it will happen anyway. Some of us have become cynical about this defence. The noble Lord, Lord Myners, used it last year in connection with the Banking Bill debates, when he resisted the substance of what is in this clause. Last year he said that the FSA did not need a financial stability objective because it was already implicit in its market confidence objective. He said that a financial stability objective was not appropriate. If something is not in plain language in the Bill, we cannot assume that it will be taken for granted. The Minister cannot give a Dispatch Box assurance about what the FSA will or will not do, and so we have to judge the Bill for what it says, not what the Minister would like it to mean. I beg to move.

Lord Myners: Amendment 33 would require the FSA to have regard to the proceedings of the Council for Financial Stability when considering its financial stability objective. I can agree with the spirit of the amendment but I do not believe that it is necessary. The Government are creating the Council for Financial Stability precisely to be a forum for effective co-ordination between the authorities responsible for financial stability. Clause 1(3) is clear that the council has to monitor and co-ordinate, and paragraph 17 of the terms of reference clearly specifies that the council will consider the financial stability strategies of the FSA and the Bank.

I am confident that the FSA, like the Bank, will work in close partnership with the other authorities in the work of the council. For this reason, we fully expect the FSA to take due account of the council's discussions and that the actions of all the authorities will be informed by the views, actions and approach of other council members.

In addition, paragraph 26 of Schedule 2 to the Bill amends Section 354 of FSMA, which concerns the FSA's duty of co-operation. Paragraph 26 will extend this duty by adding a new subsection which states:

"In pursuing its financial stability objective, the Authority must take such steps as it considers appropriate to co-operate with other relevant bodies (including the Treasury and the Bank of England)".

Therefore, nothing would be gained by adding the proceedings of the council to the list of matters to which the FSA must have regard. I therefore invite the noble Baroness to withdraw her amendment.

Baroness Noakes: Could the Minister direct me again to the reference in Schedule 2?

Lord Myners: I referred the noble Baroness to paragraph 26 of Schedule 2 to the Bill.

Baroness Noakes: My Lords, clearly paragraph 26 will repay most careful study, which I undertake to do before returning to this part of the Bill. I beg leave to withdraw the amendment.

Amendment 33 withdrawn.

Amendment 34

Moved by ***Baroness Noakes***

34: Clause 5, page 4, line 9, after "Treasury" insert "and the Bank of England"

Baroness Noakes: I shall speak also to Amendment 105. Under new Section 3A(3) of FSMA, which is inserted by Clause 5(3), the FSA is to determine and review its strategy in relation to its financial stability objective and must consult the Treasury. When the Bank of England was given its financial stability objective in last year's Act, an identical clause was set up, with the Bank consulting the Treasury on its financial stability strategy. It is clearly right that each body should develop its own strategy because each has its own responsibilities and powers. My amendments do not call for a common strategy but for the FSA and the Bank to consult more widely than the Treasury. If there is to be any meaning to tripartite working, it seems odd that each one must consult the Treasury but not each other.

9.15 pm

Amendment 34 calls for the FSA to consult the Bank of England on its strategy, and Amendment 105 returns the compliment by making the Bank consult the FSA on its strategy. The draft terms of reference for the Council for Financial Stability has a go at this area. It says that the council,

"in considering strategic developments … will consider the statutory financial stability strategies of the Bank and the FSA—the Council will act as a forum for challenge and co-ordination of these strategies but determination of individual strategies will be a matter for each independent Authority".

So we have the Bank and the FSA working on their own strategies and consulting the Treasury, and then those strategies are put before the Council for Financial Stability, which might challenge them or even co-ordinate them. Will the Minister explain what happens if there is a challenge? Two of the three council members have already been involved in the preparation of the strategy. At a council meeting, presumably it is only the third member who will challenge because it is only his organisation that has been excluded from the preparation process.

Will the Minister explain what the co-ordination of the strategies is about? If the FSA and the Bank have individually prepared their strategies in divergent ways, what is co-ordination about? Is this code for sending one or both of the FSA and the Bank back to the drawing board? All this is very mysterious. No further light was shed on Report in another place when, in response to the equivalent amendment, the Minister said:

"In our view, it is unnecessary"—

that useful ministerial concept again.

"The draft terms of reference for the council for financial stability already specifically require it to consider the financial stability strategies of the Bank of England and the FSA".—[*Official Report*, Commons, 25/1/10; cols. 631-2.]

My amendments are not about ex post consideration but about involvement ex ante in the development of strategies. As the Committee will be aware, our policy would eliminate the gap between the FSA and the Bank of England in relation to financial stability. In our world one body would produce a holistic strategy for financial stability and would, of course, consult the Treasury. In the fragmented world of the Government's creation, the Bill misses opportunities to close the gaps between the tripartite bodies. I do not believe that this is a sensible way to proceed even within the Government's own construct of the tripartite authorities and financial stability. I beg to move.

Lord Higgins: My Lords, we seem to be getting in a position where everyone is looking for stability in the financial system and everyone is consulting everyone, except for some reason at this point the FSA consults only the Treasury and not the Bank of England. However, the real trouble with this arrangement is that one really does not know where the buck stops at the end of the day. It is dividing all over the place, everyone is consulting with everyone, but no one appears ultimately responsible. Which of the three is it?

Lord Hodgson of Astley Abbotts: My Lords, I cannot see how the Government can reasonably resist this amendment. Either we will have a position where the Treasury is calling the shots all the time or we will have

a tripartite co-ordinating structure, which I think is the Minister's plan. He keeps telling us that the council has no Executive responsibility and is a co-ordinating body. The authority does not have to consult the other two members; only one of the other two members is consulted. Surely the very essence of the co-ordination that the Minister has in mind should require all three parties to dance at the same time.

Lord Howard of Rising: My Lords, when the Minister answers, it would be helpful if he could tell us where the buck stops, as my noble friend Lord Higgins has asked. One of the weaknesses of the tripartite system is that there is no buck-stopper around. The Minister should look very seriously at this amendment. Anything that welds the tripartite authority together to make it a more unified structure whereby each part supports the others rather than argues with them is to be applauded.

Lord Myners: My Lords, Clause 5 requires the FSA to prepare a financial stability strategy and, in doing so, to consult the Treasury. Amendment 34 would require the FSA also to consult the Bank of England in this work.

The amendment is not needed, because the effect that the noble Baroness seeks is already provided for in the terms of reference of the Council for Financial Stability. The draft terms require the council to consider the financial stability strategies of the Bank and the FSA. Therefore, the Bank will have a consultative role.

Nevertheless, it is right that the FSA should be required by the Bill to consult the Treasury. As the UK's finance and economics ministry, it is ultimately accountable to Parliament and responsible for decisions that have an impact on public finances. I hope that this provides sufficient reassurance to the noble Baroness that her amendment is not needed, and I invite her to withdraw it.

Amendment 105 seeks to amend Section 2A(3) of the Bank of England Act 1998, which provides that the Bank's strategy in relation to financial stability shall be determined and reviewed by the Court of Directors of the Bank of England. Currently, the court must consult the Treasury before it sets the strategy. The new clause proposed by the amendment would require the Bank also to consult the FSA in addition to the Treasury when setting the Bank's strategy. I reassure noble Lords that this amendment is also unnecessary. The role of the Council for Financial Stability is to act as a forum for discussion and co-ordination of the Bank's and the FSA's financial stability strategies. As noble Lords are aware, the FSA is one of the council's three members and will therefore take an active role in scrutinising the Bank's strategy for financial stability. However, again, it is right that the Bank is required by Section 2A(3) of the Bank of England Act to consult the Treasury, since the Treasury is ultimately accountable to Parliament and responsible for decisions that may have fiscal consequences.

Noble Lords have asked who does the challenging when two parties have already agreed, but I think that it is obvious: it could be one of the two parties to which the noble Baroness referred, having not reached agreement with the other party, or it could be the third party. That is precisely why the Council for Financial Stability is meticulous in its requirement not only that the minutes be published but that attributable comments be included in them as agreed by the three members of the council. That will be the test in teasing out any difference of opinion that might arise.

The noble Lords, Lord Higgins and Lord Howard of Rising, again asked who is in charge or who is responsible. We covered this at some considerable length at both Second Reading and on the first day of Committee. I could again repeat the answers that I gave then: the FSA is the independent financial services regulator responsible for the supervision of financial firms. The Bank of England is the central bank; it is responsible for providing liquidity insurance to the banking system; it has oversight of the payments system; and it is the resolution authority. Finally, the Treasury, as the finance and economics ministry, is responsible for the overall institutional structure of financial regulation and the legislation which governs it. It is ultimately accountable to Parliament and responsible for decisions which impact on the public finances. That could not be clearer. There is no doubt who is responsible for what, and there is no doubt in my mind that the Council for Financial Stability will significantly improve transparency and accountability from its predecessor and therefore represents a good improvement on a model that already worked very well during the crisis.

Baroness Noakes: My Lords, I cannot leave unchallenged that this model worked very well in a crisis. We all know that this model failed abjectly the first time it was put to the test, which is why this Bill tries to pretend that the arrangements that used to work just need a little bit of tweaking and improving to make them work even better. We know that is not the case.

The concept that the Minister is really putting forward is that financial stability is not one thing where everybody is working together. The FSA does a little bit working on its own and perhaps with the Treasury. The Bank does its bit perhaps working with the Treasury. The Treasury does whatever the Treasury does and then they come together in this shiny new concept called the Council for Financial Stability and somehow this all works.

I think the Minister does not really believe that this will all work. This is really all rather silly. I am getting bored with the Council for Financial Stability. All the Minister has said has not endeared the Council for Financial Stability to my party. I do not think that we are any more impressed with it at the end of these amendments than we were at the beginning of day one of Committee. However, I think it is time to move on from the Council for Financial Stability. I beg leave to withdraw the amendment.

Amendment 34 withdrawn.

Amendment 35 not moved.

9.30 pm

Amendment 35A

Moved by ***Baroness Noakes***

35A: Clause 5, page 4, line 10, at end insert—

"( ) The FSA must issue a statement of policy about—

( ) its understanding of the objective, and

( ) in what circumstances and how it intends to use its powers to achieve the objective.

( ) Before issuing the statement of policy, the FSA must consult—

( ) the Treasury,

( ) the Bank of England, and

( ) such other persons as it considers will or may be affected by the statement."

Baroness Noakes: My Lords, Amendment 35A adds two new subsections to proposed new Section 3A of FSMA as inserted by Clause 5(3). The financial stability objective is not defined in this Bill, as it was not when the Bank of England was given its financial stability objective in last year's Banking Act. We sought then to get a definition in the statute or, failing that, a requirement to define what is meant by "financial stability" in the code of practice. As I recall, more than one definition had surfaced during the consideration of that Act and we thought that clarity would be aided by a definition. We did not succeed in that.

However, we now have a financial stability objective proposed for the FSA and rather different considerations apply. The FSA will be able to use some of its powers solely on the basis of it being desirable for its financial stability objective. Under Clause 7, the FSA's powers are proposed to be considerably enhanced. For example, its own-initiative power in Section 45 of FSMA could, if Clause 7 is passed into law, be used by the FSA if it is desirable in order to meet any of its regulatory objectives. At present, the FSA can use this power only in relation to consumer protection. Similarly, the general rule-making power in Section 138 of FSMA is extended from consumer protection to all of the FSA's objectives by Clause 7.

These are massively widened powers and we will debate them when we get to Clause 7. For the purposes of Clause 5, the relevance is that the FSA has an undefined financial stability objective which it can now invoke to justify the use of various of its powers. I hope that the Government share our belief in regulatory powers needing to be clear in order to give certainty to the regulated community. Clause 5, taken with Clause 7, creates major new uncertainty.

The Banking Act creates a requirement for the Treasury to issue a code of practice setting out how the special resolution powers would be used. This was welcomed by the financial services sector even if the content did not always satisfy those who looked to the code for answers. I believe that this Bill would be improved by something similar.

Amendment 35A calls for the FSA to issue a statement of policy of both its understanding of the objective and in what circumstances it intends to use its powers to achieve its objective. It also requires the FSA to consult the Treasury, the Bank of England, and people who could be affected by the statement. It would clearly not bind the FSA in all circumstances, but it would give reassurance to the financial services bodies that might be affected by what is meant by it.

The amendment was prompted by the memorandum submitted by the City of London Law Society to the Public Bill Committee in another place. It is concerned about the breadth of the rule-making powers and the lack of constraints on the use of those powers. In relation to Clause 5, it believes that a statement of policy is the very least of the amendments that should be made to give greater clarity about the objective. The City of London Law Society said that it understood that the Government's main concern was to ensure that the FSA took account of the systemic risk posed by common patterns of behaviour by, and relationships between, regulated firms. I do not know if that is what is intended to be covered; I suspect that there are other things as well—but whatever that is, the FSA ought to be clear about it. I hope that the Minister will share that desire for clarity. I beg to move.

Lord Hodgson of Astley Abbotts: My Lords, other noble Lords may have seen the briefing from the British Bankers' Association that deals with the point made by my noble friend and the issue that her amendment seeks to address. The association says, inter alia, that the provision of a financial stability objective should not be taken as a licence for the FSA to place unreasonable information demands on banks and that there will be a need for full and open dialogue on what further data capture and reporting requirements this may involve. It says that the provision should not be taken as a licence for the FSA to act other than on the basis of proportionate action, based on established need, and a full understanding of the consequences of its action.

This is clearly an issue that concerns the British Bankers' Association a great deal. The amendment that my noble friend moved would go a long way towards ensuring that these concerns are addressed because of the way which she requires the FSA to plan and prepare and to explain why it will act in a proportionate way.

Lord Myners: Amendment 35A would require the FSA to issue a statement about its understanding of its financial stability objective and how it plans to use its power to achieve this. It would also require the FSA to consult the Treasury, the Bank of England and any other person whom it considers will be affected by the statement. While I agree with the sentiment of this amendment, I must argue that it is superfluous, because it is already covered elsewhere. I begin by referring the noble Baroness to new Section 3A(3) in Clause 5, which states:

"The Authority must, consulting the Treasury, determine and review its strategy in relation to the financial stability objective".

The section may not refer specifically to a statement of policy, but this is just a matter of wording. The content is clearly there.

As for the FSA consulting the Bank on its strategy for financial stability, I assure the noble Baroness that provisions for this are already in place. As noble Lords are aware, the Bank of England is a member of the Council for Financial Stability. The terms of reference for the council clearly specify that it will consider the financial stability strategies of the FSA and the Bank. Ipso facto, the Bank will have a role in scrutinising the financial stability strategy of the FSA, which already takes a proactive approach to consulting industry and

consumers on its policies. I have no reason to doubt that this will be any different where the FSA's financial stability strategy is concerned. When the FSA makes rules, it is required to consult in accordance with Section 155 of the Financial Services and Markets Act. When making rules under Section 138, the FSA will still have to follow the procedures in Section 155, including consulting industry and other stakeholders and undertaking a cost-benefit analysis. It will also have regard to its general duties in respect of the desirability of maintaining the UK's competitive position and the need to be proportionate in its regulation. I hope I have clearly explained why this amendment adds nothing to the Bill, and I therefore urge the House to resist it.

Lord Higgins: I have had some difficulty because the noble Lord is reading out the answer to the questions raised by my noble friend behind me rather than making it up in his own words—it is always much easier to understand when he does not simply read it out.

I have some difficulty in seeing from the Bill as it stands where the FSA will not be in danger of demanding too much information from banks—although if it had demanded rather more in the past it would probably be to our general advantage. In particular, I am not clear about how duplication is to be avoided. If information is to be demanded from the banks, is it to be done by the FSA or the Bank, and how are they going to arrange this? Which will be the lead person in demanding information, and then, presumably, in ensuring that it is enough for both the Bank and the FSA? At the moment it is not at all clear from the Bill why any burden is placed on the FSA not to demand excessive information on the one hand, or to ensure that there is not duplication between the Bank and the FSA on the other.

Lord Myners: I thank the noble Lord, Lord Higgins, for his intervention. My experience is that when I make up the answer as opposed to reading it I invariably get myself into difficulty. Common sense tells me that on the whole I should stick to developing my skills in reading aloud rather than in trying to convey to the House my understanding of why we are making particular proposals and how I think they will operate. It is precisely because of my tendency to extemporise that I found myself challenged earlier by the noble Lord, Lord Lawson of Blaby, as to whether I had misled the House on issues in Canada. Having used the dinnertime break to check the facts assiduously, I am increasingly confident that I did not mislead the House, although I still have to do a little further work in answering that point.

This takes me back to the more substantial point made by the noble Lord, Lord Higgins: the question of what limits the FSA from making unreasonable requests. The FSA is required to have regard to costs and proportionality in the inquiries and requests that it makes for information. I agree with the noble Lord that the balance of argument is strongly in favour of the fact that in recent years the FSA should have been asking more questions. I would even go a little further and say that it should have been asking more questions about business strategy and managerial competence rather than simply gathering data. However, both in the Turner review and in its forensic analysis of the failure of Northern Rock, the FSA itself admits that it needs to change its style of engagement. The question of whether it asks for too much information has to be addressed through processes of open consultation.

On the matter of who asks the banks for information, the noble Lord asks a very good question. Our view is that regulatory institutions should not be bombarded with requests for information from the Treasury, the Bank of England and the FSA in connection with financial stability. That is why we require that those questions are channelled through the Financial Services Authority. If the Bank requires additional information, it will seek it through the FSA.

Lord Northbrook: One of the troubles with new Section 3A(2), to be inserted by Clause 5, is that it states:

"In considering that objective the Authority must have regard to",

three broad categories. However, it does not focus, as the amendment does, on what is important, which is the FSA's understanding of the objective and how it will be achieved. That is why I support my noble friend's amendment.

Lord Higgins: The noble Lord's answer was very helpful in its context, but are we to understand that the Bank of England will not approach banks at all to ask for information but will always ask the FSA to get it and then pass it on?

Lord Myners: With the agreement of the noble Lord, Lord Northbrook, I will first answer the question asked by the noble Lord, Lord Higgins, which followed on from his earlier one. Of course, there is a lot of contact between the Bank of England and the banking community, particularly through Mr Paul Tucker, the deputy governor, and Mr Paul Fisher, another executive director of the Bank. I doubt whether there is a day when they do not meet people from the banking industry. But we are talking about the collection of data from banks. That data collection will go through the FSA because the first stage must be for the Bank of England to seek an understanding from the FSA where it already has the data or has data that will provide the answer to the question that the Bank is seeking to address. If that is not the case, that information request will be channelled through the FSA, which has formal links for the purposes of information gathering with all regulated and supervised banks in the United Kingdom.

On the point made by the noble Lord, Lord Northbrook, the three categories described are very broad, but that is consistent with our principle-based approach. If we are too specific, there is a danger that we limit ourselves and then find that new circumstances emerge that are not precisely contemplated in legislation. The language that focuses on principles and broad areas of authority without being too narrow or specific is consistent with the approach that we are seeking to adopt and will be supportive of the intention of the Bill.

Baroness Noakes: I thank my noble friends Lord Northbrook, Lord Higgins and Lord Hodgson for their passionate observations. My noble friend Lord Higgins hit the nail on the head in relation to information, because it emerged in evidence sessions for the Public Bill Committee in another place that information powers are one of the few things that the Bank wanted but which are not in the Bill. We have an amendment somewhere in the 300s that will address that.

Lord Myners: I was helpfully trying to point out that the direction of the question asked by the noble Lord, Lord Higgins, as the noble Baroness might have noted, might not be entirely consistent with an amendment that we may reach in the late autumn if we proceed at this pace with the Committee stage of the Bill.

Baroness Noakes: That is entirely correct and my noble friend Lord Higgins would have come to appreciate the importance of information powers for the Bank before we got to that stage.

It is perfectly clear that written right at the top of the Minister's brief is "resist", that word that appears on most ministerial briefs. One could tell that the Minister's heart was not quite in it. He told me that my amendment was superfluous because somehow a strategy was the same as a statement of policy. Since the City of London Law Society, which I respect greatly, has seen the Bill, which talked about a strategy, and still said that we needed a statement of policy, I rather took that as being important. There is no requirement here to issue or publish a strategy. There is no sign that it is the same thing. There is no consultation on the strategy beyond the Treasury, whereas my amendment would require wide consultation and in particular refers to other persons who,

"may be affected by the statement",

of policy. The Minister is resisting something which is entirely sensible for the regulated community. There is an inability to see the kind of concerns that genuinely exist out there. If the FSA just had this objective without widening the powers to cover this, it might have been an easier matter. It is not an easy matter because the powers are to be broadened at the same time. For that reason, I would like to test the opinion of the House.

9.45 pm

Division on Amendment 35A

Contents 22; Not-Contents 41.

Amendment 35A disagreed.

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House resumed.

House adjourned at 9.55 pm.

Grand Committee

Monday, 15 March 2010.

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Baroness Pitkeathley): My Lords, before the Minister moves that the first statutory instrument be considered, I remind noble Lords that in the case of each statutory instrument the Motion before the Committee will be that the Committee do consider the statutory instrument in question. I should perhaps make it clear that the Motions to approve the statutory instruments will be moved in the Chamber in the usual way. I remind your Lordships also that, if there is a Division in the House, the Committee will adjourn for 10 minutes.

Concessionary Bus Travel Act 2007 (Variation of Reimbursement and Other Administrative Arrangements) Order 2010

Considered in Grand Committee

3.46 pm

Moved By ***Lord Faulkner of Worcester***

That the Grand Committee do report to the House that it has considered the Concessionary Bus Travel Act 2007 (Variation of Reimbursement and Other Administrative Arrangements) Order 2010.

Relevant document: 9th Report from the Joint Committee on Statutory Instruments.

Lord Faulkner of Worcester: My Lords, buses are the most widely used form of public transport in this country. Over two-thirds of all public transport journeys are made on them. Buses are particularly important for some of the most vulnerable people in our society. For many older and disabled people, buses provide the only link to the places they want to go and the people they want to see.

As your Lordships will be aware, the statutory minimum bus concession was extended in April 2008 to provide free off-peak local bus travel anywhere in England for older and disabled people. The England-wide bus concession is now hugely popular. It provides an opportunity for greater freedom and independence to around 11 million older and disabled people. I should at this point declare an interest as a holder of a national concessionary bus travel pass—in common, I believe, with 84 per cent of Members of your Lordships' House.

The structures in place to administer concessionary travel and to reimburse bus operators for providing it have remained largely the same today as they were when a statutory minimum bus concession was first introduced in 2001. Taking into account the significant increase since 2001 in both the number of concessionary trips being taken and the amount of money consequently at stake, the Government in April 2009 launched a consultation to consider what improvements could be made to resolve some of the problems with the current system.

The consultation expressed the Government's preference for a shift in responsibility for both the statutory minimum and discretionary concessions to upper-tier local authorities. Discretionary concessions are those that are offered as enhancements by local authorities, such as peak travel, companion passes and travel on other modes of transport, such as the railway. The majority of respondents to the consultation were in favour of moving the administration of the statutory minimum concession to a higher tier of local government. Only 23 per cent of respondents considered the current level of responsibility to be the most appropriate.

The responses to the question as to who should administer discretionary concessions were more mixed. The Government believe that it will be more efficient for operators and authorities to keep responsibility for the statutory minimum and discretionary concessions together. Therefore, given the majority view in favour of upper-tier administration for the statutory minimum concession, the order moves the responsibility for administering both types of concession to upper-tier local authorities.

The Government believe that the change in administrative responsibilities will bring with it many benefits, including: enabling efficiencies to be realised through economies of scale and by reducing the number of negotiations with bus operators; making accurate funding by formula easier, due to less variation in the size and characteristics of the authorities; harmonising concessionary travel and wider transport authority responsibilities for the first time; and assisting with the widespread implementation of smart ticketing.

I am sure that your Lordships will agree that the changes being implemented by the order will assist in securing the sustainability of this hugely popular scheme for the future. I commend the order to the Committee.

Baroness Hanham: My Lords, I thank the Minister for introducing the order and confirm that we on this side of the House have always been supportive of the national concessionary bus fare scheme. We recognise that access to public transport is particularly important to the elderly and those with disabilities, as he said. However, we have always been worried about the mechanism for funding the scheme set up by the Government, and have felt that it was not fit for purpose. Our fears have been realised since the introduction of the scheme, as a huge number of local authorities have been left with a shortfall of funding. For some years, we have called on the Government to review the funding mechanisms.

I therefore welcome the fact that, belatedly, the Government have acknowledged the problems with this scheme and have proposed three measures to address them. The first is to reopen the final year of the agreed three-year funding settlement. That is highly controversial and most unfortunate, and has led already to great uncertainty, especially in London. The second is to link the eligibility criteria to the state pension age, which we think is sensible as it ensures that the scheme is targeted at those who need it most.

[Baroness Hanham]

The third is the subject of today's order and relates to moving the administration of the scheme from travel concession area to county level. We also consider the move to county level to be sensible and something that will help iron out local inconsistencies, as the Minister described. We need to rid ourselves of the situation where one area receives inadequate funds and is left with no choice but to cut services and raise council tax, whereas its neighbour has plenty of funds. The whole system has therefore become little more than a postcode lottery. It might be worth looking at Lancashire for a moment. The borough of Preston faced a shortfall of £824,000 in respect of the scheme, yet just down the road in Blackburn the council had surplus funds. Half the boroughs in Lancashire were getting too much money, and half were not getting enough. Those unfortunate enough to live in one of the boroughs with a shortfall could expect reduced services and the possibility of increased council tax. The concession areas were too small, and widening them will be of benefit.

I am therefore happy to support the order. However, I would like reassurance from the Minister on one or two points. First, can he confirm that the change will apply to all travel concession areas outside of the passenger transport executives and London? Secondly, what will the administrative costs of this change be, and who will bear them? Thirdly, what impact will this have on the revised three-year funding settlement? Fourthly, what does the Minister believe the impact will be on previously agreed reimbursement deals between travel concession areas and bus operators? Is it likely that those will have to be renegotiated?

Pending the answer to those four questions, we are happy to accept the order.

Lord Bradshaw: My Lords, the move to the upper-tier authority is long overdue. A plethora of negotiations has fallen very heavily on small bus operators that are negotiating with several local authorities about very small sums of money, and the administrative burden has certainly been far too high.

Will the Minister reconsider the problem of the border areas? The other day, someone from Church Stretton told me that they could go to Norwich on their bus pass but not to Knighton, which is the nearest market town. That may or may not be true, but there are problems in border areas and I hope that, through discussions with the Welsh Assembly and Scottish Parliament, these problems will in time be removed.

The real problem, as the noble Baroness, Lady Hanham, said, is that some authorities are getting more money and some are getting less. The move towards upper-tier authorities will help to put this right, but probably the only way in which to put it right is to introduce smart cards. There will be some time lag from now to when these are introduced. I urge the Government to keep a firm eye on the allocation of money to people who need it to be certain that it is not going to people who do not need it. Will the Minister assure me that this subject will continue to be kept under review?

There is also provision in the arrangements to ensure that bus operators will be no worse or better off as a result of the scheme. However, my attention is drawn to a number of areas that have capacity problems. So many pensioners are travelling that bus routes have to be duplicated at least. I was in Swanage recently when five buses had to be provided to take all the people home who had gone there during the day. This creates very bad peak problems for the operator.

I also draw the Minister's attention to the fact that the system does not work very well in rural areas, in which people make long journeys. People who make journeys within a town generally make fairly short journeys, and one can understand why. Old-age pensioners have found that they can make very long journeys in rural areas, often through attractive scenery; it is an opportunity to have a day out. Again, however, the operators of these local services suffer. Will the Minister assure me that the Government continue to review what is happening so that the burden of cost falls fairly and is adjusted as and when necessary? Other than that, I am quite happy to support the order.

Lord Rosser: My Lords, I have just one point about concessionary travel to raise with my noble friend as a follow-up to paragraph 7.1 of the Explanatory Memorandum, which states:

"The introduction of free off-peak local bus travel throughout England from 1 April 2008 has given the opportunity for greater freedom and independence to around 11 million older and disabled people. The policy recognises the importance of public transport for older people and the role access to transport has to play in tackling social exclusion and maintaining well-being".

Many people feel that it would extend still further the opportunity for greater freedom and independence to older and disabled people if the national concessionary bus pass in England and the senior railcard, which entitles holders to a significant discount on rail fares, were brought together. In other words, holders of the concessionary bus pass would also be able to claim the discount on rail fares but would not have to pay what is currently £26 each year for the railcard. Will my noble friend confirm that the Government are aware of this view, which I support? Will he also say whether the Government either have considered it or would at some stage be willing to consider it? In conclusion, I declare an interest as a holder of both a senior railcard and a concessionary bus pass.

Lord Jenkin of Roding: My Lords, I had not intended to intervene in the debate until I heard the noble Lord. I declare an interest as a holder of both a senior railcard and a concessionary pass that in London is called the Freedom Pass. This is free: on it is written,

"paid for by your local council".

The senior railcard costs me £26. Does the noble Lord propose to cancel the £26 payment, to charge for the Freedom Pass, or to have two different regimes?

Lord Rosser: I would propose—obviously we would need a date for this to come in—that the concessionary bus pass should entitle you to go to a railway ticket office and use it as a senior railcard without having to pay £26 to get a separate card. In other words, it would also serve as a senior railcard to give you the discount that the senior railcard currently gives older people.

Lord Faulkner of Worcester: My Lords, it has been a very interesting debate, and I thank all noble Lords who have taken part. I will do my best to answer the points that were made in the course of it. I sense from the Committee that we are all agreed on how important the concessionary bus travel scheme is for older and disabled people, and on the need to ensure its sustainability for the future. There is no political difference between the parties on that issue. The Committee understands the benefits of the administrative changes that the order before us will bring about, by harmonising concessionary travel and transport authority responsibilities to enable efficiencies to be realised by —for example—reducing the number of negotiations with bus operators.

As I indicated earlier, the Government have consulted widely on the improvements needed to the current system. The changes being taken forward, particularly with respect to the mandatory concession, were supported by the majority of respondents. The Government understand the concerns expressed by some about the loss of lower-tier discretionary powers under the option that is being taken forward. However, the order does not remove the ability of district councils to consider discretionary travel schemes using the "well-being powers" contained in the Local Government Act 2000. Furthermore, the order does not preclude upper-tier authorities from maintaining or introducing district or local-level discretions—for example, where there are differing needs within different parts of a county. Neither does it preclude district councils from providing funding to county councils to administer discretionary concessions on their behalf.

The Government acknowledge that there will be financial implications for both lower-tier and upper-tier authorities as a result of the changes being introduced. It is expected that from April 2011, all funding for concessionary travel will be provided to local authorities via the formula grant funding system. Therefore, it is not possible to consider the financial implications of this change at an individual authority level in isolation from the wider local government finance settlement. I will address more specifically the point raised by the noble Baroness in a moment.

The Department for Communities and Local Government will consult later this year on how the financial implications of the changes will be taken forward as part of the overall consultation on the next local government finance settlement. These changes provide an opportunity to look again at how the totality of funding for concessionary travel is distributed from April 2011. We will also be able to look at the issues that the noble Lord, Lord Bradshaw, raised.

I shall deal with some of the questions that were raised in the discussion. The noble Baroness, Lady Hanham, asked whether the order impacts on London or the PTEs. The answer is that it does not impact on London, but it does impact on the metropolitan districts in PTE areas. They will no longer be able to enter into discretionary schemes under the 1985 Act. We expect administrative costs to be minimal in terms of transitional costs but, if the counties feel that they will incur any additional costs in 2010-11, the DfT is willing to consider that. Overall, however, we estimate that the changes will generate approximately £3 million in efficiency savings each year.

On special grant, by comparing concessionary travel spending in 2007-08 and 2008-09, we have been able to estimate where there might be funding shortfalls and where some authorities might have been receiving excessive grant. As it transpires, the vast majority of authorities have received sufficient grant funding to cover the costs of the recent improvement in the statutory minimum concession. However, we are aware that around 30 authorities out of the 264 which now receive the grant may have a genuine cause for concern over the level of grant they have received, which is the point made by the noble Baroness. We decided that the fairest course of action was to consult on a revised grant distribution for the final year, 2010-11, of the original three-year settlement. That consultation process began on 4 November 2009 and closed on 30 December. Our aim in this work was to deliver a fairer distribution, but to minimise the impact on local authority finances by changing as few payments as possible. Where grant payments have been reduced, the new distribution still leaves those authorities which benefited from the original distribution receiving more than sufficient funding to meet the additional costs of the new statutory minimum concession in 2010-11.

Baroness Hanham: I hope that the Minister will be able to answer a question, although I am happy for him to write to me. A curious aspect of the scheme is that it seems that a negotiated settlement can be reopened in the third year. How often does this happen? Is this normal practice or was it quite unusual in these circumstances?

Lord Faulkner of Worcester: I understand that it is something that is possible with the special grant formula. However, if it would be of help to the noble Baroness, I will write to her with a more detailed explanation.

The noble Lord, Lord Bradshaw, raised the question of border journeys. As we have heard, this affects people living in, say, Craven Arms wanting to do their shopping across the border in Wales. The order does not impact on the ability of local authorities to implement discretionary cross-border schemes, other than that, from April 2011, changes to these schemes will need to be agreed with the relevant upper-tier authority in England rather than with the district authority. We hope, therefore, that people will be no worse off as a result.

I turn to the question of "no better off and no worse off", also raised by the noble Lord, Lord Bradshaw. I remind the Committee that travel concession authorities are required by law to reimburse bus operators for carrying concessionary bus travellers on the principle that the operators are no better off and no worse off by taking part in concessionary travel schemes. The existing reimbursement arrangements involve a need to make a number of assumptions and estimations with regard to matters such as average fares and the number of trips that would have taken place in the absence of a concession. This can make the negotiation of reimbursement terms quite complicated, as I am sure the noble Lord will recall from his days of running

[Lord Faulkner of Worcester]
a railway and similar considerations applied there. The department is considering options for improving the current method of reimbursing bus operators for providing the statutory minimum concession, and we hope to implement any changes at the same time as the administrative reform in April 2011.

My noble friend Lord Rosser asked about the senior railcard, while the noble Lord, Lord Jenkin of Roding, in a most welcome intervention, raised the same issue. We are aware that there has been a lobby—led, I think, by the National Pensioners Convention and some trade unions—for the possibility of combining the senior railcard with the concessionary bus pass. I think that they had in mind, as my noble friend Lord Rosser indicated, that the senior railcard would effectively be merged with the concessionary bus pass, and the concessionary bus pass would carry with it the entitlement to the sort of discount on railway travel that the senior railcard does.

Research was carried out on this in 2003 by Oxford Research, which indicated that journeys made by the senior railcard appear to be revenue abstractive, and become generative—worth while for the train operators—only if you include the revenue generated by the sale of the card. However, the Government are aware that there is great interest in this issue and that people are asking for the roles of the senior railcard and the concessionary bus pass to be considered. We are considering how best to take this forward and what further evidence might be required.

The noble Lord, Lord Jenkin, raised the question of the Freedom Pass in London, which is available to all eligible older and disabled people whose sole or principal residence is in London. Residents outside London, but in England, are now eligible for the England-wide bus pass and therefore can use that pass to travel on buses when they visit London.

Lord Jenkin of Roding: I have used my bus pass in many parts of the country, including Scotland.

Lord Faulkner of Worcester: I do not think that the noble Lord is able to use his bus pass in Scotland. I do not think that it entitles him to free travel on buses there.

Lord Jenkin of Roding: I am sorry—it may have been some months ago, but I certainly did. My wife has relations who live in Edinburgh, and when we got the bus from Waverley station to where they live, I asked, "Am I entitled to use this pass?". The driver said, "Yes, of course".

Lord Faulkner of Worcester: That is probably because it is granted on a discretionary basis. I had exactly the opposite experience in Cardiff two weeks ago when I attempted to use my Worcester bus pass and was told very firmly that it did not operate outside England.

I hope that I have allayed concerns about the ability of local authorities to maintain the existing discretionary enhancements that are provided for residents, and that I have also made clear that the financial implications of the changes will be considered alongside other changes being made in the overall finance settlement for local government. I hope that the Committee will agree that the changes being implemented by the order will assist in securing the sustainability and the long-term life of this hugely popular scheme for the future. I commend the order to the Committee.

Motion agreed.

Renewables Obligation (Amendment) Order 2010

Considered in Grand Committee

4.14 pm

Moved By ***Lord Faulkner of Worcester***

That the Grand Committee do report to the House that it has considered the Renewables Obligation (Amendment) Order 2010.

Relevant document: 8th Report from the Joint Committee on Statutory Instruments.

Lord Faulkner of Worcester: My Lords, the purpose of the order is to make some changes to the renewables obligation, encouraging a higher level of renewable generation and providing increased support for offshore wind.

Decarbonising our energy system is more important than ever. By 2020 we want to be firmly on track towards achieving our commitment for an 80 per cent reduction in carbon emissions by 2050. Renewable energy from water, wind, sun and sustainable biomass will play a crucial role in making that happen and be vital for our energy security in years to come. That is why the Government have been instrumental in pushing for effective and binding EU targets, and have published a UK action plan for achieving our legally binding target of sourcing 15 per cent of our total energy from renewables by 2020. We will need radically to increase our use of renewable electricity, heat and transport to meet that challenging target, and large-scale electricity generation will have to play a central role.

The renewables obligation is the Government's main mechanism for supporting the generation of renewable electricity in the United Kingdom. The order builds on what has been achieved thus far and will help to drive forward the additional generation necessary to meet our share of the target. Since its introduction in 2002, the RO has incentivised significant amounts of eligible renewable electricity. In 2008-09 there were 5,100 stations accredited under the RO, generating 19 terawatt hours. We have seen the amount of onshore wind electricity more than double since April 2006, delivering 6.2 terawatt hours. For the first time, more electricity has been generated by offshore wind sites in England than was generated by onshore wind. But we now need it to deliver even more.

The changes that we are introducing apply to England and Wales. Scotland and Northern Ireland are bringing in complementary orders which will work together to create a United Kingdom renewables obligation.

Perhaps the most significant change, and perhaps the most welcome, is the increase in the level of support from 1.5 renewables obligation certificates per megawatt hour to two ROCs per megawatt hour for offshore

wind stations for capacity accredited between 1 April 2010 and 31 March 2014. That increased support will apply to the whole station accredited within the period or to all the additional capacity accredited in the period. It therefore includes any turbines that form part of the station or the additional capacity, even if some of those turbines are yet to be installed.

Offshore wind is an important technology for the United Kingdom and is expected to play a vital role in meeting our renewable energy targets. We are now number one in the world for offshore wind. It is crucial that we maintain the momentum and ensure that investment is attracted to the UK. We have worked closely with industry in developing the change. After commissioning a study into the costs of offshore wind and extensive consultation, we are confident that projects will now receive the right level of support to proceed. In accordance with our grandfathering policy we intend that, once a station or additional capacity qualifies for the two ROCs, the electricity that it generates should remain eligible for that level of support for 20 years from the date of accreditation, subject to the 2037 end date.

The order also allows us to take the steps to give investors the long-term certainty necessary to incentivise them to invest in new generation up to 2020. As announced in the Pre-Budget Report, the extension of the lifetime of the renewables obligation by 10 years to 2037 will ensure that projects in technologies such as marine and round 3 offshore wind, due to come online from 2017, will be able to benefit from RO support. However, in light of that extension, we are mindful of the need to avoid overcompensation and ensure value for money to the consumer, so we have limited support to a maximum of 20 years. This will apply to stations that receive full accreditation on or after 26 June 2008, which will receive support for 20 years or until 2037, whichever is the sooner. A further period of 20 years' support will apply when capacity is added to any generating station—again subject to the 2037 end date. As is currently the case under the Renewables Obligation Order 2009, generating stations accredited before 26 June 2008 will continue to receive support until 31 March 2027.

In order to allow renewable electricity generation to grow as much as possible, we have also removed the 20 per cent cap on the size of the obligation, and increased the level of headroom—that is, the set margin between predicted demand and supply of ROCs—from 8 per cent to 10 per cent from the 2011-12 obligation period, to ensure the stability of the market for renewables obligation certificates.

This increase in the level of headroom builds on our commitment to making the ROC price more stable and predictable. This not only provides greater certainty to investors but helps to ensure that in future years the consumer is not paying more than required to bring on this renewables generation. Given the current economic climate, I am sure that noble Lords will agree that these considerations are extremely important.

Over the past few years we have introduced a number of changes to the RO in order to make it easier and more attractive for microgenerators to join the scheme. Despite these however, we recognise that it remains better suited to professionals in the energy sector. The Government are therefore introducing a feed-in tariffs—FITs—scheme from 1 April this year to support the generation of low-carbon electricity by small-scale projects up to a maximum of 5 megawatts. Offering a fixed level of reward for each unit of electricity generated should provide the simplicity and certainty required to encourage households and communities to generate their own electricity from low-carbon sources.

In anticipation of the FITs scheme coming into force, the order removes from the RO all microgenerators in the technologies that will be eligible to claim FITs, so that they can join the new scheme from its start. As FITs will be a more appropriate support scheme at the microgeneration scale, we intend for it to replace the RO completely in providing support for generators up to 50 kilowatts in anaerobic digestion, hydro, solar photovoltaic and wind power. Microgenerators in other technologies will of course remain eligible to receive support through the RO.

It is a slightly different story at the small scale—covering generators above 50 kilowatts and up to 5 megawatts in capacity—because the appropriateness of either the RO or FITs will depend on the circumstances and preferences of the individual generator. That is why small generators who joined the RO on or after 15 July 2009 and before the FITs scheme comes into force will be able to elect to transfer to FITs during a defined period. Small generators who had already joined the RO before 15 July 2009 will remain in the RO, and new small generators at this scale after the FITs scheme comes into force will need to make a one-off choice as to which of the two schemes they wish to join.

We are making a few small technical and administrative changes to the order to improve the way the RO works. For example, we have clarified when ROCs can and cannot be issued and revoked, and excluded landfill and sewage gas from sustainability reporting, because we do not believe that any value is added in requiring reports for those sources.

We have consulted extensively on these changes, which have been warmly welcomed by the renewables industry. However, I must point out that—as with previous renewables obligation orders—we have notified the European Commission about the amendments that we intend to make to the RO for state aids purposes, and we are awaiting its response. We intend that the order will come into force on 1 April.

The changes that I have presented to the Committee put us on a firm path to developing our renewable electricity industry, which will be vital for decarbonising our energy supplies. I commend the order to the Committee.

Lord Jenkin of Roding: My Lords, the Minister has been good in outlining the scope of the wide-ranging order. I assure him that I will not seek to cover the whole field.

The issue that interests me is not actually in the order; rather, it is the complaint that considerable effort has been made and discussions have been had with DECC on the suggestion that the cap on co-firing of biomass with coal of 12.5 per cent, set in the preceding 2009 order, is too restrictive, and that the figure should be raised to at least 17.5 per cent. That is what I am going to address today.

[Lord Jenkin of Roding]

I want to get one thing clear first, though. The Minister talked about the discussions with the European Commission on "state aids". I have long detected that, perhaps unintentionally, Ministers have sought to persuade the public that the subsidy for renewable is paid by the state. That is not so. I was surprised to read a short exchange in our debate on the national policy statements on 11 March when the noble Lord, Lord Willoughby de Broke, referring to the discussions that the Government had been having with the lady who is the chief executive of the Drax power company, said:

"I can guess how the conversation went. I expect that she wanted more taxpayers' money to make biomass plants viable".

Obviously, the noble Lord had bought the "state aids" possibility. The noble Lord, Lord Hunt of Kings Heath, then responded:

"My Lords, it pains me to say it, but the noble Lord is absolutely right".—[*Official Report*, 11/3/10; col. 161.]

The noble Lord was absolutely wrong. The cost of the ROCs does not fall upon the taxpayer but upon the companies that have to buy their ROCs. It is then passed on to the customer in higher prices. A proper description of what the Government do is that they have put in place a system that makes consumers pay.

I apologise to those who were here on Thursday because I am going to quote again the figures that were given to me by Ofgem at a briefing a couple of weeks ago, headed, "Estimated average cost impact per household customer (i.e. costs added to gas and electricity bills) of main environmental schemes in 2008, 2015 and 2020". The renewable obligation figure for 2008 is £10. I shall come to the other categories in a moment. By 2015 that figure will rise to between £38 and £47, and by 2020 it will rise to between £71 and £81—that is, between a sevenfold and an eightfold increase. That is the cost falling upon the consumer for the financing of the subsidy for renewable energy. The consumer is being asked to pay. Therefore, the noble Lord, Lord Hunt of Kings Heath, really surprised me when he said that the noble Lord, Lord Willoughby de Broke, was absolutely right. I suspect that he may have done so as a quick answer to an intervention.

4.30 pm

To complete the figures, by the time you have added the European Emissions Trading Scheme, the FITs, the renewable heat incentives, CERT, the new CCS levy that is provided for in the Energy Bill, and smart meters, you have a total, in 2008, of £79 per household bill; in 2015, of between £153 and £205; and, by 2020, of between £294—let us say, nearly £300—and £406-plus. I said last Thursday that I do not believe that any Government could possibly contemplate those additions to the average household energy bill, or indeed to the industrial energy bill.

I return to biomass, which is what I am on about. The co-firing of biomass is the burning of renewable biomass materials with coal, and is recognised in this order and its predecessors as a renewable technology under the renewables obligation. The Drax power company, which I mentioned a little while ago, is constructing what will be the largest co-firing project in the world. It will have a capacity of 500 megawatts, and from mid-2010 it will have the capability to produce 12.5 per cent of the power station's output from renewable biomass. To put that into context, that is the equivalent of around 600 wind turbines. By substituting biomass for coal, carbon dioxide emissions have been reduced by more than 2.5 million tonnes a year. Again, to put this into context, this is the equivalent to taking about 700,000 cars off the road.

Very little biomass is currently available from energy crops. The order clearly refers to the distinction between energy crops that are specifically planted to provide fuel for power generation and what is sometimes called regular biomass: that is, waste products from other industries, notably from the forestry industry and from agriculture. The majority of biomass that is currently available for firing generation is therefore regular biomass. The price of regular biomass is typically about three times more expensive than coal, which is why a power station such as Drax has to have the incentive and support that are afforded by the renewables obligation system simply to make it economically viable.

Suppliers of electricity can, of course, purchase and redeem ROCs to satisfy their obligation under the RO. However, the number of ROCs produced from co-firing regular biomass that suppliers of electricity can redeem is currently restricted to 10 per cent, although this will be increased to 12.5 per cent by April this year. That was the figure that I mentioned a moment ago. This cap applies only to power stations that co-fire with regular biomass; it does not apply to ROCs from power stations that co-fire with energy crops or with regular biomass from power stations with combined heat and power. I understand the logic of that, but you have to look at the effect on a company that invested millions of pounds in a new biomass plant. That is the problem.

I asked the company questions about the impact of this, and I had an e-mail from it this morning. First, it was pretty cross with the noble Lord's noble friend, who appeared to be saying that this was a call for more subsidy. It simply is not. As I explained, such subsidy as exists is paid for by the consumer and came about because the Government have stated that they want lower CO_2 emissions. If anything, co-firing of biomass receives less ROC per megawatt hour than offshore wind. Because of that, it represents a cheaper transition to a low-carbon future.

The Government have accepted that biomass is a renewable. There was some suggestion that it might not be. They are quite right to do that. Even importing it from Canada as waste forestry products is still far better than burning fossil fuels. In fact, Drax states that, across the whole life cycle, co-firing coal and biomass produces 87 per cent less greenhouse gas. It estimates that its current portfolio of greenhouse gas savings relative to burning coal will range from 88 per cent to 93 per cent. It states:

"Even if we imported all our biomass from the Western US (which we don't) the GHG saving across the whole life cycle from field to furnace is 75-80% relative to coal".

Those are the company's calculations. We are talking about large figures when it comes to the question of the cap.

Another brief that I have received states that the Government have been considering this, and had a consultation with a firm of economic consultants,

Oxera. I am sure that the Minister has been briefed about that. I make it clear that the Government, not Drax, consulted Oxera. The findings of the Oxera report were that the cap constrains the development of co-fired renewable generation, and increases the cost to consumers of CO_2 abated through the renewables obligation. The report stated that the,

"removal of the cap would not destabilise the ROC market or serve as a material disincentive to new investments in renewable generation".

I have gained the impression that this has worried the Government. They are so keen on offshore wind power that they are not prepared to envisage anything that might compete with it for the money that will be available for ROCs.

I will not read the whole report. It states that the,

"existence of the cap exacerbates ROC market competition issues for independent co-firing generators".

Most importantly, it states that,

"increasing the cap to 17.5% could ensure that technical constraints rather than policy constraints are binding, which would act to increase the ability of independent co-firing generation to compete".

This view was supported by the regulator, Ofgem. Its responses to the consultation were very similar. Ofgem states that the,

"cap potentially disadvantages independent co-firing generators if vertically integrated suppliers self-supply a considerable proportion of their demand for co-firing ROCs … the market for independent generators"—

including companies such as Drax—

"may be smaller than that implied by the cap … there is concern that the cap constrains the contribution to renewable energy targets from a relatively low-cost renewable technology".

I find it difficult to understand why, in the face of that advice both from the consultants and Ofgem, the Government still refuse to countenance the increase of the 12.5 per cent cap to the figure they were consulting on, that of 17.5 per cent. If I may put it this way, it seems to be simply perverse.

More important, what the Government are doing is confusing the ends and the means. The ends surely have to be the reduction of carbon emissions by a whole range of the measures which were set out in their publication, *The Transition to a Low Carbon Economy*, and many other statements. One of the means is wind power, but to subordinate the increased contribution that burning biomass could make to the reduction of carbon by their refusal to increase the cap in order to be able to have more offshore wind is simply confusing the ends with the means. It is not the first time I have had to complain about this. Some years ago, we debated at length the contribution that coal mine methane might make. If the gas could be recovered and burnt, it would save very large quantities of carbon dioxide, because methane is 23 times more carbon intensive than CO_2. Again, we were told that it could not be done because it would restrict investment in wind power. All that is in *Hansard*. I said that that was simply confusing the ends with the means, and they are doing it again here. I do not understand why the Government have got themselves into this extraordinary position.

I want therefore to ask one or two questions, which I hope the Minister will be able to answer. Why did the Government reject the Oxera report? What were the reasons for refusing to accept its recommendation that this would not have any impact on the ROC market generally—that it would not destabilise the ROC market or serve as a material disincentive to new investments in renewable generation? The Government asked for advice, they got advice, and they are ignoring it. Another question is this. The Government have said that they will further consider the co-firing cap in October this year when the next banding review starts. What additional information do they think they are going to get between now and then that would lead them to a different decision, which is what they are holding out to the company? What discussions have taken place between the department and Ofgem on the effect of retaining the cap on the number of ROCs available for co-firing regular biomass? If there is to be a change—and what is the purpose of review if it is not to be open to the possibility of change—will it come into effect in 2011 or will the company have to wait until 2013, the date which the Minister mentioned in his opening speech?

I find the way in which the Government have approached this whole process, and indeed the treatment of the Drax company itself, really quite inexplicable. One must bear in mind that Drax was one of the first major companies to tackle issues of pollution by putting in at considerable cost special plant to limit nitrogen oxide and sulphur dioxide emissions, but it is now being penalised by having this cap put on the amount of co-firing that it can use and for which it can claim ROCs.

I hope the Minister understands that I am pretty indignant about this. I have no interest in Drax, but its argument is wholly compelling and I hope that the Government will perhaps be prepared to take it away. The problem is not what is in the order, but what is not the order. They have chosen not to use this order to increase the cap to 17.5 per cent.

4.45 pm

Lord Reay: My Lords, the main purpose of this order is to increase the level of subsidy made available for new offshore wind generation. It also extends the system for an extra 10 years, from 2027 to 2037, while limiting the access to the system of individual subsidy recipients to 20 years. So much for the principle that no Government can bind their successors.

The Explanatory Memorandum explains that this increase is being proposed following evidence that costs have risen. The subsidy available for offshore wind will rise from 1.5 to 2.5 ROCs per megawatt hour, while the subsidy for onshore wind will remain at one ROC per megawatt hour. Thereby, offshore wind is judged to require twice the level of subsidy as onshore wind. That does not seem to leave with much value, or even meaning, the boast that we frequently hear from Government, and which we heard from the Minister last Thursday:

"We have the best wind resource in Europe, and it makes no sense not to use it".—[*Official Report*, 11/3/10; col. GC 172.]

This justification for increasing the subsidy also casts doubt on something else the Minister said here on Thursday:

"We think that it is best for us to go down the low-carbon route as quickly as possible, and the cost-effectiveness will become clear over time. I should also say that the more turbines we build,

[LORD REAY]

the more the cost will reduce. The whole renewable obligations system is based on the expectation that costs will come down, and I am sure that that will happen".—[*Official Report*, 11/3/10; col. GC 175.]

I do not know what costs the Minister had in mind, but for the moment it is clear that the order is based on the belief that costs have risen, not fallen.

On Thursday, the noble Lord confirmed that the Government have in mind 10,000 new turbines, delivering up to 25 gigawatts of electricity by 2020. Asked whether he was confident that this target could be reached, he answered an emphatic yes, in col. GC 173. I believe that more than half this total is expected to come from offshore wind—something in the order of 6,400 additional turbines. Perhaps the noble Lord would confirm that. But how realistic is it to expect that that target could be achieved? The rate is over 600 a year, or perhaps two or three or even five a day during the months when work at sea is possible. Given the competition for, and expense and shortage of, installation vessels to lay them, the target seems to be improbable in the highest degree. In Denmark a rate of two additional turbines a week was never exceeded.

The first report of the Committee on Climate Change, which we debated in the House before Christmas, stated that 10 installation vessels were required for targets to be met, only two of which were operating currently in the United Kingdom, and that there was a three-year queue for new orders. We were also told that the new vessels cost between £50 million and £150 million each. Perhaps the Minister could tell us whether the position has improved.

In any case, that is the target. It is an enormous target that is, in the Government's view, worth imposing enormous additional expense on the electricity consumer. Page 22 of DECC's summary attached to the order, under the third paragraph of the section on distributional impacts, states:

"The very approximate estimate of the consumer cost of both policies together taking account of the overlap"—

which I take to be the sum total of the effects of the order as a whole—

"is around £46 billion total from 2010 to 2030".

As I said on Thursday, that breathtaking sum is likely to push us into the pole position of having the most expensive electricity in Europe—although it will be difficult to beat Denmark, which has a considerable lead in the reckless pursuit of wind power and very expensive electricity as a result—and at the opposite end of the spectrum to France, whose reliance on nuclear power has given it some of the cheapest electricity in Europe. Incidentally, France also has one of the lowest per-capita carbon-emission figures in Europe, unlike Denmark and Germany which have two of the highest. Altogether, that is a recipe for sending our industry overseas.

In the Explanatory Memorandum, we are not told in any detail how that figure of £46 billion is arrived at. I assume that it attempts to assess all the subsidy likely to be received in future years, until 2030, but not until 2037, by all offshore wind farms likely to be installed for the Government's target to be met. Will the Minister confirm that, or state the assumptions behind the calculation? Are the consequent and necessary extensions to the national grid included or are they additional to that figure? If separate from that figure, what do they amount to and how and when will the consumer be asked to pay?

The Minister explained that this order also makes provisions regarding the feed-in tariff scheme, which is also due to come in on 1 April, but this order is not responsible for bringing that scheme in. I therefore presume that its costs are not included in the estimates attached to the order.

Last Tuesday, when we debated the nuclear national policy statement, the noble Lord, Lord Turnbull, referred to an article in the *Guardian* by George Monbiot in which that well known patron saint of the green movement came out against the FITs scheme and estimated its costs at some £8.5 billion, once again to be paid by the consumer. I do not know whether the Minister would like to comment on that estimate. I do not think his colleague did so last week.

In one of his articles this month on the feed-in tariffs scheme, George Monbiot referred to a study recently produced by Ruhr University. It perhaps played a part in turning him against the scheme. Germany has had a feed-in tariffs system for 10 years or so that applies to large-scale wind power as well as to renewable microgeneration. Germany does not have a ROC system. The study shows that its subsidy regime has resulted in 6 per cent of the country's electricity being produced by wind power at a cumulative cost to the consumer of up to €20 billion, were the scheme to end tomorrow, and in 0.6 per cent of the country's electricity being provided by solar power at a cumulative cost to the consumer, were the scheme to be cancelled tomorrow, of €53 billion. The study concludes with these words:

"Although Germany's promotion of renewable energy is commonly portrayed in the media as setting a 'shining example of providing a harvest for the world' (The Guardian 2007), we would instead regard the country's experience as a cautionary tale of massively expensive environmental and energy policy that is devoid of economic and environmental benefits".

Just at the moment that Germany discovers all that wasted investment, we proceed to embark down the same path. Like the CCS levy, to be introduced in the Energy Bill, our feed-in tariffs scheme amounts to yet another large charge to be laid on the poor electricity consumer. I suggest that this order is asking the consumer and, through him, the country to pay more than either can bear for a solution that brings no measurable advantage to us or to the world at large. I hope that one day a Government will wake up, see sense and revoke it.

Lord Woolmer of Leeds: My Lords, like the noble Lord, Lord Jenkin, I shall comment on Drax and other users of biomass. As noble Lords know, there are two uses for biomass: co-firing and dedicated, 100 per cent, biomass units. In introducing this statutory instrument, the Minister mentioned guaranteeing grandfathering for 20 years from the point at which a plant is accredited, not the point at which it is constructed. This is important, of course, because construction takes a long time and involves a lot of money up front. It has an effect on the rate of return on the capital employed if plants take two, three or four years to construct. What are the Government's intentions on grandfathering rights on the same basis for dedicated

biomass plant? As with co-firing, that is the dog that does not bark. It is not in here. The Government must have considered it, but they have not included it in the order.

Turning to the question of co-firing, I will not repeat the many points ably made by the noble Lord, Lord Jenkin, all of which I agree with; I shall just add one or two others. I very much hope that my noble friend will be able to give some reassurance about the Government's intentions—I do not expect them to change their mind about the order now, but it is important to know their intentions for the future.

I should like to make the distinction between a cap, which limits the contribution towards electricity supply that can be made by co-firing, and the degree of support that is given. The degree of support given to co-firing is 0.5 ROCs per megawatt hour. Offshore wind already gets 1.5 ROCs per megawatt hour. In the order, that is increased to two. In other words, the degree of support given to wind will be four times that given to co-firing biomass. That indicates that offshore wind could not compete if it was not given such large support. Co-firing generation is economically a much better deal to get renewable generation. Whatever the question of the cap to be imposed, there can be no doubt that co-firing is not being given an unfair advantage in support; on the contrary, the support given to it will be a quarter of that given to offshore wind.

I turn to the question of the cap—that is, the number of ROCs that suppliers can acquire under the order. As the noble Lord, Lord Jenkin, said, the Government intend to keep that at 8 per cent. In the supporting documentation to the order, under the heading "Summary: interventions and options" on pages 4 and 5, it is made clear that the consultation considered the question of retaining the co-fired cap at 12.5 per cent. In other words, as the noble Lord, Lord Jenkin, said, there was consultation on that. It has not been merely reaffirmed, it has been considered. As the noble Lord said, the department not only consulted Oxera, it commissioned it to produce an independent report on the issue of the cap. It did not simply consult it; it asked it independently to consider the issue. The report is not flimsy; it is substantial. The noble Lord fairly informed the Committee of the findings of that independent review.

The explanation of the costs and benefits of the proposals under review is set out in the document, entitled "Summary: analysis and evidence". No evidence is given at all about the consultation on keeping the cap on co-firing at 12.5 per cent, as opposed to raising it to 15 or 17.5 per cent or removing it altogether. I find that strange because the other elements of the consultation—the options to be considered, including the benefits and costs—are all set out for those who want to study them carefully. My question to my noble friend is this: given that this was a policy option that was consulted on, why are the options not set out along with the costs and the benefits so that noble Lords could reasonably consider the virtue of keeping the cap at the current level? That seems extraordinary and indicates that the Government are either not sure that they have a good case or perhaps have overlooked it. Surely it cannot be right to ask us to approve an order that contains one element which is to remain unchanged but for which options were considered, but for us not to be told what those options were and what are their advantages and disadvantages.

5 pm

The question of the cap is important for two reasons. First, but not in order of logic, is that one of the effects of the cap is that it prevents the electricity consumer, whether business or household, paying for their electricity at a lower price than they might otherwise because co-firing, as demonstrated through the ROC system, is assumed to be significantly cheaper than offshore wind. I agree with the noble Lord, Lord Jenkin, that this is a critical issue.

The second but less obvious effect of the lower cap we have at the moment is on the actual market for ROCs from the different types of co-fire producer. There are two types of these. There are independents like Drax, which produce only energy; they do not sell it because they are not suppliers. However, some integrated suppliers also own energy production units that produce electricity. The effect of a rather low cap is that, where the suppliers of electricity also own their own co-fired generation, they are inclined to buy their own in-house co-fired power generation rather than buy from the independents. This means that the independents are at the bottom of the food chain when it comes to selling their co-fired generation. If there is quite a bit of co-fired generation on the market but there is a low cap, it means that the co-fired generators are forced into accepting a lower price than they would get in a genuinely competitive market. This is well recognised.

Does the Minister agree that this is a problem, and of course that it is one of the two issues that Oxera looked at? Do the Government agree that keeping the cap where it is means that there is a danger that it is likely to distort competition in the selling of co-fired generation which will count against independent co-fired generation producers? Also, does he accept that raising the limit for the amount of co-fired generation that can qualify for ROCs would in itself significantly remove the anti-competitive element in the market? That was recognised by Oxera.

I hope that the Minister is able to give some comfort to the Committee that— while he is not in a position today to change the order, and although on this occasion it was not possible to change the cap—the matter is genuinely being reviewed again, that the Government's mind is open to such a review and that the review can be done more speedily than by 2013-14, because that plant will be commissioned within a few months. If that is not done, the danger—and this has already happened in the past few months—is that they will pay co-fired generation coal power stations not to co-fire, because it will be cheaper to produce electricity with coal, buying emission allowances, than to sell their co-fired biomass generation off at an uneconomic price. Are the Government willing to look again at this issue in a timeframe that matches the commercial reality of investors, having invested tens or hundreds of millions of pounds, not having to wait for three or four years for a review, if any, to take effect?

Lord Stoddart of Swindon: My Lords, I have listened to the debate so far and there is very little left for me to say. Nevertheless, I am going to say it.

[Lord Stoddart of Swindon]

I am one of those people who are rather sceptical of the contribution that CO_2 makes, and will make in future, to so-called global warming. Still, one has to look at the position of the Government, how they are going to meet their obligations and what effect that will have on industry, on consumers and, particularly, on the electricity supply industry. We have heard about some of those effects today.

I am also opposed to the dedicated growing of crops for energy generation. I have spoken, as have others, to Drax power station about the co-firing of its coal-fired station with biomass. Drax has assured me, and I believe it, that the biomass that it is using is from waste agricultural products, from forests that need clearing to enable them to regenerate and from sources that do not use good agricultural land for producing food. I have been quite impressed by what Drax says, and I understand its concern that the Government are giving it no particular priority—indeed, that they are shifting their priority to wind generation in order to meet their targets. As we have heard, Drax is currently constructing the largest co-firing facility in the world, with a capacity of 500 megawatts, and producing 12.5 per cent of its output from biomass will make enormous savings in CO_2 emissions of 2.5 million tonnes. That is the equivalent of 600 wind turbines, saving the equivalent of the CO_2 emitted by 700,000 cars. This is making a huge contribution to the Government's obligations to Europe, and indeed to the rest of the world.

I do not want to repeat much more of what has already been said, but we have not yet dealt with the question of security of supply. Between now and 2015—and beyond—that will be one of the most difficult problems with which to deal. The great benefit of Drax, and perhaps other power stations later, is that it will be a base-load station and will produce electricity at maximum demand when needed and when the wind is not blowing. That really must be tackled, and it must be understood by the Government and by consumers—who, as we have heard, will have to pay an enormous premium on their fuel costs to finance 20,000 megawatts of wind power—that that power will not guarantee that we meet our demands in the winter, particularly at peak periods, or even make a large contribution to meeting them.

I urge the Government to look at this problem very seriously indeed, because they really are on the wrong track. It is essential that we provide power that will meet maximum demand. The maximum demand met during the recent cold snap was a record 58,000 megawatts, or just over, but this is likely to increase. Despite all the perhaps local savings in electricity, the very fact of population increase and more electricity use in what I hope will be additional manufacturing industry will increase the demand for electricity.

An Answer to a Question that I asked recently about wind power showed that, for most of the period since 15 January, the wind power system has provided less than 50 per cent of its capacity and frequently less than 30 per cent. Indeed, on three days of the winter freeze, it provided 10 per cent or less of demand. Its lowest output was 5 per cent, on 7 January. That is a warning to the Government that they need to look again at their policy on supplies if they are to meet maximum demand, particularly if we are going to have much colder winters than we have had for the past 10 years. They will fail in their duty to do so unless they re-examine their policy and reconsider the desirability of ensuring that co-fired electricity generation can take place, because it is economic.

5.15 pm

Lord Teverson: My Lords, perhaps I can cast away some of the gloom that has descended this afternoon and congratulate the Government to some degree on the order, which concerns ROCs and FITs and which moves, on the whole, in the right direction. However, I will ask one or two questions. A couple of the issues have already been raised. I was interested that the Minister mentioned state aid. Having had a little bit to do with Europe, I know that DG Competition does not move fast. It probably has not escaped the notice of any noble Lord that we have 17 days left for this state aid to be cleared because the regimes start on 1 April. I would be interested to understand whether there has been any indication from the Commission that the state aid issue will be overcome. I presume that the Government do not think that it will be a major problem. I would also be interested to understand whether the state aid issue relates solely to ROCs or whether it relates also to feed-in tariffs. I am sure that the industry, too, would be interested in that.

After listening to the Minister, I was unclear about some of the microgeneration installations already in operation and about what options are available to individuals and households who have already put substantial amounts of money into generating renewable energy for their homes and to feed back on a small scale to the national grid. The Government and many of us have said that this is a good thing, but I am not sure that everybody will come off better from this order. What options are open to someone who put in a small-scale but quite expensive PV installation before July 2009? I thought that I understood them from part of the Minister's statement, but then he went through some other options that were less clear to me.

I am also concerned about the absence of co-firing. I find it difficult to understand the Government's position. I will not go into it at great length, because the noble Lords, Lord Jenkin, Lord Stoddart and Lord Woolmer, have discussed it. However, we all recognise the challenge of approaching, let alone achieving, the target of generating 15 per cent of energy from renewables by 2020, and we need all the ammunition that we can get. I find it strange that we put a restraint on a technology that can help to deliver the targets that all of us know are very important to decarbonise the economy by that date and onwards to 2050. I would like to understand the Government's logic in applying a cap. The rest of the issue has been well argued. Although I would understand if there were considerations around ensuring the sustainability of fuel, that is a separate issue from the cap itself.

Perhaps the Minister will also update us on where the renewable heat incentive has got to. That would be useful for the Grand Committee. Lastly, as so many matters have been covered, I would be interested to hear the Minister's prediction for the impact this package will make in terms of growth in jobs. How

many jobs in the renewables sector do the Government hope to create through their strategy? I think that other noble Lords have said quite enough to enable me to sit down at this point.

Baroness Wilcox: Noble Lords will see from the previous order that the noble Lord, Lord Teverson, and I reverse our order on this subject because we learn so much from behind us before we stand up to speak and do not want to appear too foolish when we do so. The noble Lord said that we should be cheerier and more optimistic than we have been this afternoon. I think that the speeches we have heard from all sides of the Committee show unease with this order. That is worrying, and I am sure that the civil servants sitting behind the Minister will be having long talks with him afterwards.

We all agree that there is a pressing need to shape up Britain's renewable energy regime. We know that the United Kingdom is third from the bottom in the European Union in the development of renewables. Only Luxembourg and Malta are behind us, in spite of us having one of the most generous systems of support. I shall leave out biomass and Drax because my noble friend Lord Jenkin and the noble Lords, Lord Woolmer, Lord Stoddart and Lord Teverson described them well.

My general concern with the order is that I do not believe that it addresses the magnitude of the renewables challenge that we face. Perhaps the most important issue is the cost that these measures will impose on the consumer. The Minister alluded to this, as did the noble Lord, Lord Reay. Will the Minister provide the Committee with a greater understanding of the financial implications that the Government see these measures having on the public's already ever-growing energy bills? Can the Minister explain the extent to which the British consumer will be paying to create jobs overseas by allowing renewable generation capacity to be developed overseas using British renewables obligation certificates?

The Government talk about the need to do more to support offshore wind, but I am concerned about the lack of consideration and development of other forms of marine renewable potential. We have 11,000 miles of coastline and the highest tidal reaches in the world. We should be a beacon for international investment and a place for developers to try out their projects and ideas. Can the Minister say what research is being done to explore these other methods and to attract international investment? What are the Government doing to protect and support wind technology companies that are already based in the United Kingdom? There are reports that two of the UK's most advanced developers of wave technology—Pelamis and Aquamarine—are considering developing their technologies overseas. We must harness this section of the market and not let such a great opportunity to capitalise on forms of marine renewable potential other than offshore wind slip through our fingers. We cannot afford to do that. We believe that offshore wind has tremendous potential and an important role to play in the growth of renewables in this country. Does the Minister think that the temporary increase to two ROCs will be sufficient to deliver the increase that the Government want?

Beyond the financial practicalities of the Government's offshore wind targets, the practicalities on the ground are harder to overcome. My noble friend Lord Reay outlined some of the problems that the Government are facing. We currently do not have the cranes, ships, money or skills for the sort of offshore operation that the Government will need to reach their targets. My honourable friend Charles Hendry estimated that:

> "Currently, there are only a small number of ships in the world that can erect the turbines at sea. The most efficient of those can erect perhaps 80 turbines a year. The new ships will be able to erect 100 turbines a year. Even if every single ship in the world that can erect turbines was to come to the North sea to help us deliver our capacity, we would probably be erecting 400 to 500 turbines a year, but that is only if they started today and did nothing else for 10 years. However, we need to have about 1,000 turbines a year erected".—[*Official Report*, Commons, Third Delegated Legislation Committee, 8/3/10; col. 7.]

What are Her Majesty's Government doing to address these problems, especially if we are to achieve the targets, which we all want? These questions aside, we support the order while recognising its shortcoming and seeing the trouble ahead.

Lord Faulkner of Worcester: My Lords, we have had a fascinating debate and, like the noble Baroness, I have learnt a huge amount from contributions made in all parts of the Committee. I thank everybody most sincerely for taking part in it. I shall do my very best to answer the points that have been made. If I leave any matters unanswered, I will of course write to noble Lords and make sure that copies are available to all Members who have taken part.

A number of Members of the Committee dealt with the issue of co-firing biomass. This was the main point made by the noble Lord, Lord Jenkin of Roding, and by my noble friend Lord Woolmer. We are aware of the concerns expressed by the Drax company, and it has clearly been very effective in getting its point of view across to Members of this Committee. I am sure that it will have been gratified by that.

Perhaps I should explain as background that the co-firing cap was originally introduced for stations that co-fired regular biomass because of concerns that, if it was not restrained, the co-firing ROCs could flood the ROC market and this could significantly decrease the value of ROCs for other technologies and result in investors placing a higher risk premium on their investment decisions. The Drax concern was that the cap on the co-firing ROC market restricts competition and disproportionately penalises independent co-firers, as vertically integrated suppliers purchase their own ROCs. Drax considers that the cap forces independent co-firers effectively to participate in a partitioned marketplace, which means that it has to accept significant discounts in price for its ROCs. I think that that is a fair summary of Drax's point of view.

To help provide additional evidence on this, we instructed Oxera, to which a number of noble Lords referred, to look at these arguments and provide us with a report on the effect of the cap on the co-firing market. There were other points of view. Other respondents indicated that uncapped co-firing could lead to unpredictable fluctuations in the ROC price, so

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we asked Oxera to look at the effect on the wider ROC market of changes to the size of the cap, including its removal.

The Oxera report was published on 22 September. It did indeed say that increasing the cap would probably remove technical constraints in the short term, but it also said that in the long run the cap was unlikely significantly to affect the ROC market for co-firing. This is due in part to the banding allocated to co-firing in April 2009, which in effect doubled the amount of co-firing generation with regular biomass needed to receive one ROC: 2 megawatts as opposed to 1 megawatt. However, there is a suggestion that in the shorter term the cap may restrict independent generators' ability to sell ROCs, as plants affected by emissions control legislation, under the large combustion plant directive, may now run at a higher capacity in the short term than originally envisaged.

In the consultation, we asked respondents whether the cap should be retained at 12.5 per cent or to provide evidence if they thought that it should be changed. Some respondents called for the co-firing cap to be tightened and for co-firing to be removed from the RO by 2016, as originally planned. However, the majority of respondents felt that the cap should continue at 12.5 per cent. The report also indicated that there would be a decrease in price and that biomass new generation would be delayed. The cost of raising the cap to 17.5 per cent was likely to be a decrease in the ROC value and a delay in new biomass generation that would come on stream, but we have decided to look at this in the banding review where we can assess the effect across the whole renewables market.

My noble friend Lord Hunt of Kings Heath has already had a number of discussions with Drax on how the department can help. I can announce today that officials will arrange further discussion and we have agreed to reconsider the matter as part of the banding review that begins in October.

5.30 pm

The noble Lords, Lord Jenkin and Lord Teverson, raised the issue of state aids, and the noble Lord, Lord Jenkin, made the very fair point that this is not government money; it is money that is ultimately paid by electricity consumers. Of course we agree. I say to the noble Lord, Lord Teverson, that we are confident that clearance from the Commission will be received in time for us to start the new scheme on 1 April, but the RO is regarded as a state aid because it is administered by Ofgem, which administers money in the buyout fund. That is why the EU Commission's state-aid rules require us to get approval for it.

Lord Jenkin of Roding: My Lords, I apologise for intervening, but the noble Lord must recognise that the use of the words "state aid" implies that this is something coming from the Government, and therefore from the taxpayer. Does it not behove the Government to repeat on every possible occasion that in fact this is not paid by the taxpayer; it is paid by the companies and goes through to the consumer?

Lord Faulkner of Worcester: I do not disagree. The term "state aid" is almost a term of art that is used in Europe. All of us in this Room understand how the scheme is funded. We do not deny that driving up the deployment of renewables in this country will incur costs for consumers. However, I hope that all Members of the Grand Committee, with the possible exception of the noble Lord, Lord Stoddart, will accept that a reduction in the risk of catastrophic climate change and dangerous energy insecurity is the alternative to the move towards renewables. Those risks carry real and much higher costs than the increase in consumer prices which the renewables deployment will cause.

The report by the noble Lord, Lord Stern, showed that the damage caused by global climate change could cost five times more than the cost of action to stabilise global emissions by 2050. The Government believe strongly that the cost of meeting our renewables target should be seen as an investment to avoid much higher costs to the economy in the long term.

Members of the Committee asked for the figures for the RES on the impact of the measures to achieve about 30 per cent renewables electricity by 2020, covering large and small-scale generation. We estimate that under central fossil fuel prices, domestic electricity bills will be £77, or 15 per cent, higher than they would have been in the absence of the RES. The costs associated with the measures in the RO are expected to increase domestic bills by 12 per cent in 2020. For FITs, the latest estimate is £11—again, by 2020.

Returning to co-firing for a moment, I was asked about discussions with Ofgem. Ofgem has responded to consultations on that in the past. It is of the view that the cap should not be removed. As I said a moment ago, we take the view that we need to keep the matter under review and will look at it in the round.

Lord Woolmer of Leeds: Very briefly, I am remiss if the answer is straightforward, but are the various responses to the consultation on the co-firing cap, to which my noble friend referred, in the public domain?

Lord Faulkner of Worcester: I am assured that they are, indeed, in the public domain.

The noble Lord, Lord Reay, in a powerful speech if I may call it that, questioned the thinking behind a lot of what we are discussing today and paid a lot of attention to the issue of offshore wind. He also drew attention to the fact that we are increasing the level of support for offshore wind projects that receive full accreditation between 1 April 2010 and 31 March 2014 from one and a half ROCs to two ROCs. We take the view that offshore wind is expected to make the largest single contribution to renewable electricity in the UK by 2020, so we have increased the level of support to ensure that momentum is maintained and there is confidence to take the projects forward.

The noble Lord also asked whether we are confident that we can meet the targets. The deployment of wind energy is rapidly accelerating, and the latest 1 gigawatt of capacity was added in less than a year. That compares with 14 years to deliver the first gigawatt, in 2005; 20 months to deliver the second gigawatt; and a year

and a half to deliver the third. The experts in the industry predict that next year will see the installation of both the fifth and the sixth gigawatt in quick succession. To meet the lead scenario in the RES, we need to add about 1 gigawatt each of onshore and of offshore wind capacity per year from 2010 to 2020, with growth rates that rise towards the latter part of the decade. Our scenario suggests that we will need a total of 14 gigawatts of onshore wind and 12.5 gigawatts of offshore wind. That implies 15 and 21-fold increases respectively on where we are today. The noble Lord also asked how much all this offshore wind will cost. The Carbon Trust estimates that 29 gigawatts of capacity, to be installed in the next 10 years, will cost £75 billion, but, if he will forgive me, I will write to him with the other specific figures for which he asked.

The noble Lords, Lord Reay and Lord Teverson, asked about feed-in tariffs. By 2020, the feed-in tariffs are expected to lead to approximately 2 per cent of the United Kingdom's electricity being generated by small-scale renewable technologies. This will allow households to generate their own electricity and raises awareness of green issues.

My noble friend Lord Woolmer talked about biomass grandfathering in the context of Drax and co-firing.

Lord Woolmer of Leeds: No, my Lords, it was in the context not of co-firing but of dedicated biomass.

Lord Faulkner of Worcester: I apologise to my noble friend for misunderstanding him. I am assured that DECC is working rapidly to resolve the situation with biomass grandfathering and is reviewing its policy on the matter. It has formed two working groups consisting of investors and industry representatives who have been recommended by the trade associations to help to inform the review. We plan to announce the way forward later in March.

My noble friend Lord Woolmer asked about integrated suppliers. Drax has suggested that licensed suppliers in company groups with generation arms may choose to buy from generation in their own groups and companies, but that argument is not yet proven because companies in groups are independent and must act in the best interests of their shareholders, so it may not work out like that.

The noble Lord, Lord Stoddart, raised the question of biomass and energy crops. Grants are available to farmers in England to help establish energy crops, and from January 2010 they increased to 50 per cent of establishment costs. Grants are available to farmers and businesses to develop biomass supply chains. We are funding a £1.5 million, three-year research project to examine the feasibility of short-rotation forestry delivering greater volumes of biomass from the same land area as covered by current energy crops. Capital grants have been made available to help with the installation of small-scale heat boilers, community heating networks, combined heat and power plants and large-scale, dedicated biomass electricity generating plants.

The noble Lord, Lord Teverson, asked what happens to micro-generators in the existing system. As I said in my opening speech, we take the view that FITs will be a more appropriate scheme than renewables obligation as far as concerns micro-generators. As of 1 April, micro-generators in technologies that will be supported through FITs will no longer be eligible for support through the RO scheme. Any micro-generators in these technologies already in the RO will transfer to FITs, and any new micro-generators that have commissioned since we published our proposals on 15 July 2009 will be able to join FITs from its start. The only micro-generators that will be unable to access either the RO or FITs will be those that have already been operating without any form of financial support. Allowing these generators access to FITs would not only increase the cost of the scheme, but would also not encourage additional generation, which is the primary objective of the policy. This simply does not represent value for money and we cannot justify the additional cost to consumers that the support would bring.

The noble Lord also asked about jobs. We have the offshore and service skills, and the potential to develop a lead in this sector. As I said earlier, we are now the leaders in offshore wind. There is the potential here for up to 70,000 jobs by 2020. The Carbon Trust estimates that up to two-thirds of the domestic value chain could be supplied by the UK, as well as providing significant export potential. These are high-value jobs in manufacturing, research and development, engineering, installation, O and M and services. We intend to ensure that developers and manufacturers, working with the Crown Estate, will create these jobs in the UK.

The noble Baroness, Lady Wilcox, raised the question of opening the RO to stations outside the UK. We are aware that concerns have been raised about spending United Kingdom consumers' money on foreign investment, where the benefits stay overseas. I hope that I have summarised her point exactly. She and we are right to focus on value for money for United Kingdom consumers. However, we must also be open to the opportunities that the renewable energy directive presents, as there could be benefits to such projects. Analysis suggests that using joint projects—for example, electricity generated outside the UK—to meet a proportion of our target could offer cost savings, with a correspondingly reduced impact on United Kingdom consumer bills. This is something that we are looking into further as we take forward the work in this area. We set out in the RES that one principle according to which we will be open to projects under the flexibility mechanism will be if they offer genuine cost savings to the UK. But the responses that we received to those proposals in the RO consultation last summer raised a number of concerns that need to be addressed before any changes can be made. We need to take account of discussions at the European level on how trading would work, as well as the wider context of the issues such as grid interconnection and the route through to 2050, before any final decisions are taken, so we shall be consulting further on the matter.

5.45 pm

The noble Baroness also raised the question of marine energies. Again, she is right not to underestimate this potential. Indeed, the reason that I am speaking

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to the Committee today rather than my noble friend Lord Hunt of Kings Heath is that he has been visiting Strangford Loch in Northern Ireland, where Marine Current Turbines Ltd has in operation a working tidal stream technology, to announce the publication of the marine action plan. The plan considers the full range of challenges and opportunities facing the industry, and will ensure that we retain our position as the world leader in this industry. We have committed over the past decade some £160 million on a range of measures to support the wave and tidal industries, which accelerate the development and deployment of wave and tidal energy in the UK. Six of the most promising wave and tidal energy technologies, including Pelamis to which the noble Baroness referred, and Marine Current Turbines, have been chosen to receive a share of £22 million of the Government's marine proving fund with the aim of securing large-scale deployment of marine energy technology by 2020.

I am conscious that I have not answered all the points that have been made in the debate. I apologise for that, but, as I said at the beginning, I hope that I will be able to do so in writing.

Lord Stoddart of Swindon: Will the noble Lord he deal with the question that I asked about security of supply? It is a very important matter and needs the attention of the Government. We are to rely to quite a large extent on 20,000 megawatts of wind power, both at sea and on land—incidentally, the facilities at sea will be subject to stormy weather and difficult to maintain in winter. Therefore, if we are to maintain security of supply with advanced gas reactors, and existing oil-fired power stations and certain coal-fired power stations coming offline, wind power will have to be augmented by new baseload power. The Government should be seriously considering what will happen over the next 10 years when all these power stations are taken out of service to be replaced only by wind. If we are to replace the wind power with a similar amount of conventional generating power, it will be a very costly exercise indeed.

Lord Faulkner of Worcester: My Lords, the noble Lord has more or less answered his own question, and I would not disagree very much with the answer he has come up with. Security of supply—keeping the lights on and keeping us warm—is of paramount importance, of course. Those of your Lordships who have attended the debates in this Room on the various aspects of the energy plan will know that that has been a central feature of our discussions and of the speeches made by my noble friend Lord Hunt of Kings Heath.

We believe that a mix of low-carbon energy, which will include nuclear power, carbon capture schemes, the opportunity to use gas and possibly investing in more facilities to import gas, along with the range of renewables that we have been discussing in the debate on the order, is the mix that we will need in future. But it is one on which we cannot be complacent and I am sure that the points made by the noble Lord today will be taken very much to heart.

Motion agreed.

Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments) (England and Wales) Order 2010

Considered in Grand Committee

5.50 pm

Moved By ***Baroness Morgan of Drefelin***

That the Grand Committee do report to the House that it has considered the Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments) (England and Wales) Order 2010.

Relevant document: 9th Report from the Joint Committee on Statutory Instruments.

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): In opening the debate, I should like briefly to set out what this and the second order seek to do. The draft Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 will bring primary legislation into line with current policy and practice, and thus I hope remove any scope for confusion. Since the Children Act 2004, the separate local authority departments responsible for education and for children's social care have been integrated under a single director of children's services. This renders the term "local education authority" obsolete in law. The order removes references to the term "local education authority" and to the term "children's services authority", which was introduced by the Children Act 2004. They are replaced with the single term "local authority". This brings the terminology used in primary legislation into line with current policy and practice. I hope the Committee will agree that these changes, which have the support of the Local Government Association, are sensible.

As your Lordships will know, however, the term "local education authority" has a long history in primary legislation. In the vast majority of cases, replacing "local education authority" with "local authority" is straightforward, but in some cases this has not been possible. For example, some provisions in the Children Act 1989 would now read that "the local authority should consult the local authority". The intention of the Act when originally passed was probably to ensure that staff in local authority education departments worked closely with their colleagues in local authority children's social services. We have, of course, dealt with this through the Children Act 2004, which created the post of director of children's services responsible for both. So where the effect would now be that the local authority is instructed to consult the local authority, we have repealed the relevant provision or made it clear that it applies only to consultation between different authorities.

In addition, there are several cases which refer to the functions of a local education authority. If the expression was just changed to the "functions of a local authority", it might include everything a local authority does. To deal with this, we have introduced the concept of the "education functions of the local authority". This mirrors the existing concept of the "social services functions of the local authority" and

enables us to dispense with the term "local education authority" without changing the meaning of the original legislation. The bulk of the order deals with anomalies such as these. However, the intention is clear: to retain the original meaning by using terminology that is current and relatively accessible.

The second order that we are considering today is the Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments) (England and Wales) Order 2010. This order is necessary and is a technical part of the parliamentary process that was set in train by the passage of the Act in November 2009. It made provision for the replacement of the Learning and Skills Council with two new systems that will drive forward pre-19 and post-19 education and skills. These changes will take effect from 1 April 2010, and the draft consequential amendments order will provide for the further consequential amendments to primary legislation not covered by the Act.

The draft consequential amendments order repeals all remaining references to the Learning and Skills Council for England set out in primary legislation and replaces them with references to the chief executive of the Skills Funding Agency, the Young People's Learning Agency and local authorities, whichever is the appropriate body.

As noble Lords will be aware, the 2009 Act also creates a new sixth-form college sector, providing a mechanism for existing further education corporations to be redesignated as sixth-form college corporations and allowing the establishment of new sixth-form college corporations to run institutions that cater mainly for those of sixth-form age.

The consequential amendments order will make the necessary amendments to primary legislation that are consequential to these reforms. In particular, it will amend legislation to replace references to further education corporations with references to sixth-form college corporations or sixth-form colleges, where appropriate, and ensure that existing legislation recognises the new sixth-form college sector.

Finally, the order makes technical amendments to the Childcare Act 2006. These are needed to give full effect to Section 199 of the 2009 Act, which inserted provisions into the Childcare Act about inspection of children's centres by Ofsted. The order amends the Childcare Act so that the definitions of the terms "prescribed" and "regulations" in the Act apply to the new regulation-making powers about children's centre inspections.

I thank the Joint Committee on Statutory Instruments and the Merits Committee for considering these draft regulations. Subject to parliamentary approval, we intend to bring this order into force at the same time as the main provisions of the 2009 Act, on 1 April 2010. We intend the integration of functions order to come into force five weeks after it is signed, at the same time as another order amending subordinate legislation. That order is a negative resolution. I commend the order to the Committee.

Lord De Mauley: My Lords, I thank the Minister for introducing the orders. As its Explanatory Memorandum states, the draft Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments) (England and Wales) Order 2010, on which I shall focus my remarks, gives effect to the abolition of the Learning and Skills Council, as foreshadowed by the Act. The LSC was indeed a bureaucratic and inefficient organisation, but its replacement with no less than three new quangos—the YPLA, the SFA and now the NAS—does not, as we repeatedly said during the passage of the Bill, give us cause to expect a great rolling back of that bureaucracy.

We set out during the debates on the Bill how we would have preferred this to be done, and I shall not dwell on that today, save to say that our proposals would have led to a much more effective and streamlined system. However, I have questions on four areas of the order. First, the Government claimed in their impact assessments during the passage of the Bill that their proposal to replace the LSC with the new quangos would be cost-neutral. Can the Minister therefore update us with the latest estimates in that regard? Is she still confident that the measure is cost-neutral? If so, does that remain the case when the additional burden falling on local authorities under the Bill is taken into account?

Secondly, I notice in the final sentence of section 7 of the Explanatory Memorandum the statement:

> "This instrument provides for amendments to primary legislation, not already covered by the Act".

Can the Minister kindly confirm to the Committee that such changes are none the less authorised by a catch-all section in the Act allowing consequential changes or is there something more that we should know about?

Thirdly—this relates to Part 2 of Schedule 1—we are concerned to ensure that the sixth-form colleges to which the Minister referred retain their autonomy and independence, that they can specialise and achieve excellence in specific subjects and that they continue to attract people from a wider area than purely within their local authority's area. What assurance can the Minister give me on this?

Fourthly and finally, as she said, the order also makes changes to the Childcare Act 2006 to give effect to Section 199 of the Apprenticeships, Skills, Children and Learning Act. That section expands the powers of Ofsted to allow it to inspect children's centres. Can the Minister assure the Committee that this exercise will be properly co-ordinated and is not just another layer of bureaucracy and that Ofsted is sufficiently expert to carry out this function?

Lord Jones: My Lords, I support these orders. They are very helpful. I am glad to follow the noble Lord, Lord De Mauley. The Government have done well to bring the orders forward in the manner in which they have been presented. I am grateful to my noble friend the Minister for her painstaking introduction. It is the case that British industry will die unless Governments of all complexions continue to smooth the progress of apprenticeships and skills. The 2009 Act concerning apprenticeships and skills is of high importance.

Ministers deserve credit for their investment in and reform of the training industry. It is clear that this investment will help to support what remains of Britain's industries, particularly manufacturing. If our nation is

[LORD JONES]
to retain its standing in the industrial first rank, investment in apprenticeships and skills is of paramount importance. I acknowledge the increasingly important roles in training played by colleges of further education, sixth forms and universities. There is a massive input by our companies and enterprises, large and small, in England and Wales.

Surely, this order concerning skills and apprenticeships will make the work of the interested parties in factories, offices, colleges and universities easier and even more successful. In another place, for more than 30 years, it was my duty to follow the fortunes of the skills industry, the aerospace industry and manufacturing generally, whether in debates, by Questions or by deputations. One of the biggest manufacturing industries in the United Kingdom is the aerospace industry. It earns billions of pounds, perhaps £7 billion a year now, in exports. In the aerospace industry in England and Wales, there is great investment in apprenticeships and skills. As a result, despite global downturns, there is much skilled employment and considerable prosperity, and I pay tribute in this field of employment to the now famous European company, Airbus UK. Its large plant at Filton, Bristol, has high standing and employs several thousand highly skilled employees, and it always invests in apprenticeships and skills. The newest Airbus project, an airliner—the A350—will use composite materials for wing manufacture in this country. It will therefore require even more skills and even more apprenticeships. The workforce will move into new technological territory with the use of composites. This is now the only way forward for the aerospace industry, and our universities and colleges are in the vanguard.

The corresponding Airbus plant in north-east Wales is in Flintshire in a town called Broughton. More than 6,000 highly skilled operatives on site produce the wings of the world's high-class airliners such as the A320, the A330, the A340—the Airbus series overall—and, not least, the world's largest airliner, the super-jumbo A380, a double-decker machine. There are more than 600 apprentices at this plant, including school leavers, mature entrants and graduates. The plant would not prosper without investment in apprenticeships and skills. Filton and Broughton Airbus airliners are showing world-class skills. They are outselling and outproducing the great competitors, such as the mighty Boeing company, out of sight, and are earning billions of pounds per year for our country. This is because of their long-term investment as industrial sites in apprenticeships and skills. The plant at Broughton pumps £7 million per week into the economies of Chester, Cheshire, the north-west, and north-east Wales, and is one of the greatest success stories in Britain's recent manufacturing history—indeed, since World War Two ended—and the A380, the greatest airliner that is now flying, is arguably the biggest European engineering venture since the Channel Tunnel.

Finally, and consequently, I pay tribute to the retiring senior vice-president of manufacturing, Mr Brian Fleet, CBE, who is the leader of Airbus UK. He has quite brilliantly led a wonderful team in Bristol and in north Wales that is based on apprenticeships and skills. Indeed, he was an apprentice at the Broughton plant. His rise has been remarkable, and he is renowned throughout Europe as a plane-maker, a leader of apprentices and an investor in skills and training. At Filton and Broughton, Britain has a world-class, cutting-edge, profitable and successful aerospace venture that is based on high skills.

The orders are to be welcomed. Surely, they will enhance British manufacturing via skills. Mr Fleet's management and union teams have collaborated brilliantly to rise to every challenge in engineering, and they are helping Britain to keep her lead in employment in the aerospace industry. The apprenticeship and skills order is an England and Wales order and I would therefore appreciate a few words from the Minister concerning its impact on Wales in the knowledge that the Governments in London and Cardiff always collaborate.

Baroness Walmsley: My Lords, I am sure that my fellow residents of north-east Wales will be fascinated to read the comments of the noble Lord, Lord Jones, in the local newspaper.

To return to the order, I want to clarify that I intend to speak first to the apprenticeships order, which appears first on the Order Paper, although the Minister spoke to it second. It is relatively uncontroversial but, like the noble Lord, Lord De Mauley, I want to ask her about the promise that was made when the Bill, now an Act, went through Parliament, that when we moved from the LSC to the alphabet soup of the YPLA, the SFA, the NAS and the CESF—and maybe others that I have forgotten—the change would be cost-neutral and there would not be recruitment of many more staff to carry out their functions. Will the Government assure us today that they are still on track to deliver that at no increased cost?

On the local education authorities order, as the Minister said, it is mainly a matter of terminology. On a matter relating to the terminology, though, it is important that children's services directors have the appropriate expertise in both education and children's social services. Many local authorities have chosen to have a deputy with expertise in each of those areas, and I wonder how the Government are keeping an eye on that to ensure that local authorities have that expertise at the very top level in the line of management of the children's services director. I am concerned that those two senior directors or deputy directors should talk to each other and have the opportunity to communicate. We cannot assume that they do, even though they may be in the same local authority building.

I am particularly concerned about children in custody in another authority and about children with disabilities who perhaps have been placed in special provision in a different authority but for whom the local authority still has responsibility. It is important that aspects of their care and education are worked on together in a cohesive way by each local authority. There is very little to say otherwise about these orders.

Lord Martin of Springburn: My Lords, I welcome the orders. I know that they cover England and Wales, but I want to mention that in my native city of Glasgow there is an excellent project taking place with the building services department—or City Building,

as it is now called—where pupils as young as 14 are allowed to come from local schools into workshops and participate in pre-apprentice training. This has had a positive effect in the schools. The head teachers tell me that it has helped with discipline; when young boys or girls are behaving badly, they can be told that they are not going to go to City Building if they misbehave. They like the idea of being in a grown-up environment and learning from craftsmen and craftswomen in a way that is almost like mentoring. If they show promise, then by the time they are ready to leave school at 16, they can be offered apprenticeships as electricians, plasterers, bricklayers and carpenters. All these are trades that mean that these young people, once they become journeymen, can move easily into self-employment. Perhaps we can look at this for local authorities south of the border. It is an excellent scheme and has been very successful.

I hope we do not lose sight of the fact that many young men and women leave school and, perhaps because they did not get much guidance from their parents or because of economic circumstances, then go into unskilled jobs. As time goes on and they reach their mid-20s or even later, they regret the fact that they do not have a trade or an apprenticeship in order to learn one. These are adults who have been in other areas of work, but find that because they are unskilled, they have great difficulty finding employment. If they are willing to make the sacrifice to become adult apprentices, we should give them every encouragement. After all, if people in their 20s or 30s want to go to university, we encourage them to do that, so why do we not support them if they want to become engineers, welders or metalworkers by taking up the kind of apprenticeship that I served? However, I must say that the catering industry is very good about taking on adult apprentices, so I hope that the engineering and building industries would also be willing to do so if they were given the right encouragement by the Government.

It is a great thing that the Government are getting involved in ensuring that people can serve apprenticeships. They are an investment in young people's futures because they will have a skill within four or five years of leaving school. They can be self-sufficient, raise a family and become a credit to the community.

Baroness Morgan of Drefelin: I thank all noble Lords who have taken part in this short debate on the merits of these statutory instruments, and I hope that I can respond to many of the questions that have been put. I shall start by responding to the noble Lord, Lord Martin. I would like to call him "my noble friend", but he sits on the Cross Benches in the tradition of former Speakers of the House of Commons. We listened with great interest to his comments about the experience of City Building in Glasgow, and on the importance of adult apprenticeships and the contribution they can make. We all appreciate the difficulties faced by those who leave school without the qualifications that they find they want later in life, and we need to respond to the real challenges posed by a globalised economy through promoting the improvement of skills in our workforce. It is important that we get it right for young people, but we must not leave behind adults who want to upskill. That is why my noble friend Lord Young is deeply committed to promoting apprenticeships across the age spectrum from initial training that is suitable for 14 year-olds right up to advanced apprenticeships. It might be helpful for us to write to the noble Lord setting out the Government's work on apprenticeships and ensuring that the department is aware of the examples that he has helpfully explained to us.

My noble friend Lord Jones also shared with us his wealth of experience and perspective, particularly in manufacturing and the contribution of Airbus and the aerospace industry. Given his expertise and experience, it is very important that we take note of his contribution. I agree with him about the importance of the contribution of Airbus UK in Bristol and in Flintshire. The noble Baroness, Lady Walmsley, also has personal experience of its contribution. I was delighted to hear the noble Lord's remarks. I am sure that the senior vice-president, a former apprentice himself from Broughton, will also be interested to read his remarks.

I would say that although the detailed impact on Wales of the statutory instruments is slight, because much of education is devolved, there are minor changes that will affect Wales. For example, in the Further and Higher Education Act 1992, there will be a slight amendment in paragraphs 91 and 73 of Schedule 1. So there is an impact on Wales, but the impact of government policy—investing in skills and working with the Assembly Government—is much greater.

The noble Baroness, Lady Walmsley, and the noble Lord, Lord De Mauley, asked about the cost of the changes. I offer them the reassurance that we have seen a very clear value-for-money case in setting up the arrangements. We debated this in full when we considered the Act in Committee. As we know, there will be short-term costs in reducing the premises of the estate of the LSE, currently estimated at about £36.8 million, but they are still expected to be offset by savings in the medium term. There will also be one-off costs of £3 million to standardise the terms of transfer to local authorities, and £3 million for pensions. We have talked about all that in previous debates.

I reiterate that, over time, those changes are expected to generate net annual savings of £77 million from rationalisation of premises, IT, shared services and streamlined contracting and data collection processes. The new system is expected to be revenue-neutral for providers, with prudential savings through reduced bureaucracy.

The noble Baroness, Lady Walmsley, asked for specific assurances on the question of staff numbers. I assure her that no additional staff are being recruited, other than to fill vacancies, which we would expect, in respect of functions that are transferring from the LSE to other bodies. The noble Lord, Lord De Mauley, was very concerned that we do not create additional unnecessary administration. The Skills Funding Agency will work further to simplify systems—I know that the noble Lord is concerned about that—for example, for colleges and for training organisations, including through the single account management process and the approved college and training organisation register.

I know that we have discussed this before, but it will work co-operatively with the YPLA and local authorities to manage the interdependencies with pre-19 learning

[Baroness Morgan of Drefelin]
and with the Information Authority to improve data collection and dissemination through the further education data service. There is a clear focus on streamlining.

There will be a single commissioning dialogue for 14-to-19 learning. Providers currently have to engage with both the LSC and local authorities on 14-to-19 learning. In future, they will need to engage only with the lead commissioning authorities. That is a clear step forward.

The noble Lord, Lord De Mauley, also asked about authority in the 2009 Act. The consequential amendments order is authorised by Section 265 of the Apprenticeships, Skills, Children and Learning Act. The Delegated Powers Committee would have looked at those delegations to ensure that they were appropriate. That is one reason why we are having a debate on an affirmative resolution. The noble Lord, Lord De Mauley, was looking for a reiteration of the assurances that we gave in Committee on the independence of sixth-form colleges. He asked whether they would maintain their autonomy. I will reassure the noble Lord. The designation of sixth-form colleges as corporations will not change their independent status. They will remain incorporated colleges run by their college corporation, not by the local authority. They will remain responsible for all issues of staffing, premises, curriculum and finance. Local authorities will commission and fund 16-to-19 provision generally, and will performance-manage sixth-form colleges. However, noble Lords know that these sixth-form colleges are very high-performing institutions. The local authority's remit will not run beyond that performance management.

The noble Lord, Lord De Mauley, was also concerned about how Ofsted will go about inspecting children's centres. That is a matter for Ofsted. The statutory instruments are designed to ensure that the technical adjustments are made to the relevant powers so that Ofsted can make its inspections with the right regulations in place. The noble Lord is right: we want to ensure that Ofsted inspections are properly co-ordinated and that it has the appropriate expertise in place to undertake meaningful inspections. That is not something that we can achieve through legislation—Ofsted must achieve it through good management and leadership.

The noble Baroness, Lady Walmsley, asked about the importance of co-ordination between education and children's services. That issue was behind the Children Act 2004. The question is one of leadership. The job of director of children's services is a big one, and there are many extremely successful leaders in that role. We in the department have been particularly keen to promote the leaders of the future, and, through the National College for School Leadership, to encourage and promote the leadership skills that we want to see in key roles. With the establishment of children's trust boards and a more holistic approach to looking at the delivery of child-centred services, the requirement for people in these key positions to work together becomes even more acute. As the noble Baroness suggests, it is essential that they work together, and we are doing what we need to in order to ensure that they have the skills and leadership to do that.

I thank noble Lords for taking part in this short debate. It has allowed us to look at some of the important policy issues behind the legislation. I commend this consequential and technical order to the Committee.

Motion agreed.

Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010

Considered in Grand Committee

6.30 pm

Moved by ***Baroness Morgan of Drefelin***

That the Grand Committee do report to the House that it has considered the Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010.

Relevant document: 9th Report from the Joint Committee on Statutory Instruments.

Motion agreed.

Representation of the People (Scotland) (Amendment) Regulations 2010

Considered in Grand Committee

6.31 pm

Moved by ***Lord Davidson of Glen Clova***

That the Grand Committee do report to the House that it has considered the Representation of the People (Scotland) (Amendment) Regulations 2010.

Relevant document: 7th Report from the Joint Committee on Statutory Instruments.

The Advocate-General for Scotland (Lord Davidson of Glen Clova): My Lords, I beg to move that the draft regulations laid before the House on 27 January be considered. These regulations make amendments to the Representation of the People (Scotland) Regulations 2001 and the Representation of the People (Scotland) Regulations 1986 that are necessary as a result of amendments being made to the Representation of the People Act 1983 by Section 25 of the Political Parties and Elections Act 2009. They do not therefore introduce new policy; the policy position is as provided by Parliament in the 2009 Act. These regulations simply make sure that the policy is given effect. Without these changes, Section 25 cannot be commenced.

Section 25 of the 2009 Act transfers responsibility for retaining certain United Kingdom parliamentary election documents in Scotland, thereby making them available for public inspection and disposing of them from sheriff clerks to parliamentary returning officers. Section 25 will be brought into force, by order, on the same date as these regulations.

It might be helpful if I provide some background to the introduction of Section 25 of the 2009 Act. At present, after a Westminster election has been contested in Scotland, election material, including the marked

register, is sent by the returning officer to the local sheriff clerk for safekeeping. The sheriff clerk is obliged to make some of the material available for public inspection and to destroy all the material after one year, unless otherwise ordered.

However, there have been difficulties with the present arrangements for some time, as sheriff clerks do not feel that their offices are set up to carry out these functions effectively. Following consultation with stakeholders, the Government proposed a change to the law to transfer responsibility for storage and access for UK election records from sheriff clerks to returning officers. This is already the position for documents relating to European Parliament and local government elections in Scotland. It also essentially mirrors the practice in England and Wales where local authorities, through electoral registration officers who are also acting returning officers, are responsible for these functions.

Similar provision will be made for Scottish Parliament election material through the Scottish Parliament (Elections etc.) Order, which will be made before the 2011 Scottish parliamentary elections.

On timing, the intention is for the new arrangements to apply to the next general election. This is of course subject to Parliament approving these regulations and the regulations being made sufficiently in advance of the date of the poll.

As for consultation, the Society of Local Authority Chief Executives, which represents returning officers in Scotland, and the Electoral Commission were consulted on the proposal to transfer these functions from sheriff clerks to returning officers and on the proposed commencement date. They were content. In addition, and in line with statutory requirements, the Electoral Commission was consulted on the draft regulations.

On the question of funding, returning officers will be able to claim for the costs necessarily incurred in connection with their new functions as part of their claim under Section 29 of the 1983 Act. Section 29 provides for payments to and by returning officers. In addition, fees will be payable to returning officers by eligible purchasers of the marked register of electors and the marked postal vote list for UK parliamentary elections in Scotland. These regulations do not change the existing fees, which remain as set out in the Representation of the People (Scotland) Regulations 2001.

To summarise, these regulations do not introduce new policy; they simply make consequential changes that are necessary as a result of Section 25 of the Political Parties and Elections Act 2009, which transfers functions in relation to retention, public inspection and disposal of parliamentary election documents in Scotland from sheriff clerks to parliamentary returning officers. I commend the regulations to the Committee. I beg to move.

The Duke of Montrose: My Lords, I thank the Minister for explaining these regulations in some detail. They are a bit opaque when you see what is printed on the page.

I was going to ask whether the returning officers are likely to have offices suitable for the receipt of this material, and I was a bit surprised to hear the Minister say that the sheriff's officers did not feel that they had adequate provision. I suppose that I should be slightly reassured by the fact that he says that the returning officers already keep similar material for the European and local elections. I hope that provision is being made for them to be able to store this additional material. I do not know how much security is required for storing such items. If they are all equally subject to the same regulation that states that they can be destroyed after one year, that simplifies the amount of storage that is required.

I am interested to see that this measure includes an element of modification to the Representation of the People (Scotland) Regulations 1986, practically all of which, as far as I can understand, were abolished by the regulations in 2001. This must just be the fag-end of those earlier regulations. Given that this appears to be mainly a tidying-up exercise, we are pleased to support the regulations.

Lord Maclennan of Rogart: I also thank the Minister for his clear explanation of the regulations. They seem to be uncontroversial, and it is to be hoped that the Government will be able to expedite their enactment so that they indeed come into effect before the general election.

In so far as they have any purpose, it appears that it is to simplify the arrangements for holding papers. So far as I can understand, there is no substantive change in the nature of the papers that will be retained by the returning officers and those that are held by sheriff clerks. It was stated, when the regulations were introduced in another place, that there had been difficulties with access and with the fees to be charged. I am not clear why there were difficulties, but it is important to be reassured that those difficulties have been addressed and in particular that the fees regulations to which the Minister referred are not intended to do more than cover reasonable costs. Local authorities are under considerable pressure, and one would not wish the public's free access to matters connected with elections, to which they would otherwise be entitled, to be in any way restrained by action that might be taken to raise funds from such matters. I assume that these things are handled by relatively few people and that the costs will be minimal. I hope to be reassured on that point.

Lord Martin of Springburn: My Lords, I came here earlier to talk about apprenticeships. By coincidence, I see a piece of Scottish business before us. I am of course interested in the matter. I sat in the other place for 30 years. By virtue of that, I was a parliamentary candidate for many years, and in local government before that. Perhaps I may ask the Minister which sheriff clerks have been complaining, because I have not heard any complaints. The system seemed to work for the 30 years that I was an elected Member of the other House. Perhaps the Minister could tell us which sheriffs have said that this is too tough for them. No one seemed to complain in the past.

We must be careful not to put an extra burden on local government. It is not only the financial side of things; office space is at a premium in most local government buildings because of worthwhile legislation concerning health and safety. The workforce must have proper space, and there must always be proper access to a building. Taking on this extra job will in

[Lord Martin of Springburn]
some cases put a strain on local authority buildings, because a facility will have to be found so that visitors, including disabled visitors, will be able to get access. It will involve extra accommodation.

I recall the Scottish Government elections two years ago. Both Houses had agreed on an electronic system. That put a terrible strain on local government. When it came to the counts, there was great difficulty getting the results. If it had been done manually, we would have got the results, albeit at 3 am or 4 am. In the local authority where I live, the postal votes were not ready. Because I knew my way around the local government buildings, I was able to say, "Look, you must get my postal vote to me before Saturday or else I will not be able to exercise my right to vote". This is an indication of the terrible strain on local government. If the regulations are to be implemented for the next general election, which is only weeks away, it will be more of a strain, because things that are done in a rush can cause difficulties. Who is doing the complaining? If we are passing orders through this House, we should know where the complaints are coming from.

The geography of Scotland is very different from other parts of the country. In the city of Glasgow, to which I am so used, it is easy to get to the sheriff's building, but if you live in the constituency of Argyll, getting from Campbeltown to Inveraray or to Oban is a full day's journey. The constituency represented by the noble Lord sitting opposite me up in the Highlands is certainly not one where it is a 15-minute journey to get to these buildings. The long distances involved in some of these constituencies will put an extra strain on local government because people have become used to the sheriff's building having these facilities. In an island community, different islands may now hold the information.

Lord Davidson of Glen Clova: I thank noble Lords for their observations about this statutory instrument, which I shall deal with in order. First, I shall address the points raised by the noble Duke, the Duke of Montrose, concerning whether there will be enough space in the offices of returning officers for storage of the additional material. I can confirm that matters will remain as they are: namely, that destruction will take place after one year, and therefore it is unlikely that there will be a massive addition to the documentation that will be retained. I respectfully agree with him that the purpose of this instrument is tidy up these matters substantially, primarily by moving from the sheriff clerk's offices to those of returning officers.

The noble Lord, Lord Maclennan, encouraged me to ensure that matters in relation to this instrument are expedited. I can confirm that it will come into force, together with the relative provision in the 2009 Act, when the instrument is made. I understand that that is likely to take place either this coming Wednesday or next Monday, after which two further days must elapse. I trust that that gives him some confidence that expedition will be to the fore.

In relation to matters that may have been mentioned in another place regarding difficulties of access, I am unaware of what that might actually relate to. On fees, no changes are proposed. The approach that has been taken is that of trying to recover reasonable costs and is the same guidance that will obtain pursuant to this instrument. If the noble Lord wishes for clarification, I can confirm that this will not be directed as some sort of fund-raising exercise.

The noble Lord, Lord Martin, wanted to know which sheriff clerks were particularly tried by the current arrangements. I am afraid that I cannot give names and numbers, but I assure him that there have been difficulties with the present arrangements and that this is a widespread view held in sheriff clerk's offices, which are normally set up to deal with the business of the sheriff clerk. They are not confident that they are able to deal with these particular functions. The noble Lord may remember the problem that rose following the Glenrothes by-election when the marked register went missing. Issues such as that have raised a real problem.

We hope that this will not be a strain on local authorities. Consultation is taking place with the Electoral Commission, the electoral authorities and, of course, the political parties. No particular perceived strain has been identified. There is continual monitoring of what goes on with the electoral authorities and, if such a strain were to emerge, further fine tuning may be brought to bear. I entirely share the noble Lord's concern that the geography of Scotland can put considerable burdens on people in terms of travelling, but these problems are pretty much the same for the sheriff courts, which are similarly distributed throughout fair Caledonia. In any event, returning officers' offices have already had to deal with local authority elections and European elections, so it is unlikely that geography will create a particular problem. I hope that deals with the issues that have been raised by noble Lords.

Motion agreed.

Criminal Defence Service (Information Requests) (Amendment) Regulations 2010

Considered in Grand Committee

6.51 pm

Moved By ***Lord Bach***

That the Grand Committee do report to the House that it has considered the Criminal Defence Service (Information Requests) (Amendment) Regulations 2010.

Relevant document: 8th Report from the Joint Committee on Statutory Instruments.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My Lords, in moving that the Committee consider the draft regulations, I shall speak also to the draft Criminal Defence Service (Representation Orders: Appeals etc.) (Amendment) Regulations 2010. These two sets of regulations are made by the Lord Chancellor under the Access to Justice Act 1999 and are subject to the affirmative resolution procedure under Section 25(9) of that Act. I hope not to detain the Committee too long in its consideration of these draft regulations. They are both about legal aid in criminal cases, but their substance is unrelated.

The draft Criminal Defence Service (Information Requests) (Amendment) Regulations are the final piece in the jigsaw of regulations required to support the introduction of means-testing in the Crown Court, which began on 11 January this year. They mirror regulations currently in force in relation to magistrates' court means-testing. As your Lordships know, that scheme has been in operation since October 2006 and the current regulations have supported magistrates' court means-testing for over a year.

These draft amendment regulations provide for the range and accuracy of a defendant's application for legal aid in the Crown Court to be checked by the assessing authority. They will play a key part in providing a level of assurance about the validity of claims, ensuring that steps can be taken to protect the Legal Aid Fund from fraudulent applications and, equally importantly, making sure that a defendant's liability to make a contribution to their defence costs is calculated accurately. They will enable court staff, on behalf of the Legal Services Commission, to seek information from Her Majesty's Revenue and Customs and the Department for Work and Pensions about a defendant's income and capital. The powers necessary for this process were inserted in the Access to Justice Act by the Coroners and Justice Act 2009. The Committee may recall the debates we had in this place in Committee and on Report about these provisions.

The draft Criminal Defence Service (Representation Orders: Appeals etc.) (Amendment) Regulations are a small but none the less important step in ensuring that defendants in the magistrates' court—these regulations deal with the magistrates' court only—who are aggrieved by a refusal of a representation order on interests of justice grounds have an enhanced right of appeal against such a refusal. The interests of justice test takes into account a range of factors, including whether, in the event of a conviction, the defendant faces a loss of liberty or livelihood and whether the defendant is able to understand the proceedings and take an active part in court. The Government understand that there will be situations in which an initial refusal of a representation order is subsequently found to be incorrect, such as when a defendant provides further information to strengthen their application. In order to preserve the element of judicial scrutiny that is vital in deciding an interests-of-justice test, the new draft regulations provide that a refusal to grant a representation order on interests-of-justice grounds can be reviewed in the first instance by a member of the magistrates' court staff, with a further appeal to the court in the event that the initial refusal is upheld.

It might be helpful if I pause briefly to explain that a second bite of the cherry used to be available to a defendant. When responsibility for granting representation orders was transferred from the courts to the Legal Services Commission, my department provided for appeals against a refusal to grant a representation order to be heard in all instances by the court. This was done in response to comments that the Government took on board during the passage of what became the Criminal Defence Service Act 2006. These draft regulations restore the position of a defendant to the position that obtained prior to the enactment of that legislation. Not only do the regulations enhance the appeal process that is available to a defendant, but equally importantly they free up the time of the courts to concentrate on the efficient and timely disposal of cases. I hope that the Committee will consider this a positive move.

In our view, these two sets of draft regulations are a necessary and important step in developing robust support for the work of the magistrates' courts and Crown Courts, and I commend them to the Committee.

Lord Henley: My Lords, I am grateful to the noble Lord for bringing these two sets of regulations to the Committee and for his explanation. Like him, I hope that I will not detain the Committee for long in examining what he describes as the final piece in the jigsaw. If it was possible for the whole jigsaw to be put in front of us at once on some occasions, life might be considerably easier.

The answer to my first question is presumably very simple, but I genuinely do not know it. The Explanatory Memorandum for the Criminal Defence Service (Information Requests) (Amendment) Regulations 2010 also deals with two other orders, which I take to be negative instruments and the reason why they are not before the House. I would be most grateful if the Minister could confirm that. Secondly, the Minister quite rightly stressed that it was important to be able to have these regulations for the very good reason that it is important to be able to protect the Legal Aid Fund against fraud. Will he tell us his department's estimates of the levels of fraud in legal aid funding? Is it even possible to make such estimates or are they guesstimates? I remember from my days in social security the great difficulty in ever estimating how much fraud there was, because by its very nature one did not know, but I presume that the department has made some estimates and I should be grateful for advice on that.

My second and very minor question relates to the appeals regulations. As the Minister made clear, where the representation authority refuses an application, the individual may appeal first to the staff of the magistrates' courts and then to the court, but I take it that, even if the court turns that down, it would on certain occasions be possible to appeal beyond the court. I should be grateful for advice from the Minister as to whether that is the case? Having said that, it is not necessary to go back to the debates on the substantive legislation; we all remember those. For the moment, we are dealing merely with the regulations. I have no further questions.

Lord Thomas of Gresford: My Lords, I declare an interest because I am in receipt of legal aid fees. The noble Lord, Lord Henley, referred to a jigsaw. What has happened is that the pieces of the jigsaw have all been broken up and thrown into the air; or, to use another metaphor, the architecture of legal aid has completely changed in the decisions announced last week, whereby the Legal Services Commission has been abolished. As I understand it, it was the representation authority which originally granted legal aid, subject to appeals. What is to replace it? The Minister was quoted last week as saying that decisions

[Lord Thomas of Gresford]
on the grounds of legal aid will remain completely independent and Ministers will not have any part in them. He also said;

"I want to make it very clear that we consider it essential that there is a clear separation between ministers and funding decisions in individual cases".

Will he take this opportunity to explain what is now meant by the representation authority? Are we moving away from the Legal Services Commission to some unformed executive agency that is in some way up in the air? When will the legal aid package be put together as a whole?

Bringing these regulations forward at the moment is jumping the gun, because until we can see the whole picture and what the representation authority referred to in these regulations is, we are at something of a loss. I said last year all that I want to say on the principle, when we debated it first in February and later in November. I shall not repeat my objection in principle to the way in which the Government have gone about reintroducing means tests and so on. The noble Lord knows where I stand on that, but I ask him: is this not premature? Should we not wait at least to find out what executive agency is proposed and how there will be a clear separation between Ministers and funding decisions?

The director of the Legal Action Group, described this change as,

"a complete politicisation of legal administration".

These announcements have been made, and there has been a very fetching picture of the Minister in some newspapers. He is not running in the election, so perhaps "politicisation" is taking it a bit far. However, clearly there has been a very important change due to the manifest deficiencies of the Legal Services Commission, which tried and failed over many years to bring some sense to the situation and was heavily criticised last week by the Lord Chancellor, Mr Jack Straw.

Those are my questions and I look forward to hearing the answers.

Lord Bach: I am grateful to both noble Lords, who have approached these orders in slightly different but extremely helpful ways.

I shall answer the noble Lord, Lord Henley, as best I can. Yes, it would be great to have the jigsaw in place on one occasion. It has not happened here, but there are good reasons for that. He is right to say that the two statutory instruments he referred to are negative. He asked about fraud in relation to the first statutory instrument. I cannot help him very much. It is not possible to make an accurate estimate, given that more than 1.6 million acts of assistance are provided, but these regulations are of course designed to make the process transparent for defendants and the fund. As Minister responsible for legal aid, I often receive letters from Members of Parliament if one of their constituents has said to them, often in matrimonial cases, "Look, the person on the other side should not be legally aided. Why aren't I?" There are ways of looking into such matters, which involve closer working with the DWP than was previously possible. The noble Lord also asked about the second order. If the first appeal was to the staff and the second to the court, he asked, was there a further appeal? Only by way of judicial review, but it does exist.

The noble Lord, Lord Thomas of Gresford, referred to the recent decisions made about the Legal Services Commission. For the time being, the commission remains a non-governmental public body. Primary legislation will be needed for it to change its status to that of executive agency. We hope to legislate on that matter, literally as soon as possible, but for now the commission, under a new chief executive, carries on with the functions that it has in law under the Access to Justice Act 1999.

The orders are before the House today so that the Crown Court means-testing policy, which has already begun in some adopter areas—I have visited Preston Crown Court, for example, where this has already been introduced, and cases are beginning to come through from the magistrates' courts—can be started. Whether or not it will be a success we do not know yet; the jury is out. I remember well the noble Lord's concerns about that matter. We will have to see.

The burden of what the noble Lord had to say, though, was to get me to try to answer the "independence" criticism that has been made. The decision eventually to abolish the Legal Services Commission as it is and move it to an executive agency has been widely supported by the Bar, the Law Society and many commentators. We counter the argument about independence that he refers to by saying that the last thing that Ministers would do under the new system is decide individual cases on legal aid; that would be quite wrong. How will we stop individual Ministers doing that? As I understand it, the Bill is being drafted to change the status of the body by including a clause that makes clear the position—that it will not be for Ministers to make decisions on individual cases—although I cannot guarantee that that will be in the Bill. The other way that it is done by the DWP at present is to ensure that there is an independent body to appeal to on a decision so that it cannot be said that the department, let alone a Minister, has the final word on an individual decision on legal aid.

Lord Thomas of Gresford: Bearing in mind that legal aid is frequently granted for the purposes of suing the Government themselves and individual Ministers, I can understand the Minister saying that Ministers will be prevented from decision-making, but will they be prevented from making representations to whatever authority or executive agency is involved in making deciding to grant legal aid? As the executive agency will be an instrument of government, representations from a Minister will carry a lot of weight with that executive agency, and therein lies the possibility of real conflict.

Lord Bach: That is an important point. Ministers should keep out of representing their own views on individual decisions. They are entitled to set down policy lines that may or may not be adopted by Parliament with regard to what class of person should be granted legal aid and in what kind of case, but Ministers should keep well away from making individual decisions, or even recommendations on individual

decisions. This will be an important point, but one that, if I may say so, has been exaggerated. I do not think that there is any danger that the independence of decision-making about individual legal aid will not be maintained. It is important—I say so in Parliament, as it were—that that should be the case, and that is our determination.

It is important, too, that in appropriate cases, those who want to bring actions against the state—whether against local or national government—should be able to do so. In many ways, that is the mark of a free society. We want to guarantee that the independence that the noble Lord asked me about is maintained. The answer to his first question is that it will take some time for the agency to come into being. It will need an Act of Parliament for that to happen. For that reason, we have come forward today with these regulations.

Motion agreed.

Criminal Defence Service (Representation Orders: Appeals etc.) (Amendment) Regulations 2010

Considered in Grand Committee

7.10 pm

Moved By ***Lord Bach***

That the Grand Committee do report to the House that it has considered the Criminal Defence Service (Representation Orders: Appeals etc.) (Amendment) Regulations 2010.

Relevant document: 9th Report from the Joint Committee on Statutory Instruments.

Motion agreed.

Committee adjourned at 7.11 pm.

Written Statements

Monday 15 March 2010

Armed Forces: BORONA Programme
Statement

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

On 12 September 2007 my predecessor announced (*Official Report*, cols. 122-24 *WS*) a programme of moves that would see three major military formations currently based in Germany relocated to existing defence sites in the UK, together with other unit moves within Germany that would lead to the eventual closure of Rhine Garrison and Münster Station with a consequential release of significant financial savings to the defence budget. The first formation to move as part of this programme is the HQ Allied Rapid Reaction Corps, which will take place this summer, to refurbished accommodation at Innsworth in Gloucestershire as announced on 15 May 2008 (*Official Report*, col. 49 *WS*).

Today, I am announcing that I have given approval for the next phase of the programme which will enable the rebasing of units within Germany. This approval commences the implementation of 26 minor build projects within Gütersloh Garrison that will allow those units that remain in Germany in support of 1 (UK) Armoured Division to vacate Rhine Garrison. As a separate but related part of this work we will also develop and rationalise the provision of service and infrastructure support currently provided in Germany by HQ United Kingdom Support Command, the Army's administrative headquarters. Taken together these initiatives will allow the department to close large parts of Rhine Garrison in 2014, with full closure achieved when 1 Signal Brigade (7 and 16 Signal Regiments) moves back to the UK from its barracks in Elmpt.

The final two elements of the programme see 1 Signal Brigade move to Stafford and 102 Logistic Brigade move from Gütersloh to Cosford. Whilst these locations remain the planned sites for these formations it has been necessary to delay their moves by two years beyond previously announced timelines in order to accommodate other defence resource priorities. The revised plan will now see 1 Signal Brigade move in 2015 and 102 Logistic Brigade move in 2018.

We will continue to work with all interested parties in the UK, including the local county and borough councils, health and education providers and the trades unions. In Germany we will continue to engage with the relevant authorities and employee representatives at national, regional and local levels. The German Government, as host nation, have been notified of these decisions.

As stated in all of our previous announcements, the moves that we are planning do not signal a change in either our commitment to the NATO Alliance or in our overall defence policy, nor do they devalue the continued close bilateral defence relationship between the UK and Germany. Although we may make further modest adjustments to our force levels in Germany, our plan, with the continued agreement of the German Government, remains to base UK forces in Germany for the foreseeable future in the form of HQ 1 (UK) Armoured Division and the majority of its formations and supporting units, some 15,000 service personnel.

Building Regulations
Statement

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

I have today laid before the House regulations that make amendments to Parts L, F and J of the building regulations (conservation of fuel and power, means of ventilation and combustion appliances and fuel storage systems respectively). These amendments are scheduled to come into force on 1 October 2010, thereby allowing industry six months to prepare.

These amendments follow last year's formal consultations on our proposals and statutory consultation with the Building Regulations Advisory Committee.

Part L of the building regulations set building standards that are important in delivering our zero carbon policies and will help to further reduce national energy demand, to meet our emission reduction targets in line with the Climate Change Act and to lower people's fuel bills. We want energy efficient buildings, but we also want them to be healthy places to live and work in, which is why we are changing Parts F and J of the building regulations at the same time.

The Part L changes I am confirming today maintain the momentum towards zero carbon, delivering a 25 per cent improvement relative to current standards for every new home and 25 per cent improvement overall for new non-domestic buildings. These Part L changes also set out improved standards of energy efficiency when people elect to carry out work on existing homes and other properties such as replacing their windows or boilers with more efficient ones.

The changes to ventilation provisions in Part F are necessary to maintain good indoor air quality in new homes that will tend to become more air-tight because of the strengthened Part L standards. The Part F changes also introduce new requirements and guidance for installation and commissioning of ventilation systems. Similarly, changes to Part J are required to ensure that combustion appliances can continue to function safely in more air-tight homes. In addition, the Part J changes also remove technical disincentives to the wider use of biomass heating systems and introduce a provision for carbon monoxide alarms to be installed with all solid fuel appliances.

The impact assessments supporting these amendments will be published on 16 March. We are making these changes based on sound evidence and where we have judged them to be necessary in order to minimise disruption and additional regulatory burden.

Revisions to the relevant supporting technical guidance (approved documents and compliance guides) will be made available later this month, together with a summary of responses of the recent consultations on Parts L, F and J.

This statutory instrument also makes changes to the Building Regulations Competent Persons Schemes and minor technical amendments to Part G of the building regulations. The Part G and Competent Person Scheme amendments will take effect on 6 April 2010 and Approved Document G will be published later today and copies placed in the Library of the House.

Chemical Weapons Convention

Statement

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

The UK's chemical protection programme is designed to protect against the use of chemical weapons. Such a programme is permitted by the Chemical Weapons Convention, with which the United Kingdom is fully compliant. Under the terms of the convention, we are required to provide information annually to the Organisation for the Prohibition of Chemical Weapons (OPCW). In accordance with the Government's commitment to openness, I am placing in the Library of the House a copy of the summary that has been provided to the organisation outlining the UK's chemical protection programme in 2009.

Courts Service: Key Performance Indicators

Statement

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

The following list of key performance indicators has been set for Her Majesty's Courts Service for 2010 to 2011:

to commence at least 78 per cent of cases within the following timescales in the Crown Court:

cases that are sent for trial within 26 weeks of sending;

cases that are committed for trial within 16 weeks of committal;

appeals within 14 weeks of the appeal being lodged; and

cases that are committed for sentence within 10 weeks of committal.

to speed up criminal cases in the magistrates' courts so that, for charged cases, the average time from charge to disposal is less than six weeks;

time taken to produce and send court results to the police:

95 per cent of court registers produced and despatched within three working days; and

100 per cent of court registers produced and despatched within six working days.

to achieve an 85 per cent payment rate for financial penalties in the magistrates' courts;

for 60 per cent of all breached community penalties to be resolved within 25 working days of the relevant failure to comply;

to increase the proportion of defended small claims that are completed otherwise than by court hearing to 65 per cent;

to increase the proportion of defended small claims that are completed (from receipt to final hearing) within 30 weeks to at least 70 per cent;

percentage of care and supervision cases that achieve a final outcome for the child within 30, 50 and 80 weeks:

at least 26 per cent dealt with within 30 weeks;

at least 66 per cent dealt with within 50 weeks; and

at least 92 per cent dealt with within 80 weeks;

to maintain the "very satisfied" element of the HMCS court user satisfaction survey at or above the 2007-08 baseline of 41 per cent.

More information on these and other key supporting targets are published in the HM Courts Service business plan for 2010-11. Copies of the business plan for 2010-11 have been placed in the Libraries of both Houses.

Courts: Fees

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 made the following Written Ministerial Statement.

I have published today Francis Plowden's independent review of court fees in care and supervision proceedings. In May 2009, in response to a recommendation made by Lord Laming in *The Protection of Children in England: a Progress Report*, I asked Mr Plowden to undertake a review to determine whether or not there was incontrovertible evidence that fees were a deterrent to a local authority when they decided whether or not to commence care proceedings. As part of the review, Mr Plowden considered how budgets were allocated and managed within any local authority area, including how and by whom decisions regarding issuing care proceedings were made. Francis Plowden has presented me with a comprehensive and considered report and I am grateful to him for his work. He believes that, at the margins, resource issues, including fees, can play a part in determining when care proceedings are initiated, but concludes that it is unlikely that children have been knowingly left at unavoidable risk by local authorities. He therefore recommends that these fees should be abolished.

The fees for care and supervision proceedings by local authorities were increased in May 2008 from £150 to up to £4,825. To facilitate this, approximately

£40 million was transferred from my department's budget to the Department for Communities and Local Government, and to the Welsh Assembly Government, for onward apportionment to local authorities in England and Wales so that the fee increase would be cost-neutral for local authorities.

Francis Plowden commented that there was a sharp fall in the number of applications during spring and autumn 2008, which caused speculation that the increased fees might have been the cause. However, he believes that the introduction of the public law outline in April 2008 is more likely to have been responsible for the temporary reduction in application volumes as local authorities familiarised themselves with the new court procedures and carried out the work required. In any event, application levels have since risen and the latest data shows that this has been sustained with no indications of a return to pre-November 2008 average volumes.

At the outset of the current Comprehensive Spending Review period, the Government responded to requests from local authorities by making an unequivocal commitment to ensuring that local authorities had a stable financial settlement for the duration of that period and that there would be no amendments made to their settlement other than in exceptional circumstances. Lord Laming acknowledged this in his report, commenting that in the event that an independent review recommended abolition of these fees, the appropriate transfers would need to be made back to my department to enable implementation of such a recommendation.

In such circumstances, and following further consideration of Francis Plowden's report with particular regard to the safety of children, I have agreed that the circumstances surrounding the recommendation to abolish court fees are not of sufficient exception to justify breaking the Government's commitment to giving local authorities financial stability. I have also considered the fact that funding to cover the cost of the fees has been transferred to local authorities up to and including March 2011.

I therefore intend to abolish court fees for care and supervision cases with effect from the next spending review period beginning April 2011. Appropriate adjustments to local authorities' funding will be made at that stage.

The safety and welfare of children is and always must be our priority. My decision today means that local authorities can now be certain that they have the £40 million funding for the next financial year to pay for the court proceedings necessary to keep children from harm.

I have placed copies of Francis Plowden's report in the Libraries of both Houses, the Vote Office and the Printed Papers Office.

Crime: Rape

Statement

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My honourable friend the Solicitor General (Vera Baird QC) has made the following Statement.

Following discussion with my honourable friend Alan Campbell MP, Parliamentary Under-Secretary of State for Crime Reduction, I am pleased to make the following Statement to the House.

In September last year, the Minister for Women and Equality and the Home Secretary jointly wrote to the chair of the Home Affairs Select Committee, updating him on progress in relation to the Government's consultation on violence against women and girls, and to inform him of our intention to jointly commission a review of the handling of rape complaints.

This review was commissioned within the context of the cross-government strategy *Together We Can End Violence Against Women and Girls*, which was published on 25 November 2009. Copies are available in the Libraries of both Houses. The consultation for the strategy had found that women lack confidence in the criminal justice system (CJS), and that this was particularly evidence in relation to rape.

There have been improvements in how the CJS responds to complaints of rape, evidenced by the increase in victims reporting rape and more cases taken to court resulting in convictions than before. In addition, this Government have implemented a series of legislative and policy improvements to the way in which rape complaints are handled, and to ensure that there is a greater focus on victims' needs.

And as part of the cross-government VAWG strategy, we made a commitment to exploring the feasibility of setting up and/or extending scrutiny panels, similar to those currently operated by the CPS in relation to hate crime and domestic violence.

However, high-profile cases in the Metropolitan Police Service had exposed how reluctant many rape victims were to report their experiences to the police, and that further improvements could be made in the handling of those complaints where victims did disclose.

In response to these cases, a series of measures to improve the investigation and prosecution of rape to ensure victims received a consistent, high-quality service were announced by the Home Office in April 2009, including an inspection of police forces later this year by Her Majesty's Inspectorate of Constabulary. In addition, and as part of the work for the cross-government violence against women and girls strategy, the Home Secretary asked Sara Payne to make recommendations on how the criminal justice system's response to rape victims could be improved. The report of Sara Payne's review was published alongside *Together We Can End Violence Against Women and Girls*.

However, we took the view that a closer look at the barriers preventing full implementation of current policy was required so we could consider further what more could be done to ensure the effective handing of rape by authorities and to deliver a better service to rape victims.

On 22 September 2009, we announced that the noble Baroness, Baroness Stern had agreed to carry out an independent review into the handling of rape complaints, reporting jointly to the Government Equalities Office and the Home Office. Today (15 March 2010), Baroness Stern publishes the findings of her review and recommendations for change.

The Government are grateful to Baroness Stern for conducting this probing review and to the many organisations and individuals who contributed their views. The Government welcome her report and insightful analysis, identifying where further work or reforms are needed and setting out the case for embedding lasting change.

Baroness Stern's review of services shows that strong progress has been made. Rapists now face more than a one in two chance of being convicted. And the measures which have been put in place to improve the response to rape complaints are having an impact, with much good practice evident across the country. However there is much more to be done, both to support victims and to help them have the confidence to pursue complaints, and to improve intelligence-led policing. We will be considering Baroness Stern's recommendations carefully on all these points.

In the Government's interim response to the Stern review, published today, we accept the direction set out in Baroness Stern's report and agree that existing good practice needs to be spread throughout England and Wales to ensure that people have the correct advice and treatment, regardless of where they live. Her report poses a number of challenges, as well as 23 recommendations, which we need to consider before responding more fully later this year. In doing so, the Government will focus on eight key areas:

tackling misconceptions about rape;

forensic examinations;

joining up services;

confidence in the response to rape;

special measures;

support and advocacy;

prevention and support for particularly vulnerable groups; and

dealing with misunderstandings about compensation.

Copies of Baroness Stern's report have been placed in the Libraries of both Houses and are available at www.equalities.gov.uk. Copies of the interim response have been placed in the Library and are available at www.equalities.gov.uk. The Government will make a further report to Parliament later this year, with an action plan detailing our full response to the Stern review.

Energy: National Policy Statements

Statement

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): My honourable friend the Parliamentary Under-Secretary of State for Energy and Climate Change (David Kidney) has made the following Written Ministerial Statement.

The issue has been raised of whether, if an election should fall before the due parliamentary process envisaged by the Planning Act can be completed, Parliament's scrutiny of the six energy national policy statements and the Ports National Policy Statement would be curtailed. We have no desire to short-circuit the process that has been laid down. It is a crucial part of the validation of the national policy statements. If the Energy and Climate Change Select Committee recommends a debate in the House of Commons, or any noble Lord tables a resolution on one or more of the national policy statements, and the debate cannot be held before the election, we intend to facilitate an early debate or debates as appropriate once the new Parliament resumes. It is not the intention of the relevant Secretaries of State to proceed with the designation process until such debate or debates have taken place.

EU: Employment, Social Policy, Health and Consumer Affairs Council

Statement

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

The Employment, Social Policy, Health and Consumer Affairs Council was held on 8 March 2010 in Brussels. I represented the United Kingdom.

The main item on the agenda was a policy debate about the Commission Communication on EU2020 strategy. Member states agreed that EPSCO has an important role to play in defining the strategy, and welcomed the greater emphasis on youth employment, equality and green jobs. They also supported the employment rate goal but are cautious about the Commission's proposed poverty reduction target. For the UK, I intervened to advocate the link between economic and social goals but cautioned against simplistic, overarching quantitative targets alone and stressed that targets should be meaningful and driven from the national level.

Council conclusions on the eradication of violence against women were adopted, after which the presidency opened a policy debate on the topic. Many delegations supported further EU work in this area whilst others noted that any actions should be carefully considered and analysed first. For the UK, I intervened to stress the importance of combating negative stereotypes that perpetuate the problem of violence against women. I also outlined recent action the UK had taken in this area, including the Domestic Violence Crime and Victims Act, the 2009 strategy to end violence against women and girls, the creation of special courts, and further investment for the national helpline for victims of domestic violence.

A delegation of Ministers for Research presented conclusions on European researchers' mobility and careers adopted by the Competitiveness Council on 2 March 2010. EPSCO Ministers expressed concern that the EU did not attract sufficient numbers of researchers and risked losing talent. The Commission will consider this issue and present concrete proposals offering pragmatic solutions.

The council reached political agreement, without debate, on a proposal for a council directive to implement a social partners' framework agreement aimed at

protecting hospital and healthcare workers at risk of injury and infection from medical 'sharps' (including needlesticks, scalpels and suture equipment).

The council adopted the Joint Employment Report 2009-10, and also the Joint Report on Social Protection and Social Inclusion 2010. There were presentations from the Commission on the latest report on equality between women and men and also information from the presidency on preparation of the tripartite social summit due to take place before the spring European Council.

Under any other business, the chairs of the Employment Committee and the Social Protection Committee gave an oral presentation on their 2010 work programmes, and the council noted reports from the presidency of conferences it had hosted.

At the Ministers' lunch, there was a discussion on youth employment. The Commission expressed concern at the impact of the recession, which had had a particularly serious effect on youth employment. Member states agreed unanimously that this issue must take priority and many highlighted measures they were already taking in response to the problem. This included incentives for businesses to recruit young people, vocational training and work experience opportunities.

International Development: Nutrition

Statement

Lord Brett: My honourable friend the Parliamentary Under-Secretary of State for International Development (Mike Foster) has made the following Written Ministerial Statement.

I have today placed in the Library of the House the Department for International Development's new strategy, entitled *The Neglected Crisis of Undernutrition: DfID's Strategy*. An electronic version of the strategy is also available on the DfID website at www.dfid.gov.uk/nutritionstrategy.

The Neglected Crisis of Undernutrition: DFID's Strategy sets out DfID's strategy to tackle undernutrition. It presents a brief overview of the situation and its implications for DfID's role and priorities in nutrition over the coming years.

Find out more about how UKaid is helping people lift themselves out of poverty at www.dfid.gov.uk/lift. Be part of the LIFT and comment on real life stories of individuals, communities and countries whose lives have been changed for the better.

Pensions

Statement

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

I wish to announce to the House that I intend for contracting-out for defined contribution pension schemes to be abolished from 6 April 2012.

The Pensions Commission recommended abolition of contracting out on a defined contribution (personal or occupational) basis, as part of a programme of pension reforms.

Abolition is a simplification measure: contracting-out for defined contribution schemes is a complex issue and it has become increasingly difficult to determine that a scheme member would be better off by contracting-out of the additional state pension.

Section 15 of the Pensions Act 2007 provides for the abolition of contracting out from defined contribution pension schemes and, during its passage through Parliament, our stated objective was to abolish to this timescale.

It is important to give pension schemes due notice and the pensions industry will welcome this certainty over the abolition date.

My officials will continue to work to implement the changes in line with the above announcement in liaison with HM Revenue and Customs, the pensions industry and relevant public bodies such as the Financial Services Authority and the Pensions Advisory Service.

Schools

Statement

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): My right honourable friend the Secretary of State for Children, Schools and Families (Ed Balls) has made the following Written Ministerial Statement,

Over the past 12 years, our education system has been rebuilt on foundations of inspirational teaching, great school leadership and sustained record investment.

We now have almost 3,500 Sure Start children's centres compared to none in 1997, nearly 4,000 schools have been rebuilt or refurbished, per pupil funding has more than doubled and over 42,000 more teachers and 212,000 more support staff have been recruited.

As a result, outcomes for children and young people have improved dramatically, we have many more outstanding schools and many fewer underperforming schools and our education system has gone from below average in the world to well above average.

But our ambition is to have a world-class schools system in which there is excellence not just for some but for all and where every pupil gets the support they need to overcome the additional barriers they face.

We set out the next stage of our reforms to achieve this ambition in our White Paper *Your child, your schools, our future: building a 21st century schools system*.

But we also know that we will have to do so in tougher times.

In the Pre-Budget Report, the Chancellor of the Exchequer said that he will protect front-line spending on the police, the health service and in our schools.

In the case of schools, we also know that we will have to make tough choices and identify savings across the Department of Children, Schools and Families (DCSF) budget.

And today I am setting out details of the savings that I have identified so far; providing more information about the real terms rises in school funding to help schools and local authorities plan for the next three years in advance of further details in the autumn; and launching a further consultation following our review of the dedicated schools grant.

The Pre-Budget Report confirmed that from 2011-13 funding for Sure Start will continue to rise in line with inflation; funding for 16-19 learning will rise by 0.9 per cent year on year with an extra £202 million this year to meet our September guarantee; and funding for schools will increase by 0.7 per cent in real terms, which at current inflation levels will mean a cash increase of 2.7 per cent. This comes on top of real terms increases of 2.4 per cent, or cash increases per pupil of 4.3 per cent, in 2010-11.

This means that 75 per cent of the DCSF budget has been protected and we can:

deliver our pupil and parent guarantees including one-to-one tuition for all children in primary school and year 7 who fall behind;

ensure there is strong discipline and good behaviour in every school;

meet our September guarantee to all school-leavers of a place in college or training;

maintain our additional teachers and support staff; and

and in addition, take forward our Building Schools for the Future pledge to rebuild or refurbish all secondary schools. We have announced a further tranche of BSF projects: £418.3 million will be invested across Buckinghamshire, Cornwall, Gateshead, Lincolnshire, Oxfordshire and Sutton.

By 2013, the Chancellor also said that I will need to find £500 million in savings from my non-protected spending which, leaving aside the teachers' pension scheme, accounts for 8 per cent of the DCSF's £63 billion resource budget.

This is equivalent to a 7 per cent cut and requires tough choices.

I have so far identified savings of over £300 million, including: £135 million from our NDPBs with significant reductions in funding for Becta and the TDA; £100 million by ending start-up funding for extended services now that 95 per cent of schools already offer access to them; £50 million by scaling back bursaries for initial teacher training now that we have a steady flow of new teachers; and £5 million in savings from communications budgets including by moving Teachers' TV online. At the same time the department will save a further £8 million per year from the costs of its back-office functions, by sharing services with other government departments.

We still have further work to identify savings without cutting into programmes such as short breaks for disabled children, music, sport or support for looked-after children because I am determined to do whatever it takes to protect the front line.

Real terms increases in schools funding of 0.7 per cent, or 2.7 per cent cash at current levels of inflation, mean we can resource increasing pupil numbers—a projected further 80,000 pupils—and still increase per pupil funding by 2.1 per cent in cash. This means we can resource our priorities:

ensure one-to-one tuition can be maintained in KS2 and year 7 and expanded to KS1, delivering our "3Rs" guarantee;

maintain the subsidy for extended services, supporting a richer and broader school experience for all pupils but particularly those from more deprived backgrounds;

resource new or improved areas of provision, such as ensuring parents are able to secure a school place from the September following their child's fourth birthday, as recommended by Sir Jim Rose; and

ensure continued protection of core frontline provision for children in schools and thus delivery of our pupil and parent guarantees.

For the same period, we expect average cost pressures of 1.6 per cent cash per pupil. This means that schools on average will be able to meet their cost pressures from within their overall increase.

The actual level of increase in funding for each individual school will vary. It will depend on each school's own particular needs; local decisions about how best to meet needs; and the conclusion of the consultation I am beginning today on the distribution of the dedicated schools grant.

However, as in the past, we will protect schools by setting a minimum funding guarantee (MFG): a guaranteed per pupil increase in their like-for-like budget. We will, as usual, set the exact level of the MFG in the autumn, but it will certainly guarantee all schools increasing per pupil budgets in cash terms. Of course, the majority of schools will receive higher funding increases than the MFG—as is the case with three quarters of schools this year.

Every school faces different challenges and some schools face greater challenges than others.

We know that results have been rising fastest of all in schools in the areas with the greatest deprivation and the gap has been narrowing.

But we have much more to do and we are determined to tighten the link between deprivation and school budgets so that schools with the greatest proportion of pupils from disadvantaged backgrounds get the additional resources they need.

We have been reviewing the dedicated schools grant to ensure that funding is distributed fairly, transparently and responds to the needs of children and young people, and today have published the consultation on the future distribution of school funding.

Currently, around £3 billion is allocated to local authorities as additional deprivation funding through the dedicated schools grant, rising to nearly £4 billion including other grants.

In the past, local authorities have not always passed on all of this funding to schools on the basis of deprivation and we have already made it clear to local authorities that we expect them to do so in the future.

But to ensure that all schools who take on pupils from disadvantaged backgrounds get the additional resources they need and still have the flexibility to

decide how they use deprivation funding, it is also our intention to require local authorities to use a local pupil premium to distribute deprivation funding, based on their own local decisions of how best to measure deprivation and to increase it gradually before 100 per cent of deprivation funding is passed on appropriately by 2014-15.

During our review, we received some representations that a nationally-set pupil premium should be implemented.

However, a nationally-set pupil premium would not take account of local need, would prescribe a single amount of funding to overcome deprivation across the whole country and would, according to the Institute of Fiscal Studies, require severe and immediate cuts to school budgets or other public services to pay for it.

So it is also our intention that the definition and therefore the level of the pupil premium is agreed locally so that it can properly reflect local need, circumstances and challenges.

It is however vital that all schools make savings to enable schools collectively to meet all cost pressures, ensure investment in our key priority areas, allow progress to be made on delivering a fairer funding system without creating damaging instability for schools funded at the MFG, and use their resources to best effect to maximise investment in improving outcomes for their pupils. So alongside a real terms rise in school funding of 0.7 per cent, (a cash increase of 2.7 per cent), we have also set schools challenging but achievable efficiency targets of 0.9 per cent or £650 million across the school system as a whole which will enable them to meet cost pressures and continue to deliver improved outcomes for pupils.

It should be possible for schools, across the piece, to save in excess of this. We believe schools could go further and potentially make efficiency savings of up to £950 million, providing up to £300 million extra savings which could be recycled by schools to spend themselves on their priorities to support every child.

We published a discussion document on efficiencies—*Securing our future: using our resources well*—in November last year setting out the areas where we believed schools would be most able to achieve efficiency savings.

I know that school leaders around the country have recognised the progress that needs to be made and are responding vigorously to the challenge of identifying efficiency savings in order to switch resources to the frontline. Around 1,800 schools have already taken up the offer of free financial consultancy support that we have made available to all maintained schools and we expect many more schools to attend one of the conferences that we have arranged with the National College, the LGA and other organisations.

We also announced last week that we will fund 1,000 more primary school bursars.

There is no doubt that this is a tougher settlement than in the past and tough choices have to be made by schools, by local authorities and by government.

I have chosen to protect frontline budgets, pass on real terms increases to schools, make tough choices to find savings in the DCSF unprotected budget and support schools to make efficiencies.

I have also chosen not to create excess places that would deprive existing schools of funds they need and not to introduce a national pupil premium that would require severe and immediate cuts to school budgets.

And I believe those are the right choices for our schools and for the future of our country.

I have placed copies of both *Investing for the future: school funding 2010-13* and *Consultation on the future distribution of school funding* in the House Libraries.

Social Fund

Statement

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

Today I am publishing the Government's consultation document (Green Paper) on Social Fund reform. This consultation (Green Paper) sets out the package of reforms designed to create a scheme which:

is simpler for customers to understand and use and simpler for our staff to deliver to ensure better value for money;

plays a more active and sustainable role in helping people resolve their longer-term financial needs and supports them to become more financially independent as well as dealing with short term crises; and

is set within the wider context of financial inclusion and education, and is aligned with the range of products and services that the Government deliver for people with complex and enduring needs.

It aims to align the Social Fund with the government agenda of financial inclusion and capability, in order to help support the most vulnerable in society towards greater financial independence. It also presents our objectives to ensure that the system is fair, affordable and sustainable for the future. We believe that these proposals will make a very substantial difference to the financial environment experienced by many people.

Copies of the document entitled *Social Fund reform: debt, credit and low income households* are available in the Vote Office and will be made available later today on the DWP website.

Surveillance Commissioners

Statement

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My right honourable friend the Prime Minister has made the following Statement.

In accordance with Section 63 of the Regulation of Investigatory Powers Act 2000, I have agreed to reappoint as Assistant Surveillance Commissioners his honour Lord Colville of Culross QC and his honour Dr Colin Kolbert from 1 May 2010 to 30 April 2013, and his honour Norman Jones QC from 1 July 2010 to 30 June 2013.

Written Answers

Monday 15 March 2010

Agriculture: Genetically Modified Crops

Questions

Asked by ***The Countess of Mar***

To ask Her Majesty's Government whether there is a requirement for scientific studies outside the control of the applicant to be submitted during the assessment and approval process for genetically modified crops and foods. [HL2620]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): The assessment and approval process for genetically modified (GM) crops and foods is laid down in European Union (EU) legislation. It is not a precondition for marketing approval that safety studies should be undertaken by someone other than the applicant.

There is a specific requirement for applications to market GM food or feed products to include any independent, peer-reviewed studies which have been carried out to demonstrate that the product in question will not have adverse health, environmental or nutritional effects. For applications to release GM crop seeds for cultivation, the EU legislation stipulates that the environmental risk assessment should be carried out in a scientifically sound and transparent manner based on available scientific and technical data.

All applications to market GM crop seeds and food or feed products are subject to independent scientific scrutiny of the potential risks for human health, animal health and the environment.

Asked by ***The Countess of Mar***

To ask Her Majesty's Government whether the indirect effects on all life-forms of producing herbicide-tolerant genetically modified crops and foods, including the presence of toxic chemical residues, are taken into account during the assessment and approvals process. [HL2621]

Lord Davies of Oldham: Under the European Union (EU) legislation on the release of genetically modified (GM) organisms, the indirect environmental effects of the specific management techniques associated with a GM herbicide-tolerant crop, including the novel use of the relevant herbicide, will be considered as part of the risk assessment process for the crop in question.

Other potential effects that may arise from the use of a herbicide associated with a GM herbicide-tolerant crop, including the presence of toxic residues, would be considered under the separate EU legislation concerning the placing on the market of plant protection products.

The precise interplay of the two sets of legislation that are applicable in this context is currently being considered at EU level.

Alcohol

Question

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

To ask Her Majesty's Government further to the Written Answer by Lord Myners on 1 March (*WA 318*), whether they will estimate the cost to HM Treasury of introducing a zero duty rate on beers of 2.8 per cent ABV and below. [HL2585]

The Financial Services Secretary to the Treasury (Lord Myners): I regret that the information requested could be undertaken only at disproportionate cost.

Armed Forces: Fatalities

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government further to the Written Answer by Baroness Taylor of Bolton on 9 December 2009 (*WA 127*), how many United Kingdom service personnel died during the period 1919 to 31 August 1921; and what details the Commonwealth War Graves Commission hold about such servicemen. [HL2490]

The Minister for International Defence and Security (Baroness Taylor of Bolton): The Commonwealth War Graves Commission (CWGC) commemorates 34,610 UK service personnel who died from 1 January 1919 to 31 August 1921. This figure includes a small number of Commonwealth (then Imperial) Service personnel who, although classed as colonial troops, were not from one of the five major contributing countries (Australia, Canada, India, New Zealand and South Africa) and were not counted separately.

The details held by the CWGC can include the service person's name, rank, regiment/service, date of death, service number and place of commemoration. In some cases, details can also include the service person's age and their family's details. The details of a service person commemorated by the CWGC are available on the CWGC's debt of honour register via the CWGC's website.

Armed Forces: Mental Health

Question

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

To ask Her Majesty's Government how many British armed forces personnel have been discharged on mental health grounds in each year since 2005. [HL2762]

The Minister for International Defence and Security (Baroness Taylor of Bolton): I refer the noble Lord to the Answer given in the other place on 10 March 2010 (*Official Report*, Commons, cols. 336W-37W) to the honourable Member for Westbury (Dr Murrison).

Association of Southeast Asian Nations

Question

Asked by ***Lord Patten***

To ask Her Majesty's Government whether they have directly or via the European Union made representations about religious freedoms to the Association of Southeast Asian Nations. [HL2618]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): We have not made any representations directly or via the EU about religious freedoms to the Association of Southeast Asian Nations.

British Indian Ocean Territory

Questions

Asked by ***Baroness Whitaker***

To ask Her Majesty's Government what provisions are in force for the control of nuclear waste and pollution in the British Indian Ocean Territory; and what contingency plans exist should a nuclear incident occur. [HL2377]

The Minister for International Defence and Security (Baroness Taylor of Bolton): The United Kingdom has arrangements in place covering the use of operational berths around the globe, including in the British Indian Ocean Territory, by the Royal Navy's flotilla of nuclear-powered submarines and those of our allies.

The policy, which is owned by the Secretary of State for Defence, is to provide a simplified coherent strategy for all of these berths, irrespective of location. It is incumbent on the Commander in Chief Fleet, as duty holder for all operational berths, to demonstrate adequate arrangements for the management of nuclear and environmental safety at Diego Garcia in the British Indian Ocean Territory. These arrangements are regulated by the Defence Nuclear Regulator on behalf of the Secretary of State for Defence. Their consent is required before the berths are used.

Solid and liquid radioactive waste generated during routine operations onboard Royal Navy nuclear-powered submarines is not currently landed at Diego Garcia; it is retained onboard until the submarine returns to the UK. Any change to this policy would require a waste plan acceptable to the regulatory authorities to be produced. Regular environmental surveys show that the marine environment has not been affected by visiting nuclear-powered submarines.

In the unlikely event of a nuclear emergency occurring at an approved berth in Diego Garcia, a special safety scheme has been drawn up by the local and naval authorities. The MoD's Nuclear Accident Response Organisation is responsible for ensuring an effective response to an accident or incident involving defence nuclear assets or materials, in accordance with its legal obligations and common law duty of care and in keeping with MoD and wider government policy.

Asked by ***Lord Luce***

To ask Her Majesty's Government whether there is any dispute concerning the boundaries of the British Indian Ocean Territory Exclusive Economic Zone with any neighbouring states; and, if so, whether they intend to resolve those disputes prior to any declaration of a marine protected area. [HL2652]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): The Government of the Maldives have informed us that they are in the process of submitting to the UN on the delimitation of the outer limits of the Exclusive Economic Zone (EEZ) of the Maldives. They have noted that, should any issue arise with respect to the overlapping of their EEZ and our own Environment Preservation and Protection Zone (EPPZ), such issues will need to be discussed and resolved bilaterally between the Government and the Government of the Maldives.

We will of course liaise with the Government of the Maldives to resolve any outstanding questions relating to the delimitation of our respective EEZ/EPPZ whether or not a decision is taken to proceed with a marine protected area.

British Overseas Territories: Shipwrecks

Question

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

To ask Her Majesty's Government what information they hold on shipwrecks around the British overseas territories; and what measures have been taken to secure their historic value for those territories. [HL2583]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): The upkeep of historic sites, including shipwrecks in the overseas territories, is the responsibility of territory Governments.

The Government do not hold detailed information on shipwrecks around the British Overseas Territories. The Ministry of Defence and Department for Transport hold information on ships that have been lost, but this is classed under ship name rather than place of sinking. The Department for Culture, Media and Sport, which leads on this issue in the UK, does not hold information for the overseas territories.

No measures have been taken by the Government to secure the historic value of shipwrecks for those territories.

Broadcasting: Digital Radio

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government what level of digital radio usage has been measured in the last three years; whether they plan to increase the ability to receive digital radio signals; and what is their assessment of the quality of such reception. [HL2250]

Lord Davies of Oldham: Digital radio usage is monitored daily and reported on every quarter by Radio Joint Audience Research (RAJAR). Its report for Q4 of 2009 showed that around 20 per cent of all radio listening is currently via a digital platform.

Digital radio broadcasting across the UK currently reaches 90 per cent of the population and this percentage continues to increase. However, new investment will be required to build and improve DAB coverage and reception. The Department for Culture, Media and Sport will be working with the BBC and commercial operators to ensure that coverage is comparable to FM by the end of 2014.

In a recent survey, more than 7,000 people were asked what they thought of how digital radio sounds. More than 75 per cent said that it was already as good as or better than FM.

Buying Solutions

Question

Asked by ***Baroness Northover***

To ask Her Majesty's Government how much was paid by the Department for Work and Pensions and its agencies to (a) PricewaterhouseCoopers, (b) KPMG, (c) Deloitte, (d) Ernst and Young, (e) Grant Thornton, (f) BDO Stoy Hayward, (g) Baker Tilly, (h) Smith and Williamson, (i) Tenon Group, (j) PKF, (k) McKinsey and Company, and (l) Accenture, in each of the past five years for which information is available; how they monitor contracts with those firms; and how the department reports (1) during, and (2) at the end of, contracts to Buying Solutions. [HL2092]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): The information is in the table below:

Supplier	*2009-10 (£) (Spend to Jan 2010)*	*2008-09 (£)*	*2007-08 (£)*	*2006-07 (£)*	*2005-06 (£)*
PricewaterhouseCoopers	9,062,391	9,175,124	9,393,652	8,554,212	8,005,454
KPMG	577,087	480,886	257,884	664,795	2,245,354
Deloitte	16,314,493	24,742,902	22,869,712	21,712,082	5,865,644
Ernst & Young	251,074	54,214	59,150	0	0
Grant Thornton UK LLP	6,250	100,881	128,161	0	0
BDO Stoy Hayward	0	0	0	0	0
Baker Tilly	0	0	2,275	0	0
Smith & Williamson	59,413	0	0	0	0
Tenon Group	0	0	0	0	0
PKF UK LLP	56	301,891	328,537	869,287	763,505
McKinsey and Company	206,435	0	246,750	3,138,199	188,000
Accenture*	71,566,531	106,177,482	94,936,273	76,169,049	114,719,096

*Accenture spend is significantly higher as it provides application development services for the department's major IT systems.

Consultancy and development contracts are managed by a named project sponsor within the business unit commissioning the consultancy project. This is supported by a formal process which ensures that the project is monitored throughout its lifecycle and requires ratings on performance. Individual commercial agreements are not reported to Buying Solutions.

Census

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government further to the Written Answer by Baroness Crawley on 13 January (*WA 155–6*), what criteria were used in the 2011 census ethnic question prioritisation exercise; what was the scoring system used to decide only to add the category of Gypsy or Irish Traveller to White ethnic group; what other categories were considered; and why an Irish category was included in 2001 and will be maintained it in 2011. [HL2489]

Baroness Crawley: The information requested falls within the responsibility of the UK Statistics Authority. I have asked the authority to reply.

Letter from Stephen Penneck, director-general for ONS, to Lord Laird, dated March 2010.

As the director-general for the Office for National Statistics (ONS) I have been asked to reply to your recent Question asking further to the Written Answer by Baroness Crawley on 13 January (*WA 155-6*), what criteria were used in the 2011 census ethnic question prioritisation exercise; what was the scoring system used to decide only to add the category of Gypsy or Irish Traveller to white ethnic group; what other categories were considered; and why an Irish category was included in 2001 and will be maintained in 2011.(HL2489)

The ethnic group question is already the longest in the census questionnaire. However, there were still demands for additional response categories. For the 2011 census, there was space only for two additional tick-boxes. As explained in answer to the previous Question referred to above, ONS developed a tool to prioritise requests for additional ethnic group tick-boxes. The ethnic group prioritisation exercise scored each ethnic group under consideration against seven criteria, which were grouped into four broader themes. These were:

1 Strength of need for information on that group

1.1 Group is of particular interest for equality monitoring or for policy development (for example, particularly vulnerable to disadvantage)

1.2 Group is of particular interest for service delivery

2 Lack of alternative sources of information

2.1 Write-in answers are not adequate for measuring this group

2.2 Other census information is inadequate as a suitable proxy

3 Clarity and quality of the information collected and acceptability to respondents

3.1 Without this tick-box respondents would be unduly confused or burdened and so the quality of information would be reduced (for example, if a large, well known or highly distinct group was left out and instead respondents from this group ticked a variety of options instead)

3.2 The addition of the tick-box and/or revised terminology is clear and acceptable to respondents (both in wording and in the context of the question, for example providing mutually exclusive categories) and provides the required information to an acceptable level of quality

4 Comparability with 2001 data

4 There will be no adverse impact on comparability

Potential tick-box categories were identified throughout the extensive period of consultation with users. A score of either 2, 1 or 0 was given to each category for each principle in accordance with the level of supporting evidence and analysis, ensuring a level of consistency in relation to each principle. The scoring method equated to:

2 High level of evidence

1 Medium level of evidence

0 Low level or no evidence

This was the system that was used to decide which tick-boxes to add to the ethnic group question, including Gypsy or Irish Traveller. Full details of the prioritisation tool can be found in an information paper on the website: http://www.ons.gov.uk/census/2011-census/2011-census-questionnaire-content/question-and-content-recormnendations-for-2011 /index.html.

Other categories considered are listed in the summary of scores shown at Annexe A in the information paper referred to above and as listed in a previous Answer in December 2009 (*WA 230-31*).

A particular case was made for the inclusion of an Irish category in the 2001 census by representatives of the Irish community in Britain to provide a more accurate and reliable basis for identifying and dealing with problems of disadvantage, such as health inequality, facing the Irish community. The inclusion of an Irish category was supported by the then Commission for Racial Equality as well as central government departments and Irish community groups.

The 2005 consultation showed a continuing requirement for information on the Irish community and found that statistics users were happy with the ethnic populations measured in the 2001 census. ONS therefore recommended that the "Irish" category, and all other categories from the 2001 census, be retained. Consultation on the 2011 census content identified a strong need for comparison of ethnic group statistics with the 2001 census. Consultation also showed that statistics users were happy with the ethnic populations measured in the 2001 census and the 2001 categories have therefore been retained for the 2011 census.

Common Agricultural Policy: Single Farm Payments

Questions

Asked by ***Baroness Byford***

To ask Her Majesty's Government how many single farm payments are outstanding for the years 2007 and 2008; how many farmers have not received full payment of their 2007 and 2008 entitlements; and how much is outstanding from 2007 and 2008. [HL2575]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): The table below sets out for the single payment scheme (SPS) years 2007 and 2008 in England the number of outstanding payments under the SPS, the estimated number of claims that have not received a full payment and the total value outstanding.

Single Payment Scheme Year	*Number of claims outstanding as at 3 March 2010*	*Number of claims not received full payment as at 3 March 2010*	*Total value outstanding as at 3 March 2010*
2007	35	55	£579k
2008	92	106	£2,897k
Total	157*	161	£3,476k

* Included within the 157 outstanding claims are 31 (2007) and 67 (2008) claims that are complex cases involving probate, business partnership changes and domestic issues.

Asked by ***Baroness Byford***

To ask Her Majesty's Government in how many cases where single farm payments are outstanding the delay is due to computer problems at the Rural Payments Agency. [HL2576]

Lord Davies of Oldham: There are currently 818 single payment scheme claims for the 2009 scheme year where investigations may reveal that the computer system is preventing payment. This equates to 0.77 per cent of the 106,724 claims received under the scheme.

These cases are being investigated and resolved to make payments to customers as soon as possible. The regulatory payment window runs from 1 December to 30 June.

Asked by ***Baroness Byford***

To ask Her Majesty's Government how many upland farmers are overdue single farm payments for each of the years from 2004 to 2009; and how much is outstanding for each of those years. [HL2577]

Lord Davies of Oldham: The single payment scheme (SPS) was introduced in 2005. The current 2009 SPS deadline is 30 June 2010 therefore no payment from this year is overdue.

The table below sets out the number of outstanding claims under the SPS for 2005-08 in England for farmers who made a hill farm allowance (HFA) claim.

Single Payment Scheme Year	*Number of claims outstanding as at 3 March 2010*	*Value of claims outstanding as at 3 March 2010*
2005	0	£0
2006	0	£0
2007	0	£0
2008	3	£304k
Total	3	£304k

There are currently also five claims which may be due a top-up payment once their entitlements have been reviewed. Further such claims may arise from data correction work within the Rural Payments Agency.

Consultancy Services

Question

Asked by ***Baroness Warsi***

To ask Her Majesty's Government how much the Food Standards Agency spent on (a) public relations consultants, and (b) public affairs consultants, in each of the past three years; and for what purposes. [HL2553]

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): The Food Standards Agency (FSA) has used public relations (PR) and public affairs (PA) consultants on specific projects over the past three years.

The purpose and costs are included in the following table.

PA/PR Expenditure	*2007-08 £*	*2008-09 £*	*2009-10 £*
MHS Interim Communications Management	34,075		
External Review of FSA Communications			5,527
Communications Training			5,861
Development and Implementation of Northern Ireland Assembly Public Affairs Programme	14,894	19,892	19,808 (projected spend)
Public Relations support for Eatsafe initiative	2,210	1,150	85
Totals	51,179	21,042	31,281

Note:
All costs exclude VAT.

Council Tax

Questions

Asked by ***Baroness Turner of Camden***

To ask Her Majesty's Government what progress has been made to change the name of council tax benefit to council tax rebate; and when they will commence the process of changing it. [HL2640]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): We want to change the name of council tax benefit to council tax rebate at the earliest opportunity. However, we cannot commit to a timetable for implementation until we have fully assessed the precise costs and impact of this change. We are engaging with local authorities and their IT suppliers in work to establish the particular delivery implications and associated costs for local authorities. Similar work is being carried out within Jobcentre Plus and the Pensions Disability and Carers Service, where there are major implications for IT systems which link to local authorities' systems and play a crucial role in supporting benefit claims.

Asked by ***Lord Bates***

To ask Her Majesty's Government whether they will place in the Library of the House a summary of key property types and their values, as referred to on page 5 of the Valuation Office Agency's document *Council Tax Wales Revaluation 2005: Post Evaluation Review of the operational aspects of the project*. [HL2663]

The Financial Services Secretary to the Treasury (Lord Myners): The information could be provided only at disproportionate cost. The information also contains sales data at an individual property level, which cannot be released by virtue of Section 18(1) of the Commissioners for Revenue and Customs Act 2005.

Department for Culture, Media and Sport: Culture

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government whether, in relation to the nomenclature of the Department for Culture, Media and Sport, they have a definition of "culture". [HL2364]

Lord Davies of Oldham: "Culture" is diverse and constantly developing and is not something that can easily be put in a simple definition. The cultural work of the department includes architecture and the historic environment, the royal parks and royal palaces, the performing and visual arts, museums, galleries, libraries and archives, creative industries and tourism.

Department for International Development: Staff

Question

Asked by ***The Earl of Sandwich***

To ask Her Majesty's Government how many Dalits are employed by the Department for International Development in their offices in India and Nepal (a) in total, (b) in clerical positions, and (c) in senior management. [HL2572]

Lord Brett: The Department for International Development (DfID) does not require its staff to disclose details of their ethnic background or caste. Consequently we do not have the information requested on record. However, we are supporting improved employment opportunities for excluded groups. For example, DfID Nepal runs an internship programme targeting excluded groups, including Dalits.

Embryology

Questions

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

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 10 February (*WA 135–7*), what were the services provided to the Human Fertilisation and Embryology Authority (HFEA) by Hanover Communications during 2007 and 2008; what were the public relations matters that necessitated such services; whether such services were in addition to those provided by the HFEA's Head of Communications and Press Officer; and whether the HFEA's Head of Inspection received the same financial support to fulfil the authority's regulatory role. [HL2385]

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 27 January (*WA 337*), to what the Chief Executive of the Human Fertilisation and Embryology Authority (HFEA) was referring when writing in the internal memo placed in the Library of the House that "something clearly has gone wrong—badly wrong over a sustained length of time"; how that was communicated by the HFEA to the public; how long the authority's Head of Inspection had been aware of those issues; and how the relevant concerns are being addressed. [HL2386]

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 8 February (*WA 81–2*), why the Human Fertilisation and Embryology Authority (HFEA) does not hold a record of the particular witnessing system used in each licensed centre; how that relates to moves towards risk-based regulation following the Toft report; and how Trish Davies affected the way the HFEA ensures compliance, as described by the HFEA chief executive in his press statement on 11 January 2010. [HL2387]

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 22 February (*WA 214*), which employees of the Human Fertilisation and Embryology Authority have been responsible for the loss of records following requests by researchers; and why losses that could only be described at disproportionate cost were not included amongst the cases of misconduct described in the Written Answer on 8 February (*WA 81–2*). [HL2388]

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 8 February (*WA 81–2*), why the Human Fertilisation and Embryology Authority's Compliance Report for February 2009 stated there were no Grade A incidents at the time; how the HFEA had reclassified the grades of serious incidents; why; what were the dates for the initial reporting of incidents 01073 and 01079 at centre 0102; and at what point incidents 01073 and 01079 were subsequently classified as Grade A incidents (as described in the HFEA's press statement on 4 January). [HL2389]

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 8 February (*WA 81–2*), whether incident 01079 at centre 0102 was considered by the Human Fertilisation and Embryology Authority (HFEA) to be closed on 23 March 2009; whether incident 01073 at centre 0102 was initially considered by the HFEA to be closed before 23 March 2009; and why the HFEA contacted Mr Yacoub Khalaf again regarding those incidents after contact with the *Sunday Times* on 24 April 2009 (prior to publication of an article on 26 April 2009). [HL2390]

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): The Human Fertilisation and Embryology Authority (HFEA) has advised that the services provided to the authority by Hanover Communications during 2007 and 2008 were strategic communications advice regarding regulatory action and associated litigation regarding licensed centres 0157 and 0206. These services were in addition to those provided by the HFEA's head of communications and press officer. The HFEA has also advised that the head of inspection did not receive the same financial support.

HFEA has advised that the matter to which its chief executive was referring is described in paragraph 2 of that same internal memo, which, I am informed, has been given to the noble Lord. As individual cases relating to this matter were resolved, details were placed on the HFEA's website. In addition, a programme of change at the HFEA (known as "Programme 2010") was commenced in late 2007 and extensively publicised. This programme has now been completed. To assess its effectiveness, the HFEA has commenced an internal governance review. Again, I am informed that the terms of reference of the review have been provided to the noble Lord.

The HFEA has advised that it does not hold a record of the particular witnessing system used in each licensed centre because it considers that this is not necessary to fulfil its statutory duties. The HFEA has implemented the recommendations of the Toft report and, in 2007, further recommendations regarding witnessing were incorporated into the seventh edition of the authority's code of practice. With regard to Ms Trish Davies, the HFEA has advised that it has nothing to add to the press statement of 11 January 2010.

With respect to the nature of the disproportionate costs referred to in my Written Answer of 8 February 2010 (*Official Report*, cols. *WA 81-2*) the HFEA has advised that it would need to scrutinise all records created since 1991 in order to establish whether any have been lost following a request from researchers. The resources that this would involve would be substantial and would breach the £800 cost limit.

The incidents at centre 0102 relate to a complaint against the HFEA about the handling of events to which the noble Lord refers. This complaint is currently

the subject of an investigation. Once the investigation into this complaint is complete, the HFEA has undertaken to inform the noble Lord of the outcome.

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

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 19 January (*WA 224–5*), whether the use of women's eggs for research is considered a serious matter by the Human Fertilisation and Embryology Authority; and how the Human Fertilisation and Embryology Acts provide for an egg producing an embryo by parthenogenesis. [HL2443]

To ask Her Majesty's Government when the Human Fertilisation and Embryology Authority (HFEA) received a copy of the document by Dr Alexandra Plows and others entitled *Should scientific researchers be allowed to ask women to provide their eggs for disease research?—A statement of concerns in response to the current HFEA consultation*; how the HFEA responded to each of the points raised therein; and why the HFEA did not include that document alongside Annexe F in the paper for a meeting held on 21 February 2007 (agenda item 8). [HL2444]

To ask Her Majesty's Government from whom the Human Fertilisation and Embryology Authority obtained permission to reproduce the Summary of Edinburgh meeting in a document published on its website. [HL2445]

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 8 February (*WA 81–2*), when Trish Davies highlighted that laboratory operators were the source of the majority of errors reported as "category A incidents"; and what solution was proposed by Dr Stephen Troup of Liverpool Women's Hospital at the Human Fertilisation and Embryology Authority's annual conference on 15 March 2005. [HL2448]

Baroness Thornton: The Human Fertilisation and Embryology Authority (HFEA) has advised that, regarding the use of eggs for research, it has nothing to add to the information that I gave in my Written Answer of 19 January 2010 (*Official Report*, cols. *WA 224-5*). The Human Fertilisation and Embryology Act 1990, as amended, applies to embryos, whether created by means of fertilisation or by parthenogenesis.

The HFEA has advised that the response from Dr Alexandra Plows and others, to which the noble Lord refers, was received and considered during the authority's public consultation in 2006. It is referred to in Annexe D to the paper to which the noble Lord also refers.

The HFEA has advised that the document *Summary of Edinburgh Meeting*, to which the noble Lord refers, is a publicly available document.

In respect of the noble Lord's final Question, the HFEA has advised that it understands this reference to relate to a written account of the authority's annual conference 2005, by Dr Neville Cobb, published on the website of the Scottish Council on Human Bioethics. The HFEA has no comment to make about third-party accounts of its proceedings.

Energy: Wind Farms

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government what is their forecast of the number of on-shore and off-shore wind-farm units in 2015. [HL2403]

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): The lead scenario for meeting our renewable target, as set out in the renewable energy strategy, suggests that the majority of the UK's renewable electricity will come from onshore and offshore wind.

However, the Government do not set targets for individual energy generation technologies but take a market-based approach to generation. It is therefore not possible to predict the exact number of units (wind turbines) that will be generating in 2015.

Expenditure: Office Equipment

Questions

Asked by ***Lord Bates***

To ask Her Majesty's Government 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 Health and Safety Executive in the latest period for which figures are available; and how much it spent in total on all photocopier paper in the last year for which figures are available. [HL2399]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): The Health and Safety Executive does not distinguish between photocopier and computer printing paper. The average cost for a 500 sheet ream of white A4 80gsm paper for 2008-09 was £2.18.

All paper used is 100 per cent recycled.

The total amount spent on all photocopying and printing paper for 2008-09 was £113,427.46.

Asked by ***Lord Bates***

To ask Her Majesty's Government what was the total expenditure, excluding value added tax, on photocopier paper by (a) the Equality and Human Rights Commission, and (b) the Government Equalities Office, in the latest year for which figures are available. [HL2439]

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): The Equality and Human Rights Commission does not record expenditure on photocopier paper separately and is unable to provide this information. The Government Equalities Office spent in the order of £4,500.

Asked by ***Lord Bates***

To ask Her Majesty's Government what was the total expenditure, excluding value added tax, on photocopier paper by (a) the Environment Agency, (b) the Waste Resources Action Programme, and

(c) the Department for Environment, Food and Rural Affairs in the latest year for which figures are available. [HL2442]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): The table below shows the total expenditure, excluding value added tax, on photocopier paper by the Environment Agency (EA), Waste Resources Action Programme (WRAP) and Defra.

Figures are for the financial year 2008-09.

	EA	*WRAP*	*Defra*
Paper brand	Evolve Office	Evolve	Evolve Office and Evolve Business
Recycled content	100% Post Consumer Waste (PCW)	100%	100%
Paper type and volume	A4—ream wrapped, 80 gsm, 120,000 pa. A3—ream wrapped, 80 gsm, 2,000 pa.	A4—80 gsm A3—N/A*	A4—80 gsm, 45,125 reams A3—714 reams
Total approx. cost (excl. VAT)	A4—£240,000 pa A3—£8,500	£620	A4—£94,177 A3—£3,247

*A3 paper reams are purchased for printing, not photocopying.

Asked by ***Lord Bates***

To ask Her Majesty's Government with reference to the Office of Government Commerce document *Saving money on office stationery*, what is the annual expenditure by public sector organisations on office stationery; how many different framework agreements there are across departments covering office stationery according to the Office of Government Commerce and Buying Solutions' records; and what is the total value of each framework agreement. [HL2616]

The Financial Services Secretary to the Treasury (Lord Myners): It is for the relevant public sector body to account for their expenditure on office stationery. This information is not held centrally and to collect it would incur disproportionate cost.

The Office of Government Commerce has been notified by departments of five framework agreements covering office supplies. These are available on OGC's contracts database (www.ogc.gov.uk/contractsdatabase/).

Buying Solutions is the contracting authority for one pan-government office supplies framework.

Asked by ***Lord Bates***

To ask Her Majesty's Government 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 National Archives in the latest period for which figures are available; and how much it spent in total on all photocopier paper in the last year for which figures are available. [HL2354]

To ask Her Majesty's Government 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) Her Majesty's Stationery Office, and (b) the Office of Public Sector Information, in the latest period for which figures are available; and how much they spent in total on all photocopier paper in the last year for which figures are available. [HL2437]

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): The Office of Public Sector Information and Her Majesty's Stationery Office merged with the National Archives in 2006. All expenditure is carried out by the National Archives.

To disclose the average purchase price of these products would prejudice the commercial interests of the National Archives and would give an unfair advantage to other suppliers.

The National Archives spent a total of £7,580 on all photocopier paper in 2008-09.

Forced Marriage

Questions

Asked by ***Lord Lester of Herne Hill***

To ask Her Majesty's Government whether any forced marriage protection orders have been made in cities with large British Asian populations such as Blackburn, Bradford or Leicester. [HL2417]

To ask Her Majesty's Government what action is being taken further to their assessment of the initial impact of the Forced Marriage (Civil Protection) Act 2007 to reach Black, Asian and Minority Ethnic communities and to encourage them to respond to the object and purpose of the Act. [HL2418]

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): Since implementation of the Act on 25 November 2008 and up to 28 February 2010, a total of 123 forced marriage protection orders (FMPOs) have been made, including in the areas of Blackburn, Bradford and Leicester county courts. This well exceeds the projected number of 50 orders per annum.

The initial impact of the legislation was set out in the policy paper *One Year On*. The policy paper highlighted the need for continuing publicity especially within the communities, for training, and for better interagency co-operation. One of the recommendations of that paper is to liaise and work with the Forced Marriage Unit to maintain awareness of the provisions of the Act and to reach "closed" communities.

The Forced Marriage Unit undertakes around 80 outreach events a year to both professional groups and communities to raise awareness of forced marriage and appropriate responses. This work includes raising awareness of the Forced Marriage (Civil Protection) Act and forced marriage protection orders.

The paper also highlighted the need for action balanced with caution and understanding of the impact of an application on a young person who then loses family and community and will need long-term protection and support. The policy paper is online at http://www.justice.gov.uk/publications/10508.htm.

Forests

Question

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

To ask Her Majesty's Government further to the Written Answer by the Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs, Huw Irranca-Davies, on 8 February (*Official Report*, Commons, col. 680W), why the area of new woodland planting declined from 2000 to 2009; why the amount in 2006 to 2009 was lower than previous years; and whether they expect that trend will continue. [HL2411]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): The decline in new planting is due to a number of factors including the attraction of alternative land uses and the implementation of the response to the 2002 Sustaining England's Woodlands Review. This review led to our support mechanisms from 2005 placing an increased emphasis on the sustainable management of existing woodland, including the restoration and maintenance of our ancient woodlands.

The 2000-06 England Rural Development Programme woodland creation target was 30,000 hectares and this was exceeded. In the current Rural Development Programme for England 2007-13 we have committed to creating 15,400 hectares of new woodland and we expect current planting levels to at least be maintained.

In its 2009 Low Carbon Transition Plan, the Government set out its intention to support a new drive to encourage private funding for woodland creation and options to achieve this are being explored.

G8

Question

Asked by ***Lord Cameron of Dillington***

To ask Her Majesty's Government what additional funds they have or will commit to research over the next three years as part of the G8 $20 billion commitment for global food security which states "investment in and access to education, research, science and technologies should be substantially strengthened at national, regional and international level". [HL2508]

Lord Brett: In 2008 the Secretary of State for International Development made a commitment to double funding to international agricultural research, reaching a target of £80 million per year by 2013. This commitment was reaffirmed in the recent White Paper, *Eliminating World Poverty: Building our Common Future.*

The Department for International Development (DfID) is on track to meet this target. In the current financial year, DfID has spent more than £61 million on international agricultural research, contributing to the total UK support to food and agriculture of over £1 billion.

Government: Office Equipment

Questions

Asked by ***Lord Bates***

To ask Her Majesty's Government what was the total expenditure, excluding value added tax, on photocopier paper by the Department for International Development in the latest year for which figures are available. [HL2503]

Lord Brett: The Department for International Development (DfID) spent approximately £44,000, excluding VAT, on standard A4 paper during 2008-09. This paper was used in both photocopiers and printers.

This figure relates to expenditure in the UK. Figures for our overseas offices are not held centrally and could not be obtained without incurring disproportionate cost.

Asked by ***Lord Bates***

To ask Her Majesty's Government what was the total expenditure, excluding value added tax, on photocopier paper by the Scotland Office in the latest year for which figures are available. [HL2549]

The Advocate-General for Scotland (Lord Davidson of Glen Clova): The Scotland Office does not record separately spending on photocopier paper and other types of copier paper. In the financial year 2008-09, excluding value added tax, the Scotland Office spent £2,871 on all types of copier paper.

Asked by ***Lord Bates***

To ask Her Majesty's Government what was the total expenditure, excluding value added tax, on photocopier paper by the Ministry of Justice in the latest year for which figures are available. [HL2550]

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): In the 2008-09 financial year, the Ministry of Justice had in operation numerous contracts for the supply of photocopier paper.

The National Offender Management Service (NOMS) had one main supplier for photocopier paper incurring £1,089,154. In addition, prison industries spent a further £595,532 on specialist paper used for their printing workshops.

For the rest of the department—comprising the Ministry of Justice headquarters, HM Courts Service, Tribunals Service and the Office of the Public Guardian—several different contracts had been used to supply photocopier paper. It is not possible to determine the total expenditure on photocopier paper in 2008-09 without incurring the disproportionate cost of examining individual transactions which took place under the multiple contracts. However, the expenditure under the main contract for photocopier paper was £1,417,907 for the year.

It is possible, though unlikely, that some further expenditure may have been incurred outside of those contracts using the government procurement card (GPC).

To investigate whether any photocopier paper had been purchased with the GPC card would incur disproportionate cost.

Since May 2009, the Ministry of Justice has consolidated its office supply contracts into one main supplier in order to derive the best value for money option possible. Prison industries, however, still continue to order specialist paper from other suppliers for their print industry.

All figures stated exclude VAT.

Asked by ***Lord Bates***

To ask Her Majesty's Government what was the total expenditure, excluding value added tax, on photocopier paper by (a) the Department of Health, and (b) the NHS Purchasing and Supply Agency, in the latest year for which figures are available. [HL2551]

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): Within the last financial year that figures are available (2008-09), the department spent £222,237.72 on photocopying and printing paper.

The National Health Service Purchasing and Supply Agency (NHS PASA) spent £2,240.10.

Asked by ***Lord Bates***

To ask Her Majesty's Government what was the total expenditure, excluding value added tax, on photocopier paper by the Department for Business, Innovation and Skills in the latest year for which figures are available. [HL2552]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Young of Norwood Green): Information on photocopier paper purchased by departmental directorates is not held centrally.

Asked by ***Lord Bates***

To ask Her Majesty's Government what was the total expenditure, excluding value added tax, on photocopier paper by the Department of Energy and Climate Change in the latest year for which figures are available. [HL2611]

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): Since 01 April 2009, the Department of Energy and Climate Change has spent £85,760.86 on stationery. This amount includes the expenditure on photocopier paper, which is not recorded separately.

Asked by ***Lord Bates***

To ask Her Majesty's Government further to the Written Answer by Lord Bach on 19 January (*WA 235*), whether they will publish the average purchase price, excluding value added tax, of a 500-sheet ream of white A4 80 gsm photocopier paper paid by the Ministry of Justice in the latest period for which figures are available. [HL2613]

Lord Bach: We do not intend to publish the average price of a 500-sheet ream of white A4 80 gsm photocopier paper because to do so would breach contractual commercial confidentiality provisions and would give an unfair advantage to other suppliers.

Asked by ***Lord Bates***

To ask Her Majesty's Government 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 Office of Government Commerce in the latest period for which figures are available. [HL2614]

The Financial Services Secretary to the Treasury (Lord Myners): The average price for a ream of A4 80 gsm copier paper paid by HM Treasury (which incorporates the Office of Government Commerce) in 2008-09 was £1.69 (ex VAT).

Housing: Brownfield Sites

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government what plans they have to use brownfield sites for housing in England, rather than using green belt land. [HL2470]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): The Government's planning for housing policy (planning policy statement 3) sets a target for 60 per cent of all new housing to be delivered on previously developed (brownfield) land. This policy has been a success, with the latest figures showing that in 2008, on a provisional estimate, 79 per cent of all new housing was delivered on such land. This compares to 56 per cent in 1997.

There is a general presumption against inappropriate development in the green belt (which includes brownfield sites within the green belt), as set out in PPG 2 (planning policy guidance note 2, *Green Belts*). Such development is, by definition, harmful to the green belt and should not be approved, except in very special circumstances. Very special circumstances will not exist unless the harm caused to the green belt is clearly outweighed by other considerations. The only new-build housing in green belt to be treated as not inappropriate would generally be limited to infill in existing villages or else affordable housing to meet local need if allowed for as an exception in development plan policies.

In 2008, only 2 per cent of all new dwellings in England were built in the green belt. Moreover, of those dwellings built in the green belt, the latest estimate (2007) showed that 77 per cent were built on brownfield land.

Housing: Valuation

Question

Asked by ***Lord Bates***

To ask Her Majesty's Government whether (a) solar panels, and (b) a small wind turbine, are considered by the Valuation Office Agency when assessing the capital value of a dwelling for a council tax valuation or revaluation. [HL2615]

The Financial Services Secretary to the Treasury (Lord Myners): Improvements made after a dwelling is first entered into a council tax valuation list are not taken into account unless and until a property is sold. If to be considered when (i) a dwelling is first entered into a list, (ii) following a sale or (iii) at a general revaluation of all dwellings, it is unlikely that (a) solar panels or (b) a small wind turbine would add significant value and hence are unlikely to result in a higher council tax band than would otherwise apply.

Immigration

Question

Asked by ***Baroness Miller of Chilthorne Domer***

To ask Her Majesty's Government further to the Written Answer by Baroness Kinnock of Holyhead on 4 March (HL2336), whether any other department keeps statistics on how many British citizens have been refused entry to the United States or other countries; and, if not, whether they have assessed the usefulness of doing so. [HL2554]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): We are not aware of any other department keeping statistics on how many British citizens have been refused entry to the United States or other countries. We have not assessed the usefulness of keeping such statistics ourselves. Neither the national authorities nor the individuals concerned are obliged to inform us of such cases.

Iraq

Question

Asked by ***Lord Acton***

To ask Her Majesty's Government how many Iraqi refugees there are in countries neighbouring Iraq. [HL2423]

Lord Brett: The United Nations High Commissioner for Refugees (UNHCR) provides the only verifiable data on the number of Iraqi refugees. As of 31 January 2010, the total number of refugees registered with UNHCR across the region was 228,733, of which 163,207 are located in Syria; 38,833 in Jordan; 9,015 in Lebanon; 6,608 in Egypt; 6,658 in Turkey; and 4,412 in Iran.

Kyrgyzstan

Question

Asked by ***Viscount Waverley***

To ask Her Majesty's Government whether they will pursue treaties or co-operation agreements with Kyrgyzstan covering (a) double taxation, (b) protection of investment, and (c) culture and education. [HL2559]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): The UK already has treaties with the Kyrgyz Republic covering the fields of protection of investment and culture and education. These are covered by my Written Answer to the noble Lord on 2 February 2010 (*Official Report*, col. *WA 33*) and both treaties are listed in the corresponding document that was deposited in the Libraries of the Houses.

We are aware of a request from the Kyrgyz Government for a double taxation agreement. Her Majesty's Revenue and Customs is able to conclude only a limited number of these agreements each year and will keep this request in mind as they work through their forward programme.

Legal Aid

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government further to the Written Answer by Lord Bach on 24 February (*WA 305–6*), what was the expenditure on legal aid per capita in (a) Northern Ireland, and (b) England and Wales in each of the past three years. [HL2424]

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): The expenditure on legal aid per capita for Northern Ireland and England and Wales for the past three financial years is as follows:

	Northern Ireland			*England and Wales*		
	Exp £m	*[1]Population (millions)*	*£ per cap*	*Exp (£m)*	*[2]Population (millions)*	*£ per cap*
2006-07	69.0	1.741	39.63	1,980	53.729	36.85
2007-08	72.4	1.759	41.15	2,023	54.072	37.41
2008-09	83.0	1.775	46.76	2,099	54.440	38.55

[1] Source—Northern Ireland Statistics and Research Agency (NISRA)

[2] Source—Office for National Statistics

Legal Aid: Northern Ireland

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government why the agreement at Hillsborough Castle increased the annual Northern Ireland legal aid budget final allocation from £80 million in 2008–09 to £100 million this year; and why there has been a one-off allocation over the next two years of a further £12 million. [HL2425]

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): The Prime Minister's letter of 21 October 2009 made adjustments to the legal aid baseline. The settlement adjusted the baseline from £65 million to £85 million for 2009-10 to 2012-13. The baseline was then reduced to £79 million to take account of the effect of efficiency savings. Additional funding of up to £39 million was also made available to meet any shortfall in legal aid funding above baselines until planned efficiencies take effect and to cover other Court Service pressures. £17 million of the additional funding was accessed in 2009-10 to cover the shortfall in legal aid required above the revised baseline.

Live Music

Question

Asked by ***Lord Colwyn***

To ask Her Majesty's Government with regard to the Department for Culture, Media and Sport report *Live Music: An Analysis of the Sector*, of 28 January, (a) what is the definition of the term professional musician, and (b) how many professional musicians are included in the total of "those employed in live music performance" in 2006 and 2008. [HL2477]

Lord Davies of Oldham: I refer the noble Lord to the Answer that I gave to Lord Clement-Jones on 23 February 2010 (*Official Report*, col. *WA 285*).

Maldives

Question

Asked by ***Lord Luce***

To ask Her Majesty's Government what discussions they have held with the Government of the Maldives about the proposal to create a marine protected area in the British Indian Ocean Territory Exclusive Economic Zone. [HL2653]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): No discussions have been held with the Government of the Maldives about the proposal to create a marine protected area in the British Indian Ocean Territory Environment Preservation and Protection Zone. However, the Maldives have responded to the consultation and, as with all other responses, their views will be taken into account.

Ministry of Defence: Data Loss

Question

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

To ask Her Majesty's Government how many people have been affected by incidents of data loss at the Ministry of Defence in each of the past five years. [HL2482]

The Minister for International Defence and Security (Baroness Taylor of Bolton): There is no evidence to date that any individual has suffered loss or harm as a consequence of an incident of data loss at the Ministry of Defence.

Details of incidents of data loss reported to the Information Commissioner, including the number of people potentially affected, have been reported in the annual report and accounts since 2007-08. Copies of the annual report are available on the MoD internet site at the following link: http://www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/AnnualReports/.

NHS: Foundation Trusts

Question

Asked by ***Lord Warner***

To ask Her Majesty's Government which applications to merge hospital trusts or other NHS organisations have been made to the Co-operation and Competition Panel since its establishment. [HL2515]

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): The Co-operation and Competition Panel began operations in January 2009 and has received the following merger cases involving National Health Service organisations:

merger of Croydon Primary Care Trust's (PCT's) provider services arm and Mayday Healthcare NHS Trust;

transfer of Buckinghamshire PCT's provider services arm to Buckinghamshire Hospitals NHS Trust;

East London NHS Foundation Trust proposals to acquire Newham PCT's provider services arm;

merger of South-East Essex's provider services arm and Mid-Essex's provider services arm;

merger of Ealing PCT's provider services arm, Harrow PCT's provider services arm and Ealing Hospital NHS Trust;

merger of NHS Lewisham's provider services arm with Lewisham Hospital NHS Trust;

merger of Portsmouth's provider services arm and Southampton City's provider services arm;

merger of Bexley Care Trust with Oxleas NHS Foundation Trust and South London Healthcare Trusts;

transfer of services from Derby City Provider Services to Derby Hospitals NHS Foundation Trust;

merger of West Sussex Provider Services and South Downs Health NHS Trust;

acquisition of Bedfordshire and Luton Partnership NHS Trust;
merger of NHS Richmond and Twickenham and NHS Hounslow provider services arms; and
transfer of NHS Barking and Dagenham community health services business to North East London Foundation Trust.

NHS: Independent Sector

Question

Asked by ***Lord Warner***

To ask Her Majesty's Government on what grounds the Department of Health has instructed primary care trusts in the east of England that they cannot seek service providers from outside the National Health Service; and whether ministers will allow the Co-operation and Collaboration Panel to complete their examination of cases of community services changes of provider that they have been instructed by the Department of Health to cease. [HL2574]

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): The department has not instructed primary care trusts in the east of England that they cannot procure services from independent and third sector providers or instructed the Co-operation and Competition Panel to cease any investigations.

Northern Ireland: Bill of Rights

Question

Asked by ***Lord Kilclooney***

To ask Her Majesty's Government why the public consultation period for a bill of rights for Northern Ireland has been extended to 31 March; how many responses had been received from individuals at the conclusion of the initial consultation period; and how many (a) daily newspapers, and (b) weekly newspapers, the original public consultation invitation was advertised in. [HL2516]

Baroness Royall of Blaisdon: The Bill of Rights consultation period was extended by four weeks to 31 March following receipt of requests from consultees for an extension to the deadline, to allow more time for those individuals and organisations that wish to respond to the consultation to do so.

By 1 March, 84 detailed responses from individuals and organisations and 479 mailshot responses had been received. The launch of the public consultation was advertised in the three main daily newspapers in Northern Ireland, the *Belfast Telegraph, Irish News* and *News Letter*.

Olympic Games 2012

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government whether they will ask the Olympic Delivery Authority formally to respond to the recent National Audit Office report on co-ordination between bodies responsible for the 2012 Olympic Games. [HL2402]

Lord Davies of Oldham: The National Audit Office report was addressed at the oral evidence session of the Public Accounts Committee on Monday 8 March. Should the committee subsequently publish a report, it will be for the Government to respond formally.

Overseas Territories: South Atlantic Federation

Question

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

To ask Her Majesty's Government what is their assessment of the advantages of forming a south Atlantic federation of overseas territories for the Falkland Islands and St Helena, Ascension and Tristan da Cunha. [HL2587]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): The Falkland Islands is one overseas territory of the United Kingdom and St Helena, Ascension and Tristan da Cunha are another. This was confirmed by new constitutions for both territories that were negotiated in 2008 and 2009, following extensive consultations on all the islands.

Passports

Question

Asked by ***Lord Marlesford***

To ask Her Majesty's Government how many United Kingdom passports were reported (a) lost, and (b) stolen, during each of the past five calendar years; and how many of those were lost in transit between the Identity and Passport Service and the recipient. [HL2465]

The Parliamentary Under-Secretary of State, Home Office (Lord West of Spithead): The attached table sets out the total number of UK passports that have been recorded as lost, stolen or recovered since 2005. The category "other" is used by the Identity and Passport Service predominantly when a passport is declared damaged or destroyed.

The second table attached sets out how many new passports were recorded as lost or stolen in transit during the delivery process for the past five years. These figures are incorporated into the lost and stolen figures in the first table attached.

The periods in the table above reflect the commencement of the current secure delivery arrangements in February 2004. IPS is still collating the data for the period since September 2009, but the indications are that the fall in the rate of loss is continuing. This is attributed to the use of handheld GPS units to support deliveries, introduced at the end of 2008.

Year	*Totals*	*No. of Lost Passports*	*No. of Stolen Passports*	*Other*
2005	286,988	230,011	45,709	11,268
2006	290,996	237,879	41,830	11,287
2007	303,572	251,751	41,393	10,428
2008	296,018	249,261	38,120	8,637

Year	Totals	No. of Lost Passports	No. of Stolen Passports	Other
2009	272,963	232,852	32,276	7,835

	Deliveries	Lost/stolen	Losses as percentage of deliveries
Feb 05-Jan 06	6 774 367	1,042	0.015
Feb 06-Jan 07	6 637 242	727	0.011
Feb 07-Jan 08	6 189 465	717	0.012
Feb 08-Jan 09	5 592 994	654	0.012
Feb 09-Sep 09	4 237 267	327	0.008

Powers of Entry etc. Bill [HL]

Question

Asked by ***Lord Selsdon***

To ask Her Majesty's Government further to the Written Answer by Lord West of Spithead on 14 November 2007 (*WA 25*), under which Acts and secondary legislation listed in the Schedule to the Powers of Entry etc. Bill [HL] officials of Communities and Local Government and of public or private bodies answerable to the Secretary of State for Communities and Local Government or otherwise exercising powers of entry can enter and search the homes or business premises of United Kingdom citizens. [HL2606]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): The Department for Communities and Local Government is responsible for 117 powers of entry through 48 Acts and one power of entry through one statutory instrument as set out in the table below.

Primary

Year	Statute	Department responsible	No. of powers	Repealed
1984	Building Act 1984	DCLG	2	
1960	Caravan Sites and Control of Development Act 1960	DCLG	2	
1950	City of London (Various Powers) Act 1950	DCLG	1	
1961	City of London (Various Powers) Act 1961	DCLG	1	
1965	City of London (Various Powers) Act 1965	DCLG	2	
1977	City of London (Various Powers) Act 1977	DCLG	1	
1965	Compulsory Purchase Act 1965	DCLG	2	
2004	Fire and Rescue Services Act 2004	DCLG	3	
1968	Greater London Council (General Powers) Act 1968	DCLG	1	
1981	Greater London Council (General Powers) Act 1981	DCLG	1	
1984	Greater London Council (General Powers) Act 1984	DCLG	2	
1985	Housing Act 1985	DCLG	8	
1996	Housing Act 1996	DCLG	2	
2004	Housing Act 2004	DCLG	6	
1927	Landlord and Tenant Act 1927	DCLG	1	
1985	Landlord and Tenant Act 1985	DCLG	2	
1993	Leasehold Reform, Housing and Urban Development Act 1993	DCLG	3	
1976	Local Government (Miscellaneous Provisions) Act 1976	DCLG	6	
1982	Local Government (Miscellaneous Provisions) Act 1982	DCLG	5	
1989	Local Government and Housing Act 1989	DCLG	1	
1988	Local Government Finance Act 1988	DCLG	1	
1992	Local Government Finance Act 1992	DCLG	2	
1980	Local Government, Planning and Land Act 1980	DCLG	1	
1930	London Building Act 1930	DCLG	1	

Year	Statute	Department responsible	No. of powers	Repealed
1939	London Building Acts (Amendment) Act 1939	DCLG	4	
1912	London County Council (General Powers) Act 1912	DCLG	1	
1920	London County Council (General Powers) Act 1920	DCLG	2	
1948	London County Council (General Powers) Act 1948	DCLG	1	
1949	London County Council (General Powers) Act 1949	DCLG	2	
1956	London County Council (General Powers) Act 1956	DCLG	1	
1957	London County Council (General Powers) Act 1957	DCLG	5	
1959	London County Council (General Powers) Act 1959	DCLG	3	
1963	London County Council (General Powers) Act 1963	DCLG	3	
1991	London Local Authorities Act 1991	DCLG	1	
1995	London Local Authorities Act 1995	DCLG	4	
1996	London Local Authorities Act 1996	DCLG	1	
2004	London Local Authorities Act 2004	DCLG	2	
1985	Mineral Workings Act 1985	DCLG	2	
1841	Ordnance Survey Act 1841	DCLG	1	
1996	Party Wall etc Act 1996	DCLG	2	
1990	Planning (Hazardous Substances) Act 1990	DCLG	2	
1990	Planning (Listed Buildings and Conservation Areas) Act 1990	DCLG	2	
1974	Prices Act 1974	DCLG	1	
1991	Property Misdescriptions Act 1991	DCLG	2	
1978	Refuse Disposal (Amenity) Act 1978	DCLG	1	
1990	Town and Country Planning Act 1990	DCLG	13	
1984	Video Recordings Act 1984	DCLG	2	
1985	Weights and Measures Act 1985	DCLG	2	

Secondary

Year	SI no.	Authority	Title	Dept	No of powers	Revoked
2005	1541	Regulatory Reform Act 2001	Regulatory Reform (Fire Safety) Order 2005	DCLG	1	

Public and Commercial Services Union: Redundancy

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government what are the proposed arrangements on redundancy that have led to the dispute with the Public and Commercial Services Union. [HL2657]

Baroness Crawley: I refer the noble Lord to the Written Statement given in the other place by the Minister for the Cabinet Office on 3 February 2010 (*Official Report*, cols. 11-13 WS).

Railways: Franchises

Questions

Asked by ***Lord Bradshaw***

To ask Her Majesty's Government further to the Written Answer by Lord Adonis on 9 March (HL2546), whether their plan to let the East Coast franchise in 2011 takes account of the experience of the previous two franchises. [HL2718]

The Secretary of State for Transport (Lord Adonis): The new InterCity East Coast franchise is planned to start in autumn 2011. The specification for the new franchise builds on the improvements delivered by the previous franchisees and the current public sector operator. Provisions will be incorporated in the new franchise agreement to ensure that it is more robust against risks that could lead to premature termination.

Asked by ***Lord Bradshaw***

To ask Her Majesty's Government further to the Written Answer by Lord Adonis on 9 March (HL2546), whether their plan to let the East Coast franchise in 2011 takes account of their intention to review the franchising process. [HL2719]

Lord Adonis: The Government plan to incorporate the recommendations from their review of rail franchising into the new InterCity East Coast franchise within the timescale for letting of that franchise in 2011.

Asked by ***Lord Bradshaw***

To ask Her Majesty's Government further to the Written Answer by Lord Adonis on 9 March (HL2546), whether their plan to let the East Coast franchise in 2011 takes account of the state of the economy and any effects thereof on the competitiveness of bids. [HL2720]

Lord Adonis: The new InterCity East Coast franchise is planned to start in autumn 2011. A key element of the franchise specification process is to forecast future demand for rail travel, taking into account the best available data on current and future economic conditions. Economic conditions do not have a direct impact on the competitiveness of bids, although clearly they affect the level of premium that bidders may be able to offer.

Asked by ***Lord Bradshaw***

To ask Her Majesty's Government further to the Written Answer by Lord Adonis on 9 March (HL2546), whether their plan to let the East Coast franchise in 2011 takes account of their intention to introduce a significantly revised timetable in mid-2011. [HL2721]

Lord Adonis: The new InterCity East Coast franchise is planned to start in autumn 2011 and the franchise specification assumes that the proposed new timetable will have been introduced in May 2011.

Rwanda

Question

Asked by ***Lord Chidgey***

To ask Her Majesty's Government what is their assessment of the government of Rwanda's progress towards achieving the principles in the Harare Commonwealth Declaration, with particular reference to the forthcoming Rwandan presidential election. [HL2712]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): We welcomed Rwanda's accession to the Commonwealth, agreed unanimously at the Commonwealth Heads of Government Meeting (CHOGM) in Trinidad and Tobago in November last year. Rwanda has made progress towards meeting the Commonwealth's core values, in the areas of democratic process; rule of law; good governance; protection of human rights and equality of opportunity; and economic policies aimed at improving the welfare of the public. While much remains to be done in all these areas, we are pleased that member states have embraced the opportunity to engage constructively with Rwanda as the 54th member of the Commonwealth. With particular reference to the forthcoming presidential election, scheduled for August this year, we feel that Rwanda has made good progress at institutionalising the democratic process. The UK works closely with the Rwandan National Election Commission (NEC), including to see fully implemented the recommendations made by the EU Election Observer Mission in 2007, as well as with regard to the practicalities of the forthcoming elections.

We also engage regularly, both bilaterally and with our EU partners, with the Rwandan Government to support political and media freedoms in Rwanda.

Schools: Racism

Question

Asked by ***Baroness Warsi***

To ask Her Majesty's Government who has been consulted as part of the Maurice Smith review of the provisions which prevent the promotion of racism in schools; and on what dates. [HL2193]

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): The Secretary of State for Children, Schools and Families announced on 30 September 2009 that he had asked Maurice Smith, the former Ofsted Chief Inspector of Schools, to look into the issue of racism in schools and report his findings by the end of January 2010. Maurice Smith has now submitted his report to the Secretary of State, who is considering its conclusions and recommendations. A copy of the report will be placed in the Libraries of both Houses when it is published and will include details of all the organisations that contributed to the review.

Tajikistan

Question

Asked by ***Viscount Waverley***

To ask Her Majesty's Government whether they will pursue treaties or co-operation agreements with Tajikistan covering (a) double taxation, (b) protection of investment, and (c) culture and education. [HL2560]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): We are aware of a request from the Government of Tajikistan for a double taxation agreement. Her Majesty's Revenue

and Customs is able to conclude only a limited number of these agreements each year and will keep this request in mind as it works through its forward programme. Until such time as it is feasible to negotiate a new agreement, both Governments continue to apply the provisions of the UK/USSR double taxation agreement in their bilateral tax relations.

The UK does not have treaties or co-operation agreements with Tajikistan covering the protection of investment or culture and education but stands ready to consider a request for such arrangements.

Tajikistan: UK Diplomatic Staff

Question

Asked by ***Viscount Waverley***

To ask Her Majesty's Government whether they will review the no-child policy applicable to United Kingdom-based diplomatic staff posted to Ashgabat and Dushanbe. [HL2561]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): Our policy for our embassies in Ashgabat and Dushanbe, that the children of UK-based diplomats are unable to accompany them to post, is kept under close review. The decision to designate any of our overseas missions as no-child posts is taken very seriously and considers a range of factors.

Turkey

Questions

Asked by ***Lord Hylton***

To ask Her Majesty's Government whether they are monitoring the payment by the Government of Turkey of compensation of €40,000 to 20 journalists, awarded in January by the European Court of Human Rights. [HL2579]

The Minister of State, Foreign and Commonwealth Office (Baroness Kinnock of Holyhead): The Government are not monitoring the compensation payment from the Government of Turkey to 20 journalists. The European Court of Human Rights will be monitoring this payment, and the Government have full confidence in the European Court of Human Rights' monitoring processes.

Asked by ***Lord Hylton***

To ask Her Majesty's Government whether they have made representations to the government of Turkey about the conditions of imprisonment of Mr Abdullah Ocalan on Imrali island, following comments made by his lawyers. [HL2580]

Baroness Kinnock of Holyhead: The UK Government have not made bilateral representations about this case. However, improvements in human rights, including prison conditions, form a key part of the EU accession process, and the European Commission monitors developments closely, including the situation of Abdullah Ocalan, and raises areas of concern as necessary.

Water Management

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government what response they have given to representations by the WWF (World Wide Fund for Nature) that United Kingdom water quality standards will not reach the necessary level by 2015 on current rate of progress. [HL2524]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): The WWF has made a number of representations to both Defra and the Environment Agency about the implementation of the water framework directive.

The river basin management plans, which were published on 22 December 2009, set out how we intend to reach our water quality objectives as required by the directive. A key objective within the directive is to aim to achieve good status by 2015. However, this is subject to the consideration of some tests and the use of exemptions.

A summary of the responses to the consultation on the river basin management plans, including representations from the WWF, is available at www.environment-agency.gov.uk/wfd.

Waterways: Ecology Status Targets

Questions

Asked by ***Lord Dykes***

To ask Her Majesty's Government whether they expect all inland, coastal and estuary waters to meet the ecological standard set by the European Union Water Framework Directive (2000/60 EC) by 2015. [HL2522]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): The Secretary of State approved the river basin management plans for England and Wales for publication on 22 December 2009. The plans set out the actions needed to meet the requirements of the water framework directive. The current plans will ensure that 33 per cent of all water bodies achieve good ecological status by 2015. The Environment Agency and other co-deliverers are investigating the use of alternative objectives in planning for cycles 2 and 3 of the river basin management plans to ensure that the water framework directive objectives are achieved by 2027.

Asked by ***Lord Dykes***

To ask Her Majesty's Government what are the criteria by which the Environment Agency will allow exceptions if some waters do not reach the ecological standard set by the European Union Water Framework Directive (2000/60/EC) by 2015. [HL2523]

Lord Davies of Oldham: The criteria for the Environment Agency to allow exceptions to the water framework directive standards were set out in guidance from Defra.

The water framework directive sets out default objectives which apply unless it is permissible to deviate from them. Annexe 6 summarises these default objectives and the water bodies to which they apply. Article 4 of the water framework directive also sets out specific ways in which, in certain circumstances, member states may deviate from achieving the default objectives (eg good status by 2015). Objectives that are different from default objectives are referred to in this guidance as alternative objectives.

The types of alternative objective are an extended deadline; a less stringent objective; different objectives for heavily modified or artificial water bodies; or different objectives where there are new modifications and new sustainable development activities.

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