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House of Lords

Wednesday, 24 March 2010.

3 pm

Prayers—read by the Lord Bishop of Hereford.

Terrorist Asset-Freezing Bill
Question

3.06 pm

Asked By ***Lord Pannick***

To ask Her Majesty's Government what steps they have taken to begin the process of pre-legislative scrutiny of the draft Terrorist Asset-Freezing Bill.

The Financial Services Secretary to the Treasury (Lord Myners): The Government are committed to ensuring proper scrutiny of the draft Terrorist Asset-Freezing Bill. To enable and help inform that scrutiny, we published our draft Bill on 5 February, and on 18 March we launched a public consultation on our proposals. This will help to ensure that parliamentary scrutiny of the legislation is informed by the views and evidence provided by the general public and interested parties.

Lord Pannick: I am very grateful to the Minister and I warmly welcome the consultation paper. Will the Government, in addition to organising the consultation, welcome pre-legislative scrutiny of this draft Bill by a Joint Committee or by a Select Committee of your Lordships' House?

Lord Myners: I thank the noble Lord, Lord Pannick, for his question. We of course want this Bill to be properly scrutinised. Indeed, one of the reasons why we argued against the opposition amendment for the sunset provision in the current temporary legislation to have a much shorter life than was eventually agreed by Parliament was that we wanted to allow appropriate time for pre-legislative scrutiny. It is for Parliament to determine how that scrutiny takes place and how it would work within the timetable that is effectively set by the sunset clause, but we certainly appreciate the value that would come from detailed public comment and pre-legislative scrutiny by the Houses of Parliament.

Baroness Hamwee: My Lords, those who may wish to comment on the draft Bill, or on any future consultation in this area, may find it particularly difficult because of their own circumstances. These are sensitive matters and some individuals who may have things that are worthwhile saying may not feel confident about saying them in the public arena. Will the Government give some thought about how those who would wish to give their views on these matters could do so confidentially—including, of course, their identities?

Lord Myners: I am grateful to the noble Baroness, Lady Hamwee, for making that point, which had not occurred to me. I will take it away and give it careful consideration. We need to strike the right balance between protecting individual freedoms and securing the peace, tranquillity and safety of the nation. The noble Baroness raises an important point and I will, if I may, go away, reflect on it and communicate with her directly afterwards.

Baroness Noakes: My Lords, the consultation paper that has helpfully now come out specifically excludes those covered by the al-Qaeda and Taliban terrorism provisions. Can the Minister explain why there should not be a consultation on whether there are appropriate safeguards in that order, as well as in the draft legislation?

Lord Myners: They are of course entirely different orders dealing with similar, but different, situations. I believe that the House is due to consider the al-Qaeda orders later this week, when we will have an opportunity to hear whether the House believes that there should be a similar, parallel or congruent consultation that covers that legislation.

Ordnance Survey
Question

3.10 pm

Asked By ***The Earl of Selborne***

To ask Her Majesty's Government what funding they intend to provide to ensure that the Ordnance Survey has a sustainable future as a result of giving some Ordnance Survey data free to users.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): My Lords, the Government are committed to ensuring a sustainable operating model for the Ordnance Survey so that it can continue to supply high-quality geographic information to Government and other users. Further details will be set out in the response to the consultation, *Policy Options for Geographic Information from Ordnance Survey*, which will be published by the end of March.

The Earl of Selborne: My Lords, I thank the Minister for that reply. Clearly, the free availability of Ordnance Survey data is to be welcomed. The great concern is that the Prime Minister has already announced this week that the new arrangements for free data are to start on 1 April—next Thursday—with no funding arrangement to replace them. Is our national mapping organisation at risk?

Lord McKenzie of Luton: No, my Lords, it certainly is not. I am conscious that this exchange will not be as productive as it might have been had our response to the consultation been published by now. We have made commitments to make sure that there is a sustainable business model. I hope when the noble Earl sees our response that he will accept that we have fulfilled those commitments.

Baroness Maddock: My Lords, I never go anywhere without an Ordnance Survey map, even though I have sat-nav in the car. Some of us have experienced being sent down one-way streets the wrong way by sat-nav. I have looked at the consultation. In the changes anticipated, will I be guaranteed a paper OS map into the foreseeable future?

Lord McKenzie of Luton: Yes, my Lords, OS will continue to provide high-quality paper maps for its many customers.

Lord Howe of Aberavon: My Lords, it is well known that the Ordnance Survey is a world-class national mapping organisation and national treasure. It has so far been able to maintain its financial independence by having the freedom to license and to sell for itself the data it has available. With the data being freely distributed, as has just been announced, will it retain the vitality of being a self-financing organisation?

Lord McKenzie of Luton: My Lords, the issue is the sustainability of its business model. Obviously, to the extent to which information is going to be made available freely, there will need to be changes to the existing business model. That is what our response to the consultation will show. I certainly agree with the noble and learned Lord that we have a world-class institution here.

Apart from the innate pleasure of answering Questions in your Lordships' House, sometimes you get the added pleasure of some really interesting information in the briefing. I can say that the OS database has mapped more than 440 million different topographic features, some 544,000 kilometres of motorable road and some 750,000 road names, the three most frequent of which are High Street, Station Road and Church Lane.

Viscount Montgomery of Alamein: My Lords, the new arrangements come in on 1 April and the comments on the consultation are not published until the end of March. That does not give much time for consideration of how they will be implemented and whether changes can be made.

Lord McKenzie of Luton: The noble Viscount makes a good point. We have not just waited for the responses to accumulate with a view to dealing with them at the end of the consultation process; they have been addressed while the consultation has been under way. We are keen to make progress on this because it is very clear from the consultation that there is a real appetite to move in the direction that we are proposing.

Lord Dubs: My Lords, many of us who are keen hill walkers use Ordnance Survey maps all the time. Will my noble friend confirm that, although walkers' maps may not be the most profitable part of Ordnance Survey's output, they are absolutely essential and that nothing in the business model will damage our chance of continuing to use these maps?

Lord McKenzie of Luton: My Lords, I must not pre-empt our response to the consultation but I believe that what my noble friend says will be the case.

Lord Tebbit: My Lords, who is to blame for the fact that the Government have not yet published the results of the consultation? Is it the people who were consulted or those who were doing the consulting?

Lord McKenzie of Luton: My Lords, the consultation started on 23 December; it ran for a 12-week period and finished on 17 March. Until we have gone through the consultation process, we cannot be expected to respond to it. This whole proposal came from the Prime Minister's assertions about smarter government and making more data freely available to help public services to be more accountable and more transparent. However, we have to conclude the consultation before we can respond to it.

Lord Inglewood: Do the Government consider Ordnance Survey to be primarily a public service or primarily an organisation intended to generate profits?

Lord McKenzie of Luton: My Lords, Ordnance Survey's mission statement has been the subject of debate for some time. Obviously we see it as a key part of public service.

Lord Higgins: My Lords, what is the cost of the data being given free and will the funding be equal to it, greater or less?

Lord McKenzie of Luton: My Lords, that is precisely the information that will be covered in the response, and the noble Lord will understand that it is difficult for me to pre-empt it.

Earl Cathcart: My Lords, the consultation report said that to cover the cost of providing the products for free and maintain the very high standard of those products, an additional government grant of up to £40 million was needed. As this freebie starts next week, the Minister must have an idea, so can he confirm that £40 million will be provided? If not, how much will be?

Lord McKenzie of Luton: My Lords, I cannot confirm that figure. I have tried to stress that it is difficult to answer this Question before we have put our response into the public domain. However, I reassert that we have made a commitment to ensure that the business model is sustainable, and obviously that will mean some form of funding to support the fact that some of the income streams will not be there in the future.

Lord Brooke of Sutton Mandeville: My Lords, if I am right in recalling that Ordnance Survey, like lighthouses and lifeboats, is run on an all-Ireland basis, what are the implications of these developments for the Irish authorities?

Lord McKenzie of Luton: My Lords, these proposals relate just to Scotland, Wales and England. Ordnance Survey covers Great Britain and there are separate arrangements for Northern Ireland.

Baroness Byford: My Lords, will the Minister tell us why the consultation came out so late and why the funding finishes before any other procedure can be put in place?

Lord McKenzie of Luton: My Lords, we are proposing to start the new arrangements on 1 April and, whatever the change to the funding arrangements, it is obviously important that those arrangements are in place from that date. It seems to me that the consultation flowed naturally from government announcements about making data more freely available in relation not only to Ordnance Survey but to a whole range of other things, such as health, transport and the Met Office. This was simply a development of government policy. Sometimes we are criticised for not consulting enough or over a sufficient period. However, we have done so on this occasion.

Lord Glentoran: My Lords, does this apply also to the Hydrographic Office and the issuing of nautical charts for our navies and seamen around the British coast?

Lord McKenzie of Luton: My Lords, I may need to write to the noble Lord to give him more detail on that. If those charts are produced by Ordnance Survey, the changes we will make will fall within the ambit of the review.

Lord Tomlinson: Has my noble friend noticed the apparent enthusiasm on the Benches opposite for an extension of public expenditure? Will he join me in hoping that that extension of public expenditure and the enthusiasm for it becomes infectious?

Lord McKenzie of Luton: My noble friend as ever comes to my rescue. I agree with what he says.

Lord Skelmersdale: My Lords, I must declare an interest as a former Minister for Ordnance Survey. Can the Minister give me any other recent example where a government response to consultation had not been published before an activity was initiated?

Lord McKenzie of Luton: My Lords, I explained that we are going to publish our response in the next few days—by the end of March—and the actions proposed will follow that, not precede it.

The Earl of Selborne: My Lords, I understood the Minister to say that the consultation period ended on 17 March. On 22 March, the Prime Minister announced that the new funding arrangements were to start on 1 April. The results of the consultation document have not yet been published, and Ordnance Survey, which is expected to run a trading fund, has no idea where next week's funding is to come from. Is that the situation?

Lord McKenzie of Luton: My Lords, I do not think that is a full characterisation of the position in which we find ourselves.

Health: Tuberculosis

Question

3.21 pm

Asked By ***Baroness Masham of Ilton***

To ask Her Majesty's Government what they are doing to combat drug-resistant tuberculosis in the United Kingdom and overseas.

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton):

My Lords, I congratulate the noble Baroness on the timeliness of her Question as today is World TB Day. In England, our strategy is early detection and completion of treatment, which prevents drug-resistant TB developing. The UK Government made a long-term commitment of £1 billion from 2007 to 2015 to the Global Fund to Fight AIDS, Tuberculosis and Malaria overseas.

Baroness Masham of Ilton: My Lords, I thank the Minister for that reply. She will be aware that we are one of the most generous countries in Europe to the global fund. Others should follow us. I congratulate the Government on the national strain-typing service, which is to be opened in May. It will help with all sorts of TB strains. It will be in Newcastle, Birmingham and London. Does she agree that drug-resistant tuberculosis should be treated in negative-pressure isolation rooms? Do we have enough rooms, especially for children?

Baroness Thornton: As ever, the noble Baroness points at important matters to do with TB. Since today is World TB Day, I am pleased to announce that DfID has announced two new allocations of funding for TB research. The first is £8 million to the Aeras Global TB Vaccine Foundation to help develop a booster vaccine, and the second is the process that the noble Baroness mentioned for the diagnostics of TB.

We are confident that we have the resources to deal with drug-resistant TB which, I am very pleased to say, is not increasing. However, we know that it is a problem across the world. Some 440,000 people across the world have drug-resistant TB. Our £1 billion and our commitment to international co-operation on this matter are extremely important.

Baroness Sharples: Can the Minister explain why when over 73 per cent of TB cases come from outside the UK, only 21 per cent of cases are diagnosed within two years of arrival?

Baroness Thornton: The noble Baroness is correct. She is an expert on these matters. Seventy per cent of TB cases in England occur in people who were born abroad but show no sign of illness after living here for many years. We have, as yet, no test that can predict who will develop TB in later life. We know that there are no short-term solutions in tackling TB. The long-term action will take time to take effect, but the strategy in this country is to detect it early. That means that the generation of doctors who thought that TB was a problem that we no longer needed to address in his country need to be trained to recognise TB, diagnose it

[BARONESS THORNTON]
and make sure that people go through the treatment, which, I am happy to say, is successful, to make sure that we deal with this in this country.

Lord Alderdice: My Lords, one of the areas of great difficulty is in prisons in the United Kingdom; imprisonment carries a high-risk of contracting tuberculosis. Furthermore, the majority of sufferers are UK born—white prisoners—and have pulmonary disease. Many are increasingly resistant to drugs because they are not following up their treatment—nor being followed up—after they leave prison. Have the Government any proposals for energetically following up infected prisoners? Otherwise we shall see increased treatment-resistant tuberculosis in the country because of the prison population.

Baroness Thornton: The noble Lord is right. Certainly in London, one of the main uses of mobile X-ray machines is to go into prisons to help with the diagnosis of prisoners and to ensure that, on release, prisoners who have TB continue their treatment. That is why the detect-and-treat programme includes placing alongside released prisoners people who can ensure that they continue their treatment to the end. This requires vigilance, energy and resources.

Lord McColl of Dulwich: My Lords, are the Government aware that one in three people in the world are infected with TB? It is only noticed when the bacteria become active and the patient becomes ill. The bacteria only become active when the immune system is depressed—for example, as a result of contracting HIV or because of advancing age. Are the Government further aware that so unselfish are the ladies in this world that if they do not have enough calcium in their diet when they are pregnant or lactating, they take the calcium from the lymph nodes which have been calcified and in which the TB is entombed and made inactive? The calcium is taken out, the TB escapes and they become infected. Therefore, nutrition is extremely important—hence the slogan "drinka pinta milka day".

Baroness Thornton: The noble Lord, Lord McColl, as ever, informs me of something that I did not know. I was not aware of that and it certainly was not included in my briefing. The noble Lord points to an important matter—the prevalence of TB in the poorest communities across the world. That is why this programme is so important.

Lord Rea: My Lords—

Lord Ashley of Stoke: My Lords—

Lord Davies of Oldham: My Lords, the noble Lord, Lord Ashley, has been seeking to speak.

Lord Ashley of Stoke: My Lords, there has been criticism of the failure of international co-operation. Can my noble friend explain to the House precisely where we stand on that and what we are doing to improve it?

Baroness Thornton: We remain strongly committed to reducing death and suffering through tuberculosis. My right honourable friend the Prime Minister is today hosting an event for World TB Day which will launch a campaign to obtain the commitment of all the main political parties to continue to support and scale up the fight against TB, globally and in the UK, and to ensure that TB is a priority in the global health agenda. Thirty-six million people have been cured of TB since 1995. That is a good start but it is not sufficient. I invite all parties to sign up to my right honourable friend's campaign.

Baroness Finlay of Llandaff: How many healthcare workers have contracted TB and how many have died of TB in the past 10 years?

Baroness Thornton: I am afraid I do not have the answer to that question. I beg the noble Baroness's pardon. I shall certainly find out and ensure that I write to her and place a copy of the letter in the Library.

Lord Soulsby of Swaffham Prior: My Lords—

Lord Walton of Detchant: My Lords—

Lord Bassam of Brighton: My Lords, I think it is the turn of the noble Lord, Lord Soulsby.

Lord Soulsby of Swaffham Prior: The extra funding that will be made available globally for combating tuberculosis and drug-resistant TB is very welcome, not only at an international level but at the individual level of directly observed therapy, which has proved very effective in different countries. Can the Minister tell the House how much of the funding will go to advance directly observed therapy, as well as to the more major approaches?

Baroness Thornton: The noble Lord has given me the words I was groping for earlier: DOT, a therapy he is very aware of and has been championing. As noble Lords will be aware, in this country TB manifests itself in particular areas such as London, Leicester and Bradford. It is therefore very important that PCTs in those areas put resources into the DOT programme to which the noble Lord has referred.

Burma

Question

3.30 pm

Asked By ***Lord Alton of Liverpool***

To ask Her Majesty's Government what action they are taking regarding the Government of Burma's decision to ban Aung San Suu Kyi from standing or voting in Burma's elections.

Lord Brett: My Lords, first, I commend to the noble Lord, Lord Alton, and to the House the Written Answer to a similar question he put a few days ago, which makes absolutely clear our belief that the election laws are manifestly unfair and fall well short of international demands and standards. On 15 March

the Prime Minister described the targeting of Aung San Suu Kyi and opposition political parties as "vindictive and callous". He has written to the UN Secretary-General supporting an early meeting of the Burma Group of Friends and a possible discussion in the UN Security Council. The Government have reiterated their call for a universal arms embargo against Burma.

Lord Alton of Liverpool: In the light of the outrageous decision of the Burmese Government to ban Aung San Suu Kyi from not only contesting but even being able to vote in elections, I strongly welcome what the Minister has just said about the demarche planned by the Prime Minister. Do we intend to seek to enlist the ASEAN countries and China in that initiative? Can the Minister also tell the House what our response is to the recent report from the United Nations special rapporteur on Burma about the continuing atrocities against ethnic minorities in Burma? He identified crimes against humanity and war crimes and suggested that a UN commission of inquiry should be established. Will we support that?

Lord Brett: My Lords, on the noble Lord's first question, the Government continue to raise Burma at the highest level both within the EU and the UN. Over the past months our network of embassies in the region has lobbied numerous countries. The Prime Minister raised the issue with the President of China at the UN General Assembly last September, as did the Foreign Secretary with his opposite number, the Vietnamese Minister of Foreign Affairs—the ASEAN network is chaired by Vietnam at the moment—and Indonesia. Singapore and Thailand have publicly condemned the Burmese election laws.

On the noble Lord's second question, it really is a matter of timing. We strongly support the rapporteur's recommendation, but if we are to press the issue it is important to do so in a way that carries support within the Security Council and not to fall victim to veto or lack of support, as that will be seen in Rangoon as a victory for the military junta. But we are strongly supportive of it and are seeking support.

Lord Avebury: My Lords, can we propose that the European Union make representations to ASEAN not to recognise these sham elections and the fake parliament that will result from them as being contrary to the ASEAN charter? That provides for member governments to adhere to the rule of law and good governance, and the principles of democracy and constitutional government. How can they support these elections, which do none of these things?

Lord Brett: The noble Lord makes an important point. Those issues have been raised, and as I have said the Governments of Singapore and Thailand have already indicated the view the noble Lord sets out. We hope that by the time the elections are announced and take place that view will be shared by the whole ASEAN group.

Lord Howell of Guildford: My Lords, the noble Lord, Lord Alton, quite rightly mentioned China. Does the Minister accept, as I am sure he does, that although the arms embargo is entirely right, one effect of sanctions and cutting off links with Burma is simply to open the way for more and more Chinese enterprise and official activity to move into Burma? Chinese activity has moved in this way into east and west Africa, Latin America, Sri Lanka and many other places as well. Will he ensure that any further pressures on the dreadful Burmese Government are tailored in a way that does not simply open the door even wider to Chinese undermining of our efforts, and that we gain the support of the Chinese in putting real pressure on that regime?

Lord Brett: The noble Lord makes an important point. As I previously stated, the Prime Minister raised this issue at the highest level with the President of China in New York in September. We continue to raise it, not only within the ASEAN group but in particular with those important south Asian nations that have trading and other links with the Burmese regime. The influence of those who are in the ASEAN group is perhaps greater than that of those of us in Europe, but we take on board the point made previously that we should work through the European Union. We shall continue to press at all levels—as it is seen as a very high priority by the Prime Minister—to bring about democracy in that country as opposed to sham elections to maintain a military Government.

Lord Dubs: Will my noble friend confirm that India has recently supplied helicopters with possible military uses to the Burmese Government? If that is the case, what representations have been made to India that it should desist from this?

Lord Brett: I have to confess to not being aware whether India has provided helicopters to the regime in Rangoon. I shall make inquiries in that regard and respond to the noble Lord.

Lord Elton: My Lords, the Minister mentioned the contact between our Prime Minister and the Chinese in New York late last year. What response did he get?

Lord Brett: The dialogue is ongoing.

Representation of the People (Scotland) (Amendment) Regulations 2010

Motion to Approve

3.36 pm

Moved By ***Lord Davidson of Glen Clova***

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

Relevant Documents: 7th Report from the Joint Committee on Statutory Instruments, considered in Grand Committee on 15 March.

Motion agreed.

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

Building Societies (Financial Assistance) Order 2010

Motions to Approve

Moved By ***Lord Myners***

That the draft orders laid before the House on 8 February and 1 March be approved.

Relevant Documents: 9th and 10th Reports from the Joint Committee on Statutory Instruments, considered in Grand Committee on 18 March.

The Financial Services Secretary to the Treasury (Lord Myners): My Lords, I beg to move en bloc the two Motions standing in my name on the Order Paper.

Lord Naseby: Does the Minister recognise, as I think he does, the importance of the mutual building societies movement to our country? Will he confirm that nothing has happened in the recent past to alter the need for these two statutory instruments?

Lord Myners: I am very happy to confirm the Government's absolute commitment to the concept of mutuality, a form of ownership which has served its members well and has been free from much of the scandal and mischief that we have associated with the plc model in the financial services sector. The proposals in the orders are designed to ensure that the sector remains resilient and that we have available to us a wide range of resolution instruments should they ever be required.

Motions agreed.

Criminal Defence Service (Information Requests) (Amendment) Regulations 2010

Criminal Defence Service (Representation Orders: Appeals etc.) (Amendment) Regulations 2010

Criminal Procedure and Investigations Act 1996 (Code of Practice for Interviews of Witnesses Notified by Accused) Order 2010

Motions to Approve

3.37 pm

Moved By ***Lord Bach***

That the draft regulations and order laid before the House on 27 and 28 January and 5 February be approved.

Relevant Documents: 8th and 9th Reports from the Joint Committee on Statutory Instruments, considered in Grand Committee on 15 and 18 March.

Motions agreed.

Human Fertilisation and Embryology (Parental Orders) Regulations 2010

Human Fertilisation and Embryology (Parental Orders) (Consequential, Transitional and Saving Provisions) Order 2010

Human Fertilisation and Embryology (Disclosure of Information for Research Purposes) Regulations 2010

Motions to Approve

3.38 pm

Moved By ***Baroness Thornton***

That the draft regulations and order laid before the House on 26 January be approved.

Relevant Document: 7th Report from the Joint Committee on Statutory Instruments, considered in Grand Committee on 18 March.

Motions agreed.

Arrangement of Business

Announcement

Lord Bassam of Brighton: My Lords, 41 speakers are signed up for the Second Reading of the Constitutional Reform and Governance Bill today. If Back-Bench contributions are kept to eight minutes, the House should be able to rise this evening at around the target rising time of 10 pm.

It might also be a convenient point to remind the House of the guidance in the *Companion* about attendance at debates. Members taking part in today's debate are expected to attend the greater part of it. It is considered discourteous for Members not to be present for the opening speeches, for at least the speech before and that following their own, and for the winding-up speeches. I am most grateful.

Personal Care at Home Bill

Third Reading

3.39 pm

Bill passed and returned to the Commons with amendments..

Constitutional Reform and Governance Bill

Second Reading

3.39 pm

Moved By ***Lord Bach***

Lord Bassam of Brighton: My Lords, I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purport of the Constitutional Reform and Governance Bill, has consented to place her prerogative and interest, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): My Lords, much of the Bill crosses familiar territory for your Lordships. It was preceded by the Government's draft Constitutional Renewal Bill which was published in March 2008 for pre-legislative scrutiny. The draft Bill was also put out for public consultation in the Government's draft legislative programme. In total this Bill has been preceded by 18 consultations and publications. Many of its parts have been extensively debated by your Lordships over the years.

Perhaps, therefore, it is appropriate at this time for me to put on record again the Government's gratitude to the Members who served on the Joint Committee on the draft Bill. I also thank the Constitution Committee, the Joint Committee on Human Rights, and the Delegated Powers and Regulatory Reform Committee for their work in scrutinising the draft Bill and this Bill.

The Bill that is before us today goes much further than the draft Bill, and I make no apology at all for that. The Bill before your Lordships is a historic package of measures forming part of a wider obligation, crossing all party divisions, to rebuild trust in our democratic and constitutional settlement and to reinforce the principles of transparency, accountability and probity across government and Parliament.

The Bill has been progressing through Parliament against the backdrop of an unprecedented crisis of confidence in politics. The additions we have made to the Bill are a direct response to that. It is testimony to the seriousness of the situation we face that, for example, the provisions to implement the Kelly report, the 30-year rule for public records, and the tax status of parliamentarians all have cross-party support. Let me deal briefly with each part of the Bill.

Part 1 deals with the Civil Service, which has hitherto been established under the royal prerogative. The Government are of the view that it is now time to put the role, governance and values of the Civil Service onto a statutory footing, to give Parliament and the public confidence that an impartial Civil Service will be maintained for the future. Our Civil Service is admired across the world for its professionalism and impartiality. By placing the key values of the Civil Service on a statutory footing, we will be safeguarding the aspects of the Civil Service which we might take for granted. Your Lordships' Constitution Committee has highlighted this as one of the most significant parts of the Bill.

Part 1 will establish the Civil Service Commission on a statutory footing, thus guaranteeing its independent status. It also provides for the Civil Service and the Foreign Secretary's general power to manage the Civil Service and the Diplomatic Service respectively to be delegated, as now, to the head of the Civil Service and the permanent heads of department.

Part 1 also lays down a requirement for the Minister for the Civil Service and the Foreign Secretary to prepare and lay before Parliament a code of conduct for the Civil Service and the Diplomatic Service respectively. The codes must include the key Civil Service values of integrity, impartiality, objectivity and honesty. The codes will form part of the terms and conditions of civil servants.

Clause 7(2) provides that the Civil Service and Diplomatic Service codes must require civil servants who serve an Administration, mentioned in Clause 7(3), to carry out their duties for the assistance of the Administration as it is duly constituted, whatever its political complexion. The Administrations in question are Her Majesty's Government and the devolved Administrations in Scotland and Wales. This does not affect civil servants who are on loan to or directly employed by bodies such as the Supreme Court, the Scottish Court Service or arm's-length bodies, whose duty is to serve the organisation they are seconded to or employed by, and not the aforementioned Administrations.

Clause 8 provides for the publication of a code of conduct that prohibits special advisers from authorising expenditure, managing permanent civil servants and exercising statutory powers. This prohibition was added by the Government as an amendment in the other place and is consistent with the recommendation made by the other place's Public Administration Select Committee. The Bill provides that all appointments to the Civil Service, subject to limited exceptions, must be on merit, on the basis of fair and open competition. Civil Service Commissioners are required to publish a set of principles which will be applied to appointments into the Civil Service. The Minister for the Civil Service and the commission may agree that the commission can carry out additional functions in relation to the Civil Service. In response to issues raised by the Delegated Powers and Regulatory Reform Committee, I confirm that this power would not be used to confer functions on the commission that are already conferred by statute on some other person or body.

Part 2 places the Ponsonby rule in statute and for the first time gives legal effect to a negative vote by either House on the ratification of international treaties. The Ponsonby rule requires the treaty to be published and laid before both Houses for a minimum of 21 sitting days prior to ratification. Although the Ponsonby rule is well established, it is based on constitutional convention rather than law and, formally, Parliament has no ability to veto a ratification. I mentioned that this part gives legal effect to a negative vote of either House, but the legal effect is different, depending on which House is concerned. Negative votes by the other place could ultimately block ratification by the Government. If there is a negative vote by this House, the Government could nevertheless proceed to ratify the treaty after laying a formal statement before both Houses to explain why. This variation is an appropriate reflection of the primacy of the other place as the elected House.

I turn to Part 3 and the referendum on voting systems. These provisions were approved by a very large majority in the other place of some 178. They provide for a referendum to be held on changing the voting system for elections to the House of Commons to the alternative vote. If approved, the referendum will be held by October 2011; the Bill also provides for the practical and procedural aspects of the referendum and the referendum campaign. I look forward to hearing the views across the House on these provisions.

To anticipate one question that may arise—why now?—as I indicated in my opening remarks, in the past 12 months we have seen a crisis of confidence in

[LORD BACH]
our political system and our politicians on a scale that perhaps none of us has witnessed in our political lifetimes. Trust has been profoundly damaged; I do not think that that is an overstatement. The Government have already taken action to deal with the issue of MPs' expenses, but the crisis of confidence runs much deeper than that. We must do all that we can to rebuild that trust in politics, and the electoral system has to form some part of that process. We believe that this is a credible alternative which would go with the grain of what the British people value in our current system and build on those strengths—particularly on the single-Member consistency, the directness and depth of the relationship between constituents and their representatives and the majoritarian system that is right for the House of Commons. This is clearly a significant change, so it is appropriate to put it to the people in a referendum.

On Part 4 and parliamentary standards, this part of the Bill includes measures to implement recommendations made by the Committee on Standards in Public Life in its report on the MPs' expenses scheme. The key provisions strengthen the enforcement regime in respect of the MPs' expenses scheme and transfer responsibility for determining MPs' pay and pensions to the Independent Parliamentary Standards Authority. Happily, the provisions in this part of the Bill enjoy cross-party support and have been agreed with Sir Christopher Kelly and Sir Ian Kennedy, respectively the chairmen of the Committee on Standards in Public Life and of the Independent Parliamentary Standards Authority. None of the substantive provisions in Part 4 apply to your Lordships' House as currently constituted.

Lord Naseby: Will the Minister confirm that the trustees of the parliamentary pension fund must continue to have independence and cannot be responsive to any diktats from IPSA?

Lord Bach: I do not have the answer. I suspect that I know what the answer to the noble Lord's question is and I will certainly answer it when I come to wind up the debate later today.

Part 5 contains a package of measures which relate to your Lordships' House. The Bill brings to an end the by-elections to replace hereditary Peers once they die. Those hereditary Peers who are currently Members of the House will, of course, not lose their seats. The Bill only abolishes the mechanism which allows further hereditary Peers to enter this House solely on the basis of their hereditary title.

I recognise, as we all do, the interests of the House in these provisions. The Government have acted in good faith in taking forward reform of your Lordships' House; demonstrably so, as we have worked closely with other parties to build consensus in cross-party talks. We made clear in 1999 that the by-election process was not intended to be a permanent arrangement and it has gone on now for over 10 years. At the last by-election, there were more candidates than electors—in fact, that is true of three of the last four of these elections—and that was an election for one of the larger groups in your Lordships' House, the Cross Benches. This is not, we believe, a credible way of obtaining a seat in our legislature.

Noble Lords will recall that the 92 hereditary Peers remained in the House as, in some ways, a guarantee of full reform. That is what the Government are committed to and that is why we will be bringing forward proposals very shortly.

Noble Lords: Oh!

Lord Bach: I would argue that we have kept up the momentum.

It is essential that this House is able to deal with disciplinary issues effectively. Last year, the Privileges Committee concluded that this House did not have the powers it needed to expel Peers, or to withhold a writ of summons from a suspended Member. In order to ensure that this House has a robust disciplinary regime to deal with misconduct, Part 5 includes important measures which will, among other things, provide the House with the power to suspend or expel a Peer; override a writ of summons, or cause one not to be issued; and provide that Peers are to be disqualified from the House after conviction for a serious criminal offence, or being subject to a bankruptcy restrictions order.

Part 5 also allows Peers to resign, a provision supported by the Public Administration Select Committee. Peers who have left the House may, if they wish, disclaim their peerage.

A consensus is forming around the need to address the growing size of your Lordships' House. With over 700 Members, this House is second in size only to the Chinese National People's Congress. Indeed, a recent report by the Commons Public Administration Select Committee, entitled *Goats and Tsars*, expressed support for allowing Peers to resign from this House. In all other aspects of public life we accept that a person should be allowed to resign from office, and the Government believe that Members of this House should be able to resign if they no longer intend to sit and vote. In advance of full reform, Part 5 will provide this House with the powers it needs to operate effectively and for us to address the growing size of the House.

I turn to Part 6 and tax status. Part 6 provides that MPs and Lords Temporal are to be deemed resident, ordinarily resident and domiciled in the United Kingdom for the purposes of income tax, capital gains tax and inheritance tax. As a result, they will be liable to pay these taxes on their worldwide income, gains and assets and will be unable to access the remittance basis of taxation. The Government are clear that Members of this House and the other place should be liable to pay the same taxes as the majority of taxpayers in the UK. I am glad to say that this is one of the many issues in the Bill that enjoys cross-party support.

My noble friend the Leader of the House wrote to all noble Lords on 29 January, setting out how the new regime will apply to incumbent Members of the House. While MPs who do not wish to be deemed for tax purposes may stand down, we recognise that the situation is different for incumbent Members of your Lordships' House. To this end, Part 6 includes transitional arrangements for Peers who are not prepared to accept deemed status.

I turn to public order. Part 7 sets out a clear legal framework for the participation in, and policing of, demonstrations around Parliament Square, ensuring

that Parliament is able to function while at the same time allowing people to exercise their basic democratic rights to assemble and protest peacefully. This has been informed by wide consultation with the police, the House authorities and the public. The Bill repeals Sections 132 to 138 of the Serious Organised Crime and Police Act 2005, which regulate demonstrations in the vicinity of Parliament. This proposal has received widespread public support.

We take seriously the need to safeguard the proper operation of Parliament and the need to maintain access to the Palace of Westminster. The powers in Schedule 9 allow senior police officers to give directions imposing conditions on organisers or those taking part in processions or assemblies within a designated area around Parliament.

Part 8 concerns human rights claims brought against the devolved Administrations and confirms that such claims can be brought within 12 months. This part of the Bill has been agreed with the devolved Administrations, and the Scottish Parliament has given its consent in line with the Sewel convention. Indeed, the approach set out in this part of the Bill was agreed by the House itself when it approved an order under the Scotland Act in the previous Session.

Part 9 deals with courts and tribunals. It and Schedule 10 include a range of measures to strengthen the independence of the judiciary and further improve the appointments process. For example, statutory salary protection is extended to various judicial office-holders. Part 9 also removes the Prime Minister from the process of appointing Supreme Court justices. Recommendations to the Queen will in future be made by the Lord Chancellor, following work done by the selection commission.

Part 10 deals with national audit. On 6 March 2008 the all-party Commons Public Accounts Commission published a report on the future governance of the National Audit Office, and Part 10 implements its recommendations. It modernises the NAO's governance arrangements, to ensure appropriate internal controls, while at the same time safeguarding the independence of the Comptroller and Auditor-General. The Public Accounts Commission has strongly endorsed these provisions. Part 10 also includes a framework power to enable the National Assembly for Wales to legislate for the governance arrangements of the Wales Audit Office.

Part 11 permits the Treasury to issue directions about the way that government departments prepare estimates. It allows for the consolidation of NDPBs and other central government bodies into supply estimates and departmental resource accounts. This will provide greater consistency and transparency of public spending data that are presented to Parliament by aligning the spending of NDPBs with the existing budgetary treatment. The Bill also allows Welsh Ministers to make equivalent provision in Wales.

I turn to Part 12. In line with the Government's response to the review of the 30-year rule, chaired by Paul Dacre, the Bill provides for a transition to a 20-year rule. This rule governs the point at which public records of historical significance are transferred to the National Archives or to other places of deposit. In addition, certain exemptions under the Freedom of Information Act 2000 will cease to have effect after 20 years, rather than 30 years as at present. The Bill also provides for enhanced protection for limited categories of royal information, to protect the constitutional conventions surrounding the monarchy.

Part 13 includes provisions to clarify the effect of the Electoral Administration Act 2006 in relation to the eligibility of Commonwealth and Irish citizens to be Members of this House or holders of other public offices, in line with the Government's Written Ministerial Statement of 15 December. I hope that the inclusion of this provision will reassure Members who have been concerned about this issue. Clause 91 in this part requires returning officers to take reasonable steps to ensure that the counting of votes in parliamentary elections begins within four hours of polls closing. This part of the Bill also contains provisions to improve the regulation of referendums, including the AV referendum proposed in Part 3. In that regard, the House will wish to note that Clauses 88 and 89 respond to recommendations from the Electoral Commission. This is an important Bill; it has had a long gestation, and many of its provisions—

Lord Lea of Crondall: I am most grateful to the Minister for giving way, as he is clearly reaching his conclusion. Could he say a word about the circumstances in which we are meeting? We have the wash-up coming up very shortly. Could he remind the House how this works? He has referred to the precedents in terms of the scrutiny that is being given to many of the items in the Bill, but it would be convenient to know exactly who meets whom in wash-up, how we can whittle something down to being a lot smaller than what we are looking at now, when we receive the report, and so on. Many Members will think that is relevant to the context in which we are meeting today.

Lord Bach: My Lords, I cannot comment on whether wash-up will begin soon or not. It is an entirely theoretical consideration at this stage. I can say to my noble friend, and I choose my words carefully, that as the House will know, the wash-up is a regular feature at the end of each Parliament. It is important to stress that it does not change the procedures of the House in respect of legislation. In order to reach Royal Assent, a Bill must go through all of its remaining legislative stages in both Houses, and in wash-up this is done on a much faster timescale. The business for the few days of the wash-up is scheduled on the basis of agreements between the usual channels. It is common practice for Bills on a wide range of subjects to reach Royal Assent during a wash-up. Examples from recent years include Bills on education and criminal justice and a Bill giving effect to the statute for the International Criminal Court.

Baroness Boothroyd: My Lords, how many constitutional Bills have gone through the House in wash-up in the past 10 years?

Lord Bach: I think that the answer is none, but some other Bills that have gone through wash-up are extremely important and have had a great influence on our national life, not least Bills on education, criminal justice and other matters. I dare say we will discuss this later this afternoon and well into this evening.

Lord Elton: My Lords, can the noble Lord remind me, and probably others, whether it is possible in wash-up to insert new material or change material in a Bill, or is it merely possible to remove those bits which are not agreeable to all parties?

Lord Bach: My Lords, I have said that the procedure is the same as for all Bills. In other words, all Members, if they are so minded, have the right to put down amendments to Bills. The timetable is speeded up considerably. I cannot assist the House much more on this subject.

My noble friend was right: I had almost finished what I had to say. This is a very important Bill; it has been in gestation for some time and many of its provisions and policies have been heavily scrutinised, not least in your Lordships' House, over that time. It is a Bill whose time has come and a Bill which will help us to restore public trust in our constitutional settlement. I commend it to the House. I beg to move.

4.05 pm

Lord Henley: My Lords, the Minister has introduced this Bill with a straight face and has answered all the questions that have been put to him with a straight face. On behalf of this side of the House and possibly the whole House, I congratulate him on that rather difficult task.

The noble Lord has presented the Bill as a grand and sweeping improvement to the way in which this country is governed but in reality, as we know—and as was made clear as he introduced the 13 parts of the Bill—it is nothing of the sort. It is a ragbag collection of proposals and ideas that range from the possibly sensible to the absurd. The noble Lord knows this and most of us in the House know this.

If the Government had really been serious about presenting this Bill to us in a fit state to be approved, they could have stepped up their efforts to do so. The noble Lord told us that there have been 18 consultations. The Government have been producing White Papers, Green Papers and drafts for several years. The present Bill, however, was quite different when it was first presented in another place in July last year. It was given its Second Reading in another place some time later, on 20 October. Since then, it has been languishing while the Government use it as a vehicle for whatever the latest idea happens to be and whatever other Bills happen to come before it in the queue, despite its alleged importance as a constitutional Bill.

The noble Lord will, I imagine, have read the quite damning report produced by your Lordships' Constitution Committee, which takes great exception to the way in which the Government have behaved. I could, if I wanted, read out great chunks of that committee's report, but no doubt the noble Lord will be aware of them, as will the rest of the House.

If the Government need to make delay after delay in order to insert amendments made in desperate response to bad headlines and unfavourable opinion polls, that is their prerogative. But to insert amendments on the voting system for Parliament, on the tax status of parliamentarians and on changes to the Parliamentary Standards Act—enacted only last year—late in the Bill's stages in another place so that little debate could take place, to bring the Bill to your Lordships' House only a few days before what we all know will be the announcement that we are about to have an election, in the full knowledge that there will be no time for scrutiny, and yet still to expect your Lordships' House to embrace it is wishful thinking indeed. We all know that there is no time available for a Committee stage for this Bill, almost a third of whose clauses were not debated in another place. I repeat: almost a third of its clauses were not debated in another place, yet the noble Lord is suggesting that we proceed with a Bill of this sort—a constitutional Bill—in the wash-up.

Having said that, I shall be kind. The whole of the Bill is not junk. There are clauses—indeed, whole parts of the Bill—which are largely unobjectionable, but they still need the scrutiny that this House needs to give to all Bills that come before it. That is what we do. Part 1, for example, places the Civil Service on a statutory footing; it could—indeed, it probably should—have been given a long overdue discrete Civil Service Bill. That is something for which we and many others in this House have been asking for many years.

We would welcome greater control over the armies of special advisers, for example, but, as the noble Lord is fully aware, a code already exists. How, in practical terms, will anything be different except, as my right honourable friend Mr Cameron has said, that their numbers would be reduced? Will the Government's proposals be anything other than cosmetic? Why do the proposals relating to the Civil Service not include quangos and other quasi-governmental bodies? We all know that such bodies cost the Exchequer some £43 billion a year. Where are the controls? Where is the code relating to service in such bodies? These are areas that this House must probe in Committee, but they will, alas, probably have to be dealt with at a later date in another Parliament.

Part 1 is perhaps the most important part of the Bill, but it is important that we seek the opportunity to enhance it and to embrace all the government bodies and to get the controls right. However, we must debate that fully, and in Committee; we do not want government or legislation simply by decree, which is what the noble Lord is seeking from us.

On another part of the Bill, we will consider carefully, again in Committee—if the Government allow us the proper Committee stage that we deserve—the provisions relating to the ratification of treaties. We on this side of the House have favoured, in principle, the idea of greater parliamentary control, although it is important not to forget the flexibility that is inherent in the application of the royal prerogative in some circumstances. Again, we need to debate that. However, as the Minister also made clear in his introduction, it is not clear how far either House has authority under these proposals ultimately to prevent a Government from signing a treaty if they are determined to do so. The role of this House seems limited. There is a particular lacuna on European treaties. After the betrayal of the promise made at the last election by the Government—and by the Liberal Democrats—to give the British people a say on the draft treaty before it was ratified, it is abundantly clear, not least after the stitch-up behind

closed doors with the EU president and the so-called high representative, that it is not enough to rely on the systems set out here.

The Government are offering another referendum. At a late stage in another place, as the Minister said, they found themselves pushing for one on reform—if I might put it in those terms—of the voting system to abolish first past the post and introduce the alternative vote system. I understand that that would have been one sure-fire method of voting that would have increased the Labour majority in the 1997 election yet further. The Prime Minister has been entirely unenthusiastic about any such change until—surprise, surprise—an election looms that he cannot duck and obviously feels that he cannot win.

Clearly, this has nothing to do with electoral fairness and everything to do with flashing a bit of ankle at the Liberal Democrats, who are leaning forward in eager anticipation even at the very mention of proportional representation—except that we know that this is not proportional representation but the alternative vote. It is pretty clear that many of the Minister's noble friends are no more enthusiastic than we are at changing to a system that will embed in all future Governments a party that has been unable to win a national election on the strength of its own policies since the days of the Ottoman Empire. I think that we know a gimmick when we see one.

I turn to Part 5—to relieve the noble Lord, let me say that I am not going to go through all 13 parts of the Bill, as he kindly did. I do not have time for all 13 parts; my noble friend will deal with some of them at the end. Part 5 seeks to make further changes to membership of your Lordships' House. We were given to understand in the gracious Speech at the beginning of this somewhat truncated Session—we do not know how long it will last, but it cannot last that much longer—that a Bill would be published providing for general reform of the House of Lords. That would have been the appropriate way to legislate. Instead, we have a risible effort in Part 5, largely pilfered from the ideas put forward by the noble Lord, Lord Steel, who I imagine is here because, to his dismay, they are not pilfered fully enough.

The Government have been dithering over Lords reform for some time, but to bring forward the clauses in Part 5, which would create a progressively fully appointed House, is, as the noble Lord is fully aware, in breach of that undertaking made by a privy counsellor, the noble and learned Lord, Lord Irvine of Lairg, to this House on 30 March 1999 and accepted by both Houses as the basis of the passage of the 1999 Act as stage 1 reform. It is also directly contrary to the Government's pretence in their proposed draft Bill that they want an elected not an appointed House. It is a move away from that objective with no guarantee that reform will take place. Moreover, it would remove from the House a group of Peers with no interest in preserving the life peerage as an exclusive method of coming to this House. The proposal is confused; it is dishonourable in that it breaches that undertaking made a privy counsellor; and, except in the context of the perfectly legitimate point of view of many of your Lordships that an all-appointed House is the right stage 2, it is entirely illogical. It makes reform less rather than more likely. For those reasons we do not support it.

The suspension and removal of Peers can, again, be dealt with effectively either in the context of a wider reform Bill or in any legislation that may follow relating to discipline and behaviour after the reports by the noble and right reverend Lord, Lord Eames, and the SSRB. We do not oppose such a provision; indeed, my noble friend Lord Strathclyde was one of the first to remind the House of the powers of suspension, which were used effectively in the case of the accusations against the four Peers earlier this year. In the most serious cases, suspension can be renewed at the beginning of each Parliament and, while we agree that there should be a clear power of permanent exclusion, it is not a matter of such urgency as to require action in the next few weeks.

I move to other provisions, which I confess perplex me a lot, as they appear to have been created for the convenience of the Lord President of the Council and all his other titles—the noble Lord, Lord Mandelson. I refer to Clauses 56 and 57. We on these Benches see little attraction in changing the law to allow this House to be a staging post to a career in the Commons, or to allow defeated Ministers to sit out periods of opposition in comfort here before disclaiming to fight the next election. This House has its role in the constitution, which should not be to provide a warm rest for MPs while they scour the country for another seat. Let us use the existing leave of absence scheme to enable those Peers who do not wish to take part or to be lobbied to absent themselves. We can see no urgency for that proposal except to satisfy the unsatisfied ambitions of the Lord President of the Council and all his other titles. That does not seem to me, or to many other noble Lords, a sufficient basis on which to make such a constitutional reform. On a lighter note, I suggest that, if we did make such a change, there might at least be, as in life sentences for murder, the possibility of recall in certain circumstances and we could bring the noble Lord back if he misbehaved.

I have touched on several areas of concern. There are many more in this Christmas tree of a Bill which my noble friend will try to address when she winds up in the time available for a major constitutional Bill that has attracted 43 speakers on one of the last days of a dying Parliament. My noble friend will do what she can, but I do not think that she will be able to satisfy all the questions that need to be asked. I am not sure that the Government will be able to do that either, but perhaps they can when the Bill reaches its Committee stage, if it ever does. I end by repeating what I think is the general feeling throughout the House: this is not the way to reform the constitution; nor is the time right; nor can this House—I stress this House—perform its proper function of scrutinising a Bill of this sort that is brought to us as this Parliament dies.

4.19 pm

Lord McNally: My Lords, our debate takes place against the background of one of the most devastating reports I have read as a commentary on a piece of legislation. As the noble Lord, Lord Henley, indicated, the 11th report of this House's Select Committee on

[LORD MCNALLY]

the Constitution is the most damning indictment of the Government's failures in relation to constitutional reform.

I know that the noble Lord, Lord Bach, and other noble Lords opposite do not like to be reminded that the sure-footedness shown in the first term of this Labour Government owed much to the groundwork done pre-1997 by the joint Lib-Lab committee which drew up the blueprint for constitutional reform under the joint chairmanship of my noble friend Lord Maclennan and the late Robin Cook. However, that view is endorsed by the editorial in last week's *New Statesman*, which opined that continuing Lib Dem input into the constitutional programme of institutional reform would have ensured that,

"constitutional reform would have been thoroughgoing rather than half-baked".

So it would have been. We would not have tolerated the shelving of the voting reform proposed by the Jenkins commission; we would not have bungled the attempts at English devolution; and we would not have mismanaged the changes to the responsibilities of the Lord Chancellor and the establishment of the Supreme Court. On Lords reform, we would not have tolerated a policy of going round in ever decreasing circles of consultations, inquiries, White Papers and cross-party discussions. Now, after a decade of obfuscation, dithering and delay, the Government bring forward a Bill with more deathbed conversions than the last act of "Hamlet".

This brings me back to the findings of the Select Committee—findings which, in most cases, would have resulted in ministerial resignations, rather than the brass neck of trying to bring forward the Bill. Let me quote—since the noble Lord, Lord Henley, did not—one of its many critical findings. It states very bluntly that,

"the Government's management of the Bill",

means,

"that neither House of Parliament will be able to scrutinise the Bill as thoroughly as is appropriate for measures of constitutional reform".

That leaves the House with a dilemma. Are there enough good things in the Bill which are worth saving in wash-up? If so, are the Government willing to tell us what they are? My view is that many parts of the Bill have cross-party support, and lack of detailed scrutiny should not be a deciding factor where the measures proposed have had years— sometimes decades, sometimes a century and more—of scrutiny and debate.

As can be seen from the speakers list today, in spite of the Select Committee's devastating indictment of the Government's Bill, we intend to give the Bill as thorough an examination as possible at Second Reading. Colleagues expert in specific areas will deal with those matters in detail. I will restrict myself to observations on just three points. On reform of the Civil Service, I refer to one of my favourite quotes of the noble Lord, Lord Sheldon, who said that the two great gifts we received from the 20th century to the 21st are the BBC and our Civil Service. We on these Benches will continue to defend both. We take pride that the reforms on which the integrity and reputation of our Civil Service are based are the great Northcote-Trevelyan reforms, enacted by a Liberal Government. However, we regret that it has taken 140 years to bring forward legislation to underpin those reforms. We regret, too, that the proposals before us lack a statutory basis for the *Ministerial Code* and that the opportunity is not taken to strengthen the independence of the Civil Service Commission.

I turn now to the matter of Lords reform. We would not be in the sorry mess we are in today regarding reform if the Government had adopted and given time and support to the Bills initiated by my noble friends Lord Steel, Lord Oakeshott and Lord Avebury. The proposals in the Bill are not a testimony to the radicalism of Mr Jack Straw, but an indictment of his dithering and delay over these past 10 years. Let me admit now that I regret that we did not grasp with both hands the findings of the Wakeham royal commission. The proposals seemed modest at the time, but if they had been adopted, I believe that they would have set in train a process which would have continued throughout the decade and beyond. As it is, we have too little, too late from Mr Straw. If this last-minute hotchpotch of a Bill is seen as a cunning plan by Mr Straw to give Labour candidates some credibility on the doorstep in terms of reform of our system of governance, he is wrong. What he has produced is a checklist of his own failures. The message from this Bill is that if you want to clean up politics—if you want changes that are thoroughgoing, rather than half-baked—vote Liberal Democrat. We, rather than those who are driven to it by expediency, believe in reform.

Let me make a similar point to the Conservatives. If you think that you would be able to leave Lords reform to a Cameron third term, you are living in cloud-cuckoo-land. This House is already damaged goods. The idea that you can increase its size to more than 800, based on appointment for life by patronage and appointment, gravely underestimates public opinion on the matter.

A few weeks ago, I suggested in a debate initiated by the noble Lord, Lord Willoughby de Broke, that his grandfather, the leader of the last-ditchers, quit the field on 10 August 1910 because of the imminence of the grouse season. The noble Lord kindly sent me a copy of his grandfather's memoirs, which makes it clear that the last-ditchers were defeated not because of the grouse but because the Bishops ratted on their promise of support. There is a contemporary relevance to this, because the noble Lord, Lord Willoughby de Broke, made it clear to me that his policy now is for a three-option referendum on Lords reform—the status quo, appointments or elections. So there we have it: the last-ditchers have moved further in the past 100 years than many on the Labour Back Benches.

I have a final and brief word on reform of the voting system. Like the Electoral Reform Society, we would have preferred a multiple-choice option in any referendum. However, we do not want to make the same mistake that we made over Wakeham and reject the better because we cannot have the best. We will listen carefully to what all sides have to say and give particular weight to the point made by the Select Committee that,

"the consequence of the Government tabling so many late amendments to the Bill is that the parliamentary consideration

given in both Houses to the important aspects of constitutional reform which this Bill is likely to effect has been substantially curtailed".

On the other hand, a consultative referendum early in the next Parliament would assist rather than hinder deliberations and would not fall foul of the strictures from the Select Committee that we are producing change without scrutiny.

There will be those who will say that such is the parlous state of our economy that it would be frivolous to devote parliamentary time in the next Parliament to constitutional reform. Liberal Democrats take a contrary view. It is in part because of the deficiencies in our governance that we find ourselves in the state we are in. We can debate whether or not we have a broken society, but there is no doubt that we have a broken and mistrusted political system. That is why, in the coming election, we will be able to make our case for fundamental reform to receptive ears. People know that we have to change our ways.

I will make a final point about timing. The idea that crises squeeze out other measures flies in the face of history. At a time of this country's greatest peril, the wartime coalition produced the Beveridge report and the Butler Education Act. Good government can deal with crisis and carry through reform.

As I said in opening, my colleagues will deploy their considerable expertise on the measures and we will then take our case to the hustings. In the mean time, I leave noble Lords with the last words of the Constitution Committee:

"This is no way to undertake the task of constitutional reform".

4.29 pm

Baroness D'Souza: My Lords, this Bill has several excellent provisions. It seems somewhat parochial to go back to House of Lords reform but that is what I am going to do.

On 28 January 2009, the Secretary of State for Justice, Mr Jack Straw, in evidence to the House of Lords Constitution Committee, said that the Government had been less than enthusiastic about a Private Members' Bill. One can only assume that he was referring to what we call the Steel Bill. He said that if this was confined to specific issues then all would be well and good but if it,

"turned out to be a Christmas tree on which people then hung major proposals for reform, then it would be unmanageable".

The Government have repeatedly asserted that smaller, incremental reforms to the House of Lords were unacceptable because they would delay or even obviate large-scale and fundamental reform. Yet the Bill before us today proposes smaller reforms—most of which I would like to support. In one section at least it is close to the Steel Bill. One wonders what happened to the Government's logic.

The Bill has at last arrived in the House of Lords. As we have heard, it started life in the other place in July last year as a rather ornately decorated Christmas tree which gradually lost its splendour until it became a relatively meagre thing. Then, bit by bit as it wound its way through the other place, it got more baubles and tinsel. In the past six months or so it has inexplicably lost no fewer than 17 clauses but gained, according to the Constitution Committee's report, an additional 39 clauses, many added in Committee and on Report in the other place. What has been retained of House of Lords reforms include the ending of by-elections to replace hereditary Peers, disqualification of Peers found to be guilty of serious crime, provisions to suspend and even expel Members and the resignation of a peerage. However, there is no provision to allow Peers to retire. I feel that is different from resignation from the House. I address that today.

I have spoken before, as have many others, on the need to contain numbers in this Chamber. The Minister has referred to it many times. We are one of the largest second Chambers in the world—certainly the largest in Europe—and likely to get much larger. This does nothing for our image. It is especially difficult to defend with any logic when so many do not attend. The inevitable conclusion is that those who accept peerages now do so for the worst reason: to have a title without committing to public service. This undermines what this House tries to convey through outreach programmes and by its daily work: that we are an increasingly professional body doing a necessary job. Many of us are but some are not. Why must we continue to court criticism by maintaining such an unwieldy number when it is simply not needed? I repeat, why can we not have a dignified retirement process—different from resignation—for those Peers too old, too infirm or even too busy to attend? It might come as a relief to some Peers who either struggle on, feeling it is their public duty, or feel guilt-ridden for not being able to be active. It should not be beyond the resources of this House to work out suitable details and to develop an appropriate form of words or even a ceremony to facilitate dignified retirement.

Other provisions in this section of the Bill would enable a permanent leave of absence. This might be useful in cases where Peers have not attended in many years—I have in mind one Cross-Bencher who has not turned up in 10 years. It could be issued as a non-negotiable request. This would preclude the House having to defend such non-attenders and bring the numbers down. In time, it would convey a serious message: appointment to this House is a privilege but one with responsibilities. If these are not honoured then access to this House is curtailed.

There is no indication in the Bill that the House of Lords Appointments Commission might become a statutory body accountable to Parliament. The Public Administration Select Committee concluded in its January 2009 response to the government White Paper that the House of Lords Appointments Committee could and should take a wider role of determining the balance of parties in the House and arriving at decisions on membership based on longlists supplied by the parties themselves. The independence of HOLAC, it said, could be better guaranteed by it becoming a statutory body, and both these changes could be very easily achieved with immediate effect precisely because the present powers of HOLAC are not set in statute.

It is very difficult to see why these small but important reforms should not be enacted. What possible objections can there be to tidying ourselves up and presenting a leaner image to the outside world? The alternative

[Baroness D'Souza]
could just be a House that becomes increasingly out of touch with taxpayers' perceptions, even risking real public demand to abolish this House. I am not sure that we have the luxury to cast these long-awaited reforms aside, and gradual but steady change is now possible. That said, we may be expending our energies to no effect. This Bill will go to wash-up—of that I think we are pretty sure—and who knows what, if anything, will survive that harsh haggling? I hope that much of the Bill does survive. It would be even better if additional reforms, such as the one that I have outlined, were to be included but I suspect that that is a very vain hope.

4.35 pm

The Lord Bishop of Durham: My Lords, at the moment this debate is, I think, about sending signals, not fine-tuning an actual law. I am grateful to the noble Lord, Lord Bach, for his clear introduction. I am not sure that the Bill is a Christmas tree. A Christmas tree has a clear shape and a warm attractiveness but I do not really feel that about this Bill. However, that is no reason why we should not state clearly where the problems and principles lie, and clarify one or two particular matters. I have to say to the noble Lord, Lord McNally—mindful that he has made me carry the can for the failures of my predecessors 94 years ago—that the last scene of "Hamlet" has a great many deathbeds but no actual conversions. Perhaps that is what he was hinting at.

The problem is far more widespread than the Bill acknowledges. Tackling it in this rushed and piecemeal way fully deserves the scathing treatment it received from your Lordships' own Select Committee in the report which has already been referred to twice. As it says:

"This is no way to undertake the task of constitutional reform".

For the past few years, it has been easy to distract attention from other pressing issues by saying, "Let's reform the constitution, and let's do something with the Lords". That plays well in parts of the press, and there are so-called think tanks which belie their own designation by trundling along for the ride. However, this is a recipe for shallow, short-term thinking. If you translate it into statute, it will produce a muddled and messy public life, because a muddle and a mess is what we already have. The scandals of this past year—the unprecedented crisis of which the noble Lord, Lord Bach, spoke—are only the tip of the iceberg. Our entire constitution has been creaking under the strain of old methods addressing new challenges for at least a generation. Ever since the massive majorities of Margaret Thatcher, we have had Governments who could, and did, ignore parliamentary process, with a tiny group of people—sometimes only one—taking decisions which no one dared to oppose and which were rammed through Parliament without proper debate.

A generation ago, Lord Hailsham spoke of the need to challenge and frustrate the tyranny of the elective dictatorship. That was echoed at a meeting here in Westminster last month by Professor Sir John Baker of Cambridge, who spoke of the "absolute monarchy" of the Prime Minister—not the present Prime Minister particularly but any Prime Minister. In calling for an independent constitutional convention, Sir John warned of the danger of constitutional reform being driven by the Government of the day—any Government of the day—who would inevitably tilt new constitutional proposals to suit their own party agendas. The point of a constitution, after all, is to set up a framework within which Governments can govern but can also be held to account.

However, constitutional reform has proceeded ad hoc, and at the whim of the Government whom the constitution is there to restrain, without anyone thinking through the larger issues involved. A thousand unintended consequences lurk in the wings. For instance, to cite Professor Baker again, a wholly elected House of Lords would not only rob Parliament of one of its present strengths—the presence of genuine experts—but throw all the weight for scrutiny on to the newly established Supreme Court.

In case anyone supposes that I am coming round to a covert plea for the continuation of Bishops in your Lordships' House, I shall make my own position clear. I would rather have a wholly appointed House of Lords from which Bishops were excluded than a 95 per cent elected House in which Bishops were still just included. Speaking precisely as a Bishop who is concerned for the health of our nation, I would rather have a second Chamber that can do its job without me, if need be, than one which cannot do its job even with me, if you see what I mean. Of course, I would rather have the best of both, and of course Bishops could still be appointed, as have been the noble Lord, Lord Sacks, and the Methodist Peer, the noble Lord, Lord Griffiths.

So what about an elected House? We have some excellent MPs, but many observers think that to fill another Chamber with more of the same, whipped to the will of the Government, would be worse than pointless. I am, in other words, much more concerned with the ability of the Lords to scrutinise legislation and hold the Commons and the Government to account than I am with the official place of Bishops within that House, although I believe that matters too.

The point is that our fine-tuned constitution is a complex ecosystem, and you can not play about with it without considerable risk. If we are to make changes, elected politicians are not the people to make them. The Canadian provinces of British Columbia and Ontario chose members of the public by lot for their conventions on electoral reform. They did a good job. We could do worse. Some think we already have.

Our present confusions have contributed strongly to what I can only call the decline of democracy in the West and in our country. We vote in decreasing numbers; I bet that where I live in the north-east there will be a record low turnout in May, as traditional Labour voters stay away in droves. That is what I am hearing. This breeds a crisis of legitimacy: even if the next Government have a clear parliamentary majority, they are unlikely to have been voted for by more than 35 per cent of the electorate. Faced with that, people who suppose that we can just rumble on and hope for the best, that we can tinker with this or that aspect of public life, that our present elected politicians are just the people to reorganise our constitution, that having

a second Chamber consisting of more people voted for by one-third of the public will solve all our ills, or that any of the above will constitute genuine democracy, legitimate government and proper accountability are putting their heads in the sand.

The idea that voting every five years constitutes proper accountability is laughable. Most seats in this country remain pretty safe. We need the Government to be held to account by the Commons and the Commons to be held to account by the people on the one hand and by the Lords on the other. Only the last of those is working at the moment, and a cynic might say that the Government are now trying to stop it.

What about legitimacy? I find it depressing that speakers in your Lordship's House refer to "the elected House" as though we are somehow ashamed of our own less than fully legitimate standing. We are here according to our ancient constitution, modified as it has been over the years, to do a job that needs doing, which is to rescue the elected House from the tyranny of elective dictatorship and the rushing of important debates, such as this. The idea that voting, and only voting, confers legitimacy is a simplistic modernist slogan which we should resist.

When faced with these large issues, the smaller ones in the Bill look like window-dressing. The sideswipe against the 92 remaining hereditaries looks like a desperate attempt to achieve one last old Labour objective before new Labour runs out of steam. It breaks the undertaking that was given. The public perception of why your Lordships' House is so full is because over the past 10 years the Government have sent more people to this Chamber than other Governments in the same timeframe, unless I am much mistaken. The noises off that were made about the Act of Settlement are just that: noises off. Since the unsuccessful amendment was proposed by a Member who believes in neither God nor the monarchy, his plea for the sovereign's religious liberty rings a little hollow. Questions have also been raised about the disciplinary process for those who occupy these Benches. I assure the House that the reasons why there might be a different system for Bishops are because, technically, we are not Peers and because we have our own internal disciplinary system.

The one remaining point of great interest to many in the church concerns the possibility of alternative voting systems. Seven years ago, the General Synod of the Church of England voted by a massive majority to advocate proportional representation by single transferable vote. Many of my fellow Bishops have campaigned for this. I am myself very open to it. The discussion needs to be had. However, there is an oddity about holding a referendum on such a topic. Why will there be only two options? Will it be a first past the post referendum? If so, will those who do not like first past the post be acting against their conscience if they vote in the referendum? There is something curiously twisted and peculiar about that.

I end by re-emphasising the two basic points. First, any and all constitutional reforms should be undertaken only in the light of a full top-to-bottom constitutional review. Secondly, elected politicians are the last people who ought to be in charge of such a review, whether or not they are in washing-up mode. If there is an argument to be made for Bishops remaining in your Lordships' House it might be that, as well as having deep and constantly refreshed roots in actual local communities, we have the freedom to think outside the dominant secularist paradigm and say clearly what lots of other people are thinking.

4.45 pm

Lord Howarth of Newport: My Lords, this grandly entitled Constitutional Reform and Governance Bill might perhaps better have been entitled the Constitutional (Miscellaneous Provisions) Bill. It deals with too many topics and has nearly doubled in size since it was introduced into the House of Commons. However, if the pudding lacks a theme we can, all the same, put in our fingers and pull out some plums. It is to the credit of the Government that, 150 years after the Northcote-Trevelyan report, they are legislating to place the Civil Service on a statutory footing. Indeed, it may make the Lord Chancellor seem to be acting in indecent haste if, as my noble friend promised, he very shortly brings forward proposals for an elected House after a mere 100 years since it was first proposed.

I trust that it is not too late to rescue the integrity of the Civil Service and the public service ethos. We have had 30 years in which Permanent Secretaries were to be "one of us"; in which Ministers were told that they should get their hands on management and delivery of policy; in which we have had wholesale marketisation of public services. We now have the antics of the Public and Commercial Services Union. And we have had the proliferation of special advisers.

A statutory code of practice for special advisers is long overdue. We can understand that a Minister might want a special adviser—someone to let his hair down with, to do the party stuff—but there are many too many of them. They get between Ministers and their civil servants; they get between Secretaries of State and their junior Ministers. They are neither elected nor appointed through a proper Civil Service process—indeed, under the legislation, they would be specifically excluded from the requirement of appointment on merit—and yet they exercise very considerable power, particularly as a cabal across Whitehall. They inject party politics and interest into too many decisions—that has been true of Governments of both parties—and they spin obsessively, intensifying the unhealthy symbiosis of Ministers and the media. We need a code of conduct, but we also need a strict limit on the numbers of special advisers. I suggest that one per department would be enough.

I support a referendum on the voting system. It is right to seek the judgment and authority of the people if the rules by which Members of Parliament are elected are to be changed. It is also right to improve the regulation of referendums. It seems reasonable to suppose that the widespread disaffection with our politics and poor turnout at elections have something to do with people's perception that their votes are wasted. Now, with campaigning increasingly targeted on a small handful of swing voters and the decline of door-to-door canvassing, I suspect that that perception is deepening. Whether or not the use of social networking techniques in the forthcoming election will change that, I do not know.

[Lord Howarth of Newport]

A merit of the alternative vote system would be that if people felt that their second, third or fourth preference might affect the outcome they would be encouraged to vote. As has been noted, it also has the virtue that it keeps the single-Member constituency. I am afraid that it would not necessarily follow from that that modern Members of Parliament will remember that their first duty is as parliamentarians in the House of Commons. The single-Member constituency is a particularly important influence on Ministers, requiring them, as it does, to touch base in the lives of the people that they govern. AV avoids the anti-democratic feature of proportional representation—that it provides disproportionate power to a minority of Members of Parliament. Would it have unforeseen consequences? Almost certainly—including that voters would find themselves electing a person that none of them actually wanted. However, this is worth a proper debate and it is right to give the people the choice about it. Of course, if at the forthcoming general election we have a high turn-out and a convincing result, the people may decide to keep first past the post.

The establishment of the Independent Parliamentary Standards Authority was a terrible admission by those elected to govern us that they cannot be trusted to govern themselves. Members of Parliament were bounced into this by party leaders in a panic, and reached the conclusion that they did in a fit of guilt and depression. If ever a piece of legislation was hasty and botched, it was the Parliamentary Standards Act 2009. This legislation on the IPSA is hasty; will it be equally botched? But is it for us to save the House of Commons from themselves?

I insist that the huge majority of Members of Parliament are motivated by the public good. That, of course, is the opposite impression to that created by the media. The journalists were right to expose abuse, but they were wrong to binge on destroying respect for Members of Parliament, and they have wrought deep damage to our political culture. Both Houses should punish abusers and reform their systems, but Parliament should not lose its nerve. I very much hope that this House will have the self-respect and self-confidence to retain responsibility for its own affairs.

I support the reforms to the House of Lords proposed in the Bill, which are based on the work of the noble Lords, Lord Norton of Louth, and Lord Steel of Aikwood, and to which some of us have also made a modest contribution. In modern Britain there can be no justification for the hereditary principle for membership of the legislature. But what is proposed in the Bill is not the expulsion of the hereditaries; it is a much more civilised proposal—if the work of the grim reaper can be called civilised.

I agree with the proposals on discipline—for suspension and expulsion—and with the proposal that Members of Parliament and Peers should be deemed "ordinarily resident and domiciled" in the UK for their tax status. I agree with the noble Baroness, Lady D'Souza, that the retirement provisions are urgent. This House is bursting at the seams and it will always need to welcome new blood. I support the amendment in the name of the noble Lord, Lord Steel, regretting the omission in the Bill of a provision for a statutory appointments commission. If this House is to continue to be appointed it should not be on the basis of prerogative or prime ministerial patronage, but on the basis of respectably constituted authority with its independence underpinned statutorily.

These proposals for reform of your Lordships' House have been extensively debated in this House and I believe that they enjoy the support of a large majority of your Lordships. There would not be much point in introducing these measures if an ill judged and bitterly controversial proposal to create an elected second Chamber in place of your Lordships' House were to pass. However, I do not think that such a proposal, while it may or may not be a useful electioneering gesture, will stand up to scrutiny or pass in due course.

Will the provisions for audited public expenditure strengthen the Public Accounts Committee of the House of Commons? The answer is uncertain, and it is one illustration of the need for close examination of the measures in the Bill. The limitation of that admirable committee is that it looks at matters of public expenditure only after the event, after the unsatisfactory event when something has gone wrong. It is the unique responsibility of the House of Commons to grant or withhold supply. Select Committees of the House of Commons should invigilate departmental spending and performance. Will the new Select Committees in a new House of Commons, elected after a new fashion, take that responsibility more seriously? I am not confident that they will, but if better information is available through more transparent financial reporting they will have less excuse for giving the Government an easy ride.

There are good plums in the Bill. It deals with major issues, but we are, as has been said, in a dilemma. The Select Committee of your Lordships' House has provided us with a most useful history of the legislation to date and a description of the process which has been unsatisfactory in important respects. It is the duty of your Lordships' House always to be sceptical about proposals for constitutional reform—not to be prejudiced against them, but to examine them rigorously. There is an all-too-fashionable illusion that constitutional reform will cure the malaise of our politics and our governance. No mechanisms or institutional tricks will ensure a flourishing democracy. For that, we need well judged policies and courageous and inspiring leadership.

We who are parliamentarians hold the constitution in trust. It is not the plaything of think tanks or a consolation prize for Ministers who dart from one brainwave to another and one press briefing to another like March hares. Constitutional change should not be proposed casually, enthusiastically, on a basis of checklists or opportunistically. It should not be considered hastily or superficially but on the basis of thorough and impartial thought. The British constitution of course changes and develops in response to experience and to demonstrable practical need, but constitutional change needs to be absorbed and tested phase by phase.

We are privileged to be Peers for life. In the field of constitutional reform, we have a particular responsibility to lay aside all prejudices and partial affections, to safeguard the spirit of the constitution and to advise when proposals are not thought through and fail to

reflect the true interests of the democratic nations of the United Kingdom. I very much regret that Commons consideration of substantial parts of the Bill has been incomplete, notably on the Civil Service, referendums and ratification of treaties, and that the Government have not managed this legislation to allow your Lordships' House in Committee to fulfil its responsibility. I disagree very much on this with the noble Lord, Lord McNally. I do not think that, however much I personally may favour some of the measures in the Bill, its provisions should be waved through in a pre-election wash-up and a last-minute set of deals between the Front Benches.

4.56 pm

Lord Howe of Aberavon: My Lords, I endorse immediately the closing sentence of the noble Lord, Lord Howarth. The question of wash-up or not has come up a number of times. It is inconceivable that legislation in this state should be dealt with by wash-up.

It is ironic to reflect that the Lord Chancellor, opening the debate on the Bill in the other place, said:

"In 1997, the Government embarked upon an unprecedented programme of constitutional reform".—[*Official Report*, Commons, 20/10/09; col. 799.]

If ever a sentence was misleading, that was it. It suggested a calm consideration, now 12 years ago, with the agenda having been quietly laid out. One has only to put the sentence alongside a remark, already quoted, of the Constitution Committee of this House:

"This is no way to undertake the task of constitutional reform".

On that much, there must surely be total agreement. If ever there was something that did not need to be washed and that would be damaged severely if it went through the wash-up, it would be a Bill of this kind.

How should one tackle these proposals? We have heard a number of suggestions put forward by colleagues already. Nobody here so far, I think, has said, "Well, isn't it time we had a really complete examination of everything?". Some think tanks have already said that it is clear that we need a written constitution. It is presented as somewhere where we could resolve all the difficulties, knit them all together and at last solve everything with a clean, clear written constitution. I suggest that anyone advocating that course should have a quick word with the noble Lord, Lord Kerr of Kinlochard, who spent some of the best years of his life confronted by the attempt to establish a constitution of the European Union. I had a similar, but much more humble, experience together with the noble Baroness, Lady Williams. We were both on the advisory council of the Supreme Rada of Ukraine when it had disintegrated and been reborn. We were seeking to advise it on how to create its constitution. We had a free hand, because there was nothing to obstruct us. It had not had such a thing, or, if it had, we did not know anything about it. Everyone who has attempted to create a constitution in that way is faltering and barking up the wrong tree.

The question is better answered by saying that these matters must be considered step by step, although not necessarily one by one. If we look at the history of the past 20 years, we see that some of the important steps taken have created a new arrangement that has turned out to be right. They were not taken all at the same time. For example, the invention of life Peers opened a new door for the structure of this House. The removal of a large number of hereditary Peers, with the arrival of the present Government, was another. Along the way we have been able to address some things gradually in that form.

It is worth noticing that some of the most sensible changes—not just in this constitutional area, but elsewhere as well—have been made and can be made by convention. Sometimes we are driven to seek specific provisions to define situations precisely and closely. The Joint Committee under the chairmanship of the noble Lord, Lord Cunningham, addressed the conventions regulating relations between the two Houses in great detail and set them out in clear form. It also addressed the question of whether they should be codified and put into statutory form. That was rejected. Conventions have a value and should not be scorned.

In two areas that have been touched on, conventions have a real part to play. One is in defining the role and management of the office of Attorney-General; the other is in handling the office of Lord Chancellor. Both those institutions are best handled not by seeking to codify how they behave, either separately or in relation to each other. I will come back to that in a second.

We seem to be permanently dogged by the question of nomination or election—one or the other, or both. If one looks at the Bill as it now stands, there is a curious contrast. In the part dealing with this House, there are five separate provisions about the way in which people may leave the House but only one about their arrival in the House, which is an odd structure. What is missing is the proposal made by the noble Lord, Lord Steel. Clearly, if the House is to have any appointed Members—and that would seem to be, if not universally accepted, very widely accepted—we need an institution of that kind. The question still remains. If we accept the Steel skeleton as it is embodied in the Bill and if we include the amendment that he proposes, that is a sensible way to go. However, we are still left to look at this recurrent, emotional enthusiasm that lies behind the concept of an elected second Chamber.

The experience of the last few years shows the number of pitfalls in the management of our electoral system. The collapse of confidence in the elected House—not entirely excluding us—shows that election is not regarded by many people as the best and most secure way of creating Members of this House. It is interesting to look back at the comments made by bodies that looked at this question carefully. A number of colleagues have spoken sympathetically about the Wakeham commission report, which certainly deserves commendation and re-examination. On the election question, it made this observation. Elections, it said,

"seldom deliver results which are gender-balanced, or provide appropriate representation for ethnic, religious or other minorities".

Moreover, they are,

"unlikely to produce members who are able to speak directly for the voluntary sector, the professions, cultural and sporting interests and a whole range of other aspects of society".

The truth of that is scarcely arguable; it comes from a detached and objective scrutiny body. Alongside that, however, the Public Administration Committee of the

[Lord Howe of Aberavon]

other place, in its 11th report, reached two conclusions. First, it identified the need,

"to ensure that the dominance of Parliament by the Executive, including the political Party machines, is reduced and not increased".

That is objective 1—reduction, not increase, of the dominance of Parliament by the party machine. Secondly, the second Chamber must be,

"neither rival nor replica, but genuinely complementary to the Commons",

and, therefore, as different as possible. Those two propositions come not from this House but from the other place, describing how this House should be composed. One can start from that premise and seek one way or another. It may take some time to find agreement on this crucial issue. We have been able in a number of contexts to find agreement, but this is a fundamental that needs to be addressed again. Certainly, we need to have the additional provision put forward by the noble Lord, Lord Steel.

What about some of the other provisions, which have not really been addressed so far, on the offices of Lord Chancellor and Attorney-General? Both of those have a most important part to play on the line between law and politics and on the maintenance of mutual confidence between the two. Their existence is not incompatible with the separation of powers and their relationship is shaped by convention. The Attorney-General's office has been considered in the procedures that have taken place so far without any conclusions having yet been reached. I still have some modest memory of my two years as Solicitor-General, serving with the late Peter Rawlinson as Attorney-General, who had a clear insight into the nature of the office.

It is clear that the office of Attorney-General requires to earn the respect of professional and legal institutions and the respect and understanding of the parliamentary institutions. Therefore, that office should go to someone holding merits in both those categories and, ideally, serving in the other place. He or she should certainly be of Cabinet rank, although certainly not—and nobody argues with this—a member of the Cabinet. There has been some collapse in the convention about whether he or she should attend Cabinet. The convention was that he did not go to the Cabinet as a matter of course but went on invitation to discuss particular issues. I occasionally had to argue with some difficulty with the Lord Chancellor, who often had a view of his own. Nevertheless, the Attorney-General was the man of authority invited to present his conclusions on those issues. That is the position that should be maintained. In the past year, we have had the pattern of the Attorney-General sitting in regularly in the Cabinet, which has not been a satisfactory state of affairs. It is the kind of thing that can be resolved by looking at, establishing and maintaining a convention. If we should try to spell that out in statute, taking account of all the nuances, who knows where parliamentary counsel might take us?

The other issue is with the Lord Chancellorship. The disappearance of that office in the form that we knew it has been one of the most serious mistakes made in the progress of rather reckless constitutional amendment. The noble Lord pointed out that the Prime Minister no longer has a role to play in the appointment of judges, which relates to one of the provisions in the Bill. One can understand the welcome for that. One can also understand—and I would certainly endorse—the changes made in the procedures for the appointment of judges at the same time as the office of the Lord Chancellor has disappeared. They have probably become too complicated, but it was right to have the interposition of proper examination of candidates for those appointments. If there is anyone who should have the responsibility for steering them to their destination from time to time, it should be someone with the qualifications of the Lord Chancellor as we all used to know him—a distinguished legal figure but, equally, a distinguished, reputable and respected political figure. If one looks at the names of those who have held the office in recent times, one sees that they have all carried respect, starting with Lord Hailsham, Lord Elwyn-Jones and Lord Havers—one could go through them all. They were people who commanded not just the respect of their profession, but much wider respect as well.

For that office to have been altered by the removal of the obligation to sit upon the Chair in this House, I can well understand. That worked quite well while it was there, but it was not necessary. For the Lord Chancellor to be in a position to preside over the Supreme Court also was open to criticism, even if he did not consider cases that involved the Government in any way at all. It was an institution that worked in that way and played a crucial part in managing potential conflicts between the Executive and the judiciary.

The relationship between the Lord Chancellor and the Lord Chief Justice was well understood and regulated by convention. As soon as that relationship was removed, the poor Lord Chief Justice had immediately to expand his office and the situation changed fundamentally. I would argue that those sorts of institutions could be well governed by reference to convention, along the lines that I have suggested, and that we need to come back, not in a desperate search to cram it all into this dish just waiting to go into the dishwashing machine, but thinking carefully about the way forward. We have not made significant changes, in many respects. Most of the changes in the so-called Steel Bill and many of the changes in the Bill before us need to be considered in an orderly and well considered fashion.

I shall close by referring, although not out of any sense of frivolity, to one curious feature. The legal committee of the Council of Europe addressed itself at some length some years ago to the legitimacy of our constitution—both of the Lord Chancellorship and of the marriage between the Supreme Court and the legislature. It concluded that they were not compatible with the separation of the three principles on the Montesquieu line. It is rather interesting to see the way in which the committee expressed its conclusion. It said that the unusual aspect of the Lord Chancellor's position,

"is due to the specific conditions of the United Kingdom constitutional system, which has evolved over centuries without the beneficial modernisation introduced by the French Revolution, the effects of which were disseminated in the rest of Europe by Enlightenment thinking and the conquests of Napoleon".

One can hardly contemplate a less respectable source of enthusiasm for changing the office of the Lord Chancellor than a reference to Enlightenment thinking and the conquests of Napoleon. Any attempt to remove the office that was motivated by that would be profoundly misguided.

We need a clear definition of the office of Attorney-General. In my judgment, he should be, as he always has been, in the other place. His presence and his familiarity to his colleagues in the other place make him much more likely to be respected, because he will be judged among colleagues in that way. Likewise, the Lord Chancellor, in my judgment, should once again be in this place. I do not visualise that involving any conflict whatsoever, either with the Supreme Court or with the Lord Speaker of this House. A senior legal figure in each place, capable of handling that important frontier between law and politics, seems to me to be something that we ought to cherish.

I am quite clear that the Bill as it stands, although it may contain some very worthy considerations, does not deserve to go through the traditional wash-up process. It should be handled respectfully, allowing us to concentrate on the agenda that still remains, which is to restore the confidence of the people in this House, in politics and in Parliament.

5.15 pm

Amendment to the Motion

Moved by ***Lord Steel of Aikwood***

As an amendment to the Motion that the Bill be now read a second time, at end to insert "but this House regrets the omission from Part 5 of the Bill of a statutory Appointments Commission".

Lord Steel of Aikwood: My Lords, in order to keep my own speech within a tolerable length, I propose to talk only about Part 5 of the Bill, tempted though I am to refer to other matters.

As other noble Lords have already indicated, the Government have adopted three of the four central points of the Bill that I twice presented to this House in the previous two Sessions of Parliament. The point that is missing is the creation of a statutory appointments committee. I am grateful, as I am sure are most noble Lords, to the hardworking Library of the House, and I am grateful for the paper that it produced showing the commitments made by the present Government to reform of the Lords since we last made changes in the 1999 Act. I shall list these so that we know exactly where we have arrived at.

The first reference was in November 1999 in the Queen's Speech, when the Government said that they were committed to further reform and looked forward to the publication of the report of the Royal Commission. In January 2000, the Wakeham commission duly published its report, and I agree with my noble friend Lord McNally that it is a pity that that was never really pursued.

The second reference was in May 2001 in the Labour Party's election manifesto:

"We will put the independent Appointments Commission on a statutory footing".

The third reference came in the Queen's Speech following that election, in June 2001, which said that the Government would,

"introduce legislation to implement the second phase of House of Lords reform".—[*Official Report*, 20/6/01; col. 6.]

The fourth reference was in November that year when the White Paper was published that included the creation of a statutory appointments commission. The fifth reference was in July 2003 when the Government published their response to the Joint Committee on Lords Reform and included a commitment to consult in the autumn on proposals for a revised appointments commission.

The sixth reference was in September 2003 when the Government published a consultation paper that said that they would establish a statutory appointments commission, accountable to Parliament rather than to Ministers. The seventh reference came a little later, in the next government White Paper in February 2007, which referred to,

"a new independent … Appointments Commission, reporting directly to Parliament".

The eighth reference came in December 2007 when the House of Commons Public Administration Select Committee said in its report:

"Our main proposal is for an immediate House of Lords reform measure, clearly defined in scale and scope. Its primary purpose would be to put the independent House of Lords Appointments Commission onto a statutory footing, and empower it to take decisions on the size, balance and composition of the House against agreed and explicit criteria. A mechanism is also needed for peers to resign from the House—or, in some circumstances, to be compelled to leave".

The ninth reference was in July 2008, when another government White Paper was published that included proposals to establish a new independent statutory appointments commission.

So there we have it: nine specific references to Lords reform in over a decade which include a statutory appointments commission. Yet the noble Lord, Lord Bach, with a completely straight face—I wrote down his words; I could not believe them—said that the Government have "kept up the momentum". That is a completely new definition of "momentum" for me.

Suddenly we have the Bill, and all these promises have been dropped. The statutory appointments commission has disappeared. I submit that this is a fatal mistake, for two reasons. First, it is important that the appointments commission should have statutory powers—I look forward to hearing from the noble Lord, Lord Jay, as current chairman of the commission, who will follow me. The fact is that the commission has had to make its own rules as it goes along; they have never been debated or discussed in this House. I do not want to open up a can of worms, but we are all now well aware that undertakings were given to that commission by the noble Lord, Lord Laidlaw, and the noble Lord, Lord Ashcroft, that were simply not followed through. The commission itself has no means of ensuring that undertakings given to it are implemented, and it has no power of redress if they are not. That is a fact.

The second reason why I tabled this amendment is that the timing is all important. I have no doubt that the noble Lord, Lord Bach, in summing up, will tell us that we do not need an appointments commission

[LORD STEEL OF AIKWOOD]
now, because Mr Straw is going to produce not even a draft Bill but sections of a draft Bill, suggesting that this House should be replaced by a wholly elected House. Let us be realistic. We are about to have an election. If the present Government are re-elected, everybody accepts that this will be by a very slender majority. Are we seriously to believe that a Government re-elected with a tiny majority, in the middle of a financial crisis, given its past record of immobility on these minor reforms, are suddenly going to plunge into the creation of an elected Chamber? I simply do not believe it. It is much more likely that the publication of that Bill will simply prove that Mr Straw has caught up with Mr Asquith. That is all that it will show.

If the election produces a Conservative Government, we have already quoted Mr Cameron saying that it is not a priority and telling his MPs that it might be a matter for a third term. The last time we debated this, the noble Lord, Lord Strathclyde, got so agitated during the Committee stage of my Bill that he said he would rush off and see Mr Cameron to see that this could be put right, and that an elected House could be brought forward as a matter of haste. Since then, the noble Lord has maintained a discreet and careful silence on that subject. The fact is that we are not going to get an elected House in the very near future. That is why appointments are going to continue, whether we like it or not, and that is why the appointments commission should be, as promised, put onto a statutory basis. That is all I want to say on that topic.

I turn to the other three issues which appear in the Bill and which I call running repairs. I pleaded, publicly and privately, with Mr Straw for the Government to take over my Bill. If they had done so, we would have had these provisions on the statute book by now. We would have made progress. Unfortunately, they did not. Clauses 54 and 55 deal with the matter of expelling serious lawbreakers, on the simple basis that the House of Commons already does that, and that we cannot accept the principle that lawbreakers should be lawmakers. I do not think that there is any great disagreement in the House that those clauses are therefore desirable.

Clauses 56 and 57 deal with the retirement of Members from the House. This was taken up from my Bill, but unfortunately it was slightly mucked up, because they have introduced into the Bill something which was not in mine, which is the wholly new idea of disclaiming peerages. If they went back to the wording which the noble Lord, Lord Norton, drafted in my Bill, they would find that there is no reference to disclaiming peerages. The noble Lord, Lord Henley, suggested that the provision in the Government's Bill would enable what I call "flipping Houses"; that is, enabling people to move from one to the other. He may be totally unjustified in that accusation, but I beg the noble Lord, Lord Bach, to pay attention to what the noble Lord, Lord Henley, said, and to listen to what Mr Dominic Grieve said in the Commons in the debate on the Bill there. Talking about allowing life Peers to resign, he said:

"There must be a period between resignation from the House of Lords and return or re-embodiment in this Chamber. There should be a period during which that return is not permitted. It is likely that that matter will be returned to in another place. If there is no time, and we get to the wash-up and there have to be discussions about issues in the Bill, that is one that will have to be sorted out to our satisfaction if the Bill is to go on the statute book."—[*Official Report*, Commons, 2/3/10; col. 905.]

I simply plead with the noble Lord, Lord Bach, to pay attention to that, because it is important, for the interests of this House and for the reasons ably described by the noble Lord, Lord McNally, and indeed by the noble Lord, Lord Bach, about the size of the place. We cannot seriously contemplate having over 800 Members, so the right and means to retire from the House is an important provision which should not be lost because of a minor disagreement about the wording in the Bill. I hope that the Government will get this right and pay attention to what the Conservative Party has said.

It is too important to lose that item from the Bill. We must get the numbers down. As we well know, Members have not been able to retire; my noble friend Lord Phillips of Sudbury made an attempt, but the fact that he is still here today shows that he failed. We look forward to what I call his resurrection maiden speech. This really is an important issue, too important to be lost in the wash-up.

The third item from my Bill which is included here is much more controversial—the question of ending the hereditary by-elections. Here I must admit that during the debates on my Bill, I missed one very important point, which I want to dwell on today. The undertaking that was given by the noble and learned Lord the Lord Chancellor in March 1999 referred to the 90 hereditary Peers remaining; it did not refer to the by-elections. The noble and learned Lord, Lord Irvine of Lairg, talked about,

"the interim retention of one in 10 of the hereditary Peers, 75 out of the existing 750, plus 15 hereditary office-holders, until the second stage of House of Lords reform has taken place. The amendment reflects a compromise negotiated between Privy Councillors … and binding in honour on all those who have come to give it their assent".

That has been used frequently to defend the by-elections. The fact is, that was referred to in the Second Reading of the 1999 Bill which did not contain any reference to the by-elections. The noble and learned Lord went on to argue:

"The compromise will enable the elected 75 to participate in our counsels and to vote as the stage two plans are developed and debated".—[*Official Report*, 30/3/99; col. 207.]

Indeed, in the wind-up to that Second Reading debate, my old friend, the late and much lamented Lord Mackay of Ardbrecknish, said that the Conservatives would table later amendments to the Bill to try to improve it, especially concerning arrangements for maintaining the number of excepted hereditary Peers in the House, should the transitional phase endure for longer than expected. That underlines the point that the whole question of the by-elections came later and was not subject to the undertaking given by the then Lord Chancellor which we have quoted so often during debates on my Bill.

When Lord Weatherill was introducing his amendment two months later, he said:

"We did so because we envisaged that the arrangements would be temporary".—[*Official Report,* 11 May 1999; col. 1089.]

Later in that same debate, the Lord Chancellor said something that I want to quote in full because it makes interesting reading. He said during the Committee stage of the Bill:

"The traditional House which will be created as a result of the Bill will be exactly that: transitional and not permanent. The Government are absolutely committed to moving to stage two in the reform process. Press speculation that that may not be so is fanciful and without any foundation at all. The notion that the Government would even contemplate the notion of the Weatherill amendment becoming a permanent settlement, as distinct from a short-term compromise, is fanciful.—[*Official Report*, 11/5/99; col. 1092.]

That was 11 years ago. In the debate on this Bill in the Commons, Mr Straw said that he wanted to correct me for suggesting that this was intended as a temporary measure. I hope that the quotations I have given will sustain my argument that it was intended as a temporary measure and that the by-elections have now, in Jack Straw's own words, become risible and long since outlived their usefulness.

It would be wrong of me to end my quotations without referring to my noble friend Lord Rodgers of Quarry Bank, who is sitting beside me. He was leading the Liberal Democrats at the time and was almost a lone voice on this issue. He said:

"The noble Lord, Lord Weatherill, referred to them as 'temporary provisions'. The noble and learned Lord the Lord Chancellor made it plain today, using strong words, that this would last only through the transitional House and that the transitional House would be brought to an end in the next Parliament. However, if I were a betting man I would lay long odds that if Amendment No. 31is carried"—

that was the by-election amendment—

"there will still be hereditary Peers in this House in 10 years' time and possible for much longer".—[*Official Report*, 11/5/99; cols. 1099-1100.]

How right he was.

In view of all that, we really should rescue what we can of the limited reform proposals, which the House debated so many times, during the wash-up. The by-elections have become ludicrous; they have made the rotten borough of Old Sarum look positively respectable in comparison. It is important that, during this inevitably long debate, Members can express themselves in favour or otherwise of the four items which I have put forward for repair of your Lordships' House. I beg to move.

5.32 pm

Lord Jay of Ewelme: My Lords, there are many aspects of the Bill on which I am tempted to comment but, like the noble Lord, Lord Steel, I shall confine my comments to the provisions relating to the future of your Lordships' House. In that context, I declare an interest as chairman of the House of Lords Appointments Commission. To start with, I very much recognise the force of the arguments expressed by the Constitution Committee about the lack of full discussion of issues of constitutional significance. I merely note that there are, in the Bill, some genuinely important principles and if we were to lose them it would be a great mistake. I therefore wish the wash-up well. I shall comment on two aspects which are within the Bill and one which is not, but which is in the amendment being proposed by the noble Lord, Lord Steel.

My first comment on what is in the Bill relates to the provision for a Peer, whether life or hereditary, to resign from the House. I support that provision. Why? There are at present, as noble Lords have already said, some 700 Peers eligible to sit in your Lordships' House and, often, 400 or more are present. Those figures may of course increase after the election; indeed, I suspect the question is not whether they will increase but by how much. It seems to me that the ability to resign from this House would allow Ministers to leave it once they have fulfilled their ministerial duties and want to take up careers elsewhere. It would allow Members of this House, even if not Ministers, to resign to pursue interests which they judge would not leave them time to play an active role in the House, and allow those who have played an active and highly effective role in this House but who are, for whatever reason, now unable to do so to hand over to others.

I recognise that we do not know the exact impact of any such measure, and that there are other means of reducing the numbers of this House, but I believe that the measure before us would reduce the total number of Members of your Lordships' House and allow some greater room for the appointment of others, whether through the political process or through the Appointments Commission to the Cross Benches. That could in turn broaden the experience and expertise of the House and ensure that it better reflects the diversity of this country.

Secondly, I support the tax provisions in the Bill in so far as they relate to the House of Lords. The two principles which seem to me important are that a Member of Parliament—in whatever House—should pay taxes in the country that he or she is representing, and that the position of each Member of the House should be clear on that. I believe that the provisions in the Bill meet those points.

Finally, I shall comment briefly on a point that is, I regret, not in the Bill but which is the subject of the amendment put forward by the noble Lord, Lord Steel. It is the view of the Appointments Commission that its job in recommending appointments to the Cross Benches and in vetting recommendations by the political parties is of sufficient importance for us as a commission to be accountable to the House itself, and not to the Prime Minister. I was unaware of the nine specific references in the past which the noble Lord, Lord Steel, has given us today, and for which I am extremely grateful.

I have made this point on the Floor of the House, to the Public Administration Select Committee in the other place and, most recently, to the Constitution Committee in your Lordships' House. I have long believed it important that, as chairman of the House of Lords Appointments Commission, I should be accountable to a committee of this House as well as to a committee of the other House, and I am grateful to have been given the opportunity to give evidence the other day to the Constitution Committee.

I support the amendment proposed by the noble Lord, Lord Steel.

5.36 pm

Lord Lea of Crondall: My Lords, first, I thank my noble friend for responding to my earlier question about the precedents for wash-up and the way in

[Lord Lea of Crondall]

which that might work out in the next couple of weeks. I still think that he could say a bit more about the transparencies of its modalities—in other words, is it not in the modernising context necessary to hear a little more about how the wash-up takes place? Does it produce minutes, how does it work and so on? To take the example of hereditary by-elections, I would think it rather outrageous if the matter were not subject to any logical objection in the House. The noble Lord, Lord Steel of Aikwood, to whom I pay full tribute for both his assiduousness and his command of the material, has pointed out that there is no rational case, even though it keeps being mentioned in passing, for opposing the suspension of by-elections.

I support the overall thrust of the Bill with a couple of reservations. The main point that I wish to make in support of the noble Lord, Lord Steel, is that it is not just in the abstract that we want a statutory Appointments Commission. Following directly from what the noble Lord, Lord Jay of Ewelme, said, the Bill lacks coherence because there is no reference to a statutory Appointments Commission. My noble friend mentioned in his opening speech that he wants to reduce the size of the House. There is no way at the moment that anybody has the authority to agree what the number of new entrants to this House should be. Even the committee chaired by the noble Lord, Lord Jay of Ewelme, cannot invent the numbers as it goes along. He will perhaps correct me if I am wrong but that would appear to be the prerogative of the Prime Minister, the other parties and so on. We cannot seriously keep paying lip service to reducing the size of the House. There is an old saying that hypocrisy is the honour paid by vice to virtue. The more we say we want to reduce it the more we know we will do nothing about it. We would need to have some idea of the numbers.

In that connection there is no democratic deficit on the balance of the parties. Taking the 20-year average we have around 210 Labour, 200 Conservative and 75 Liberal Peers, or thereabouts. That is a sort of proportional representation. In what sense is there a democratic deficit? There is a democratic deficit in the way that the parties lack transparency over how people get here, and the way in which the ownership of how people get here—in the Labour Party, for example—leaves something to be desired. The Labour Party is not unique in that. There is an element of something done by the Liberal Democrats which other parties could look to, while having regard to their own constitutional backgrounds and history.

What we cannot do is accept from Mr Jack Straw the idea that we can somehow legitimise the second Chamber by election and then castrate it. If the idea of legitimisation is to give us a certain authority in constitutional form, but we then want to rely on the primacy of the Commons, I repeat that the slogan on which we are going forward is, "Legitimise it and then castrate it". I do not suppose that there would be much support for that hypothesis if it was spelt out in that way, if that is the truth, which I think it is.

The statutory Appointments Commission has been dealt with many times. I have only one point to make in connection with it, just so that there is no misunderstanding with our own Front Bench. The amendment to the Bill of the noble Lord, Lord Steel, moved in Committee on 29 April last year in my name and those of the noble Lords, Lord Steel and Lord Norton of Louth, inserted a clause—adopted unanimously—that set out the procedure to be followed by the commission in respect of party-political nominated Members. The clause stated:

"(1) A political party, having been given an indication by the Commission that it is invited to propose a certain number of new life peers"—

let me call it X—

"shall submit to the Commission a list comprising that number of names.

(2) Provided that the proposed names meet the test of probity, the Commission shall then make these recommendations to the Crown".

We then had an exchange of correspondence with the predecessor of the noble Lord, Lord Bach, namely the noble Lord, Lord Hunt of Kings Heath. He said:

"The proposal of the noble Lord, Lord Steel, embraces a statutory Appointments Commission that would decide which party-political appointments could be made. I have to say that that is entirely unacceptable to the Government".—[*Official Report*, 27/4/09; col. 3.]

I labour this point because no more should we hear the repetition of that deliberate canard. That is most demeaning for Members of this House.

I support the AV proposal. I do not think it will work out quite as the noble Lord, Lord Henley, thinks. The geographical dispersion of the Liberal Democrat vote has changed in the last 50 years. We are, perhaps, looking at a world of the past if we suppose that there will be one result or another. The extra democratic dimension would be self-evident to people in a pub in Burton-on-Trent—namely, that someone has to get 50 per cent. That is game, set and match. I might have my hesitations about the logic if I thought it would damage the Labour Party, but I do not think it would. The proposal should be supported on its merits.

I will say a word on taxation and then conclude. I very much support the general idea but, having regard to my knowledge of the case of my noble friend Lord Grenfell, I am surprised that—to use a cliché—in this day and age European residence is somehow the same as residence in Belize or the Virgin Islands. In the next 20 or 30 years there will be more and more people in the world who may spend part of their year in Dusseldorf or some place. Certainly, this would not work if you lived in Luxembourg, Holland or Belgium. It does not work in the world of industry, or even that of trade unions. My great friend John Monks, the general secretary of the TUC for 10 years, is now general secretary of the European Trade Union Confederation. I imagine that if he came into this House he would, at the same time, leave his job in Brussels. People accumulate commitments around Europe a lot more than they did, and we could ring-fence the European Union in some way in seeing how this would be implemented.

5.45 pm

Lord Denham: My Lords, I am going to limit what I say to Part 5 of the Bill, "The House of Lords", and, of that, only Section 67 which deals with the elected hereditary Peers and their replacement. Having looked at that part of the Bill itself, I then took up the

Explanatory Notes to see what justification was given for the breach of one of the most solemn undertakings given by any Government over my 60 years in Parliament. I looked in vain, but that was hardly surprising. Such a justification does not exist.

When I first heard from my noble friend the then Leader of the Opposition about what was subsequently, though mistakenly, to be called the Weatherill amendment, I had severe doubts as to whether one should on any terms allow a Bill of such constitutional importance through in a hurry, but I subsequently changed my mind, because it would give at least a handful of hereditary Peers some say in what the shape of the House that they and their confreres had all served should be.

In quoting the excerpts from the Second Reading speech of the noble and learned Lord, Lord Irvine of Lairg, I should like to assure him that I and, I think, my noble friends regard his conduct throughout the passage of that Bill, and ever since, as impeccable. We could only wish that his own party had treated him more recently in the manner that he was entitled to expect.

The noble Lord, Lord Steel, is wrong. The deal was a deal in its entirety. To try to pretend otherwise is to deceive himself. He will not deceive others. Let me read those words together with the rest.

The noble and learned Lord, Lord Irvine, said:

"The amendment reflects a compromise negotiated between Privy Councillors on Privy Council terms and binding in honour on all those who have come to give it their assent. Like all compromises it does not give complete satisfaction to anyone. That is the nature of compromise".—[*Official Report*, 30/3/99; col. 207.]

Lord Steel of Aikwood: I think that the noble Lord misunderstood the point I was making. The quotation he gives is quite correct, but it was at the Second Reading of the Bill. The by-elections were not there. They were not part of the undertaking. They were not part of the negotiations.

Lord Denham: My Lords, the negotiations went on throughout the course of the Bill. I was around at the time. I am so sorry; the noble Lord, Lord Steel, may wish to confuse himself like this, but it just simply is not true. This was an honourable meeting between parties to try and work out a way to get the Bill through in the best possible way and in the most reasonable time.

Let me continue:

"Let me attempt to explain its rationale. We have always intended a stage two reform to a reformed upper House. Others questioned our genuineness. Although I know as well as anyone the honesty and firmness of our intention, I was not offended by those who claimed to perceive a risk that removal of the hereditaries might prove to be the only reform to take place. All who have assented to this compromise would justify it in their own ways, but I believe what it comes to is the following … a compromise in these terms would guarantee that stage two would take place, because the Government with their great popular majority and their manifesto pledge would not tolerate 10 per cent. of the hereditary peerage remaining for long. But the 10 per cent. will go only when stage two has taken place. So it is a guarantee that it will take place ... to insist on fulfilling a manifesto pledge by one step, not two, would bring down the curtain unceremoniously on the whole of the hereditary peerage, many of whom, and whose forebears, have given so much to this House and to public life. The compromise will enable the elected 75 to participate in our counsels and to vote as the stage two plans are developed and debated. It will allow those who do not stand, or who are not elected, to depart with dignity, not querulously, and without rancour".—[*Official Report*, 30/3/99; cols 207-8.]

If anyone would suggest that the passage of time can release a Government from such obligations, let me say this: it is not the fault of your Lordships' House that, once the Act was on the statute book, no further effective steps toward stage two of reform took place. It was entirely due to the inaction of the Government and to no one else. It is my belief that once they got rid of the hereditary Peers they lost interest in your Lordships and set their sights on other things such as wrecking the judiciary and bringing another place into the 21st century.

Be that as it may, the Royal Commission, chaired by my noble friend Lord Wakeham, which had been running in parallel with the Bill itself, reported by the end of December 1999. This was to have been followed as soon as may be by a Joint Committee of both Houses of Parliament which was to have provided a sort of committee stage to the Wakeham report. This was put off and put off again until, in September 2001, it was announced by the then Leader of this House, the late Lord Williams of Mostyn, that it would be dropped altogether. This in itself was a breach of an undertaking. I came down overnight from Scotland to remonstrate with Lord Williams. He saw me with his invariable charm and courtesy, and gave me a good three-quarters of an hour but he was adamant. I warned him that the whole idea could go cold and lose momentum if it was dropped then—and how right I was proved to be.

Finally, the Government had no option but to reincarnate the Joint Committee, which reported on 4 February 2003 with the now infamous list of options: all elected; all appointed; 80:20; 20:80; 60:40; 40:60; and 50:50. This had the equally infamous result that Members of another place voted down the whole lot of them. It took that great man Robin Cook, who was Leader of the House at the time, to contribute the panegyric,

"We should go home and sleep on this interesting position. That is the most sensible thing that anyone can say in the circumstances. As the right hon. Gentleman knows, the next stage in the process is for the Joint Committee to consider the votes in both Houses. Heaven help the members of the Committee".—[*Official Report*, Commons, 4/2/03; col. 243.]

I end by repeating just one of the noble and learned Lord's Second Reading sentences again.

"The amendment reflects a compromise negotiated between Privy Councillors on Privy Council terms"—

I hope your Lordships who are privy counsellors will already know but those of your Lordships who are not will realise just exactly what that means—

"and binding in honour on all those who have come to give it their assent".—[*Official Report*, 30/3/99; col. 207.]

At a time when we are all trying to restore the old moral value to Parliament, I think your Lordships would realise that Her Majesty's Government renege on these words at their peril.

5.54 pm

Lord Maclennan of Rogart: My Lords, the Prime Minister recently indicated that he was personally in favour of a written constitution. I am bound to say

[LORD MACLENNAN OF ROGART]
that I think he is right. The arguments for that are greatly strengthened by the piecemeal approach to reform that we have observed over the past 13 years. I was very struck by what the right reverend Prelate said earlier about the mode of making these changes to our system. It is correct that they are not likely to deal with the problem of trust, on which the Minister laid great emphasis in his opening remarks, if they do not include at least a proper dialogue with the public.

In the brief time that I propose to speak, I want to say that I very much regret that issues of constitutional reform have become so divisive between the political parties, between the Houses of Parliament and between Government and Back-Benchers. I refer particularly to the way that the Government have treated the Public Administration Select Committee chaired by Tony Wright, which has produced most thoughtful reports on how change might be made in a progressive fashion. I believe that if we are to have a constitution which is apt to deal with the extreme complexity of government, we have to recognise that it requires deliberation, dialogue and partisan considerations to be vented, certainly, but also to be put firmly in their place and made clear.

It is true that for a long time my party has considered that we in this country cannot hope to improve the quality of government or to increase the delivery of what the public have voted for and expect to see without significant changes in the way that Governments do business. It seems to me that in this Bill the Government have rather lost sight of the purpose of constitutional reform. It is about improving the quality of government and making it more accountable and responsive to the people who make up our democracy.

In a speech with which I sympathised at the beginning of this debate, the Minister, the noble Lord, Lord Bach, emphasised heavily the nature of the circumstances in which we are considering these matters: the loss of trust of the public. It has to be said that I doubt whether bringing forward such measures at this time will of itself contribute to a restoration of trust, and that must be very much regretted. It has obviously been a scramble. When I was appointed to the Joint Committee nearly three years ago to consider the Constitutional Renewal Bill, it never occurred to me that we would have to wait so long to consider in detail in Committees of both this House and another place the most central issues in that Bill relating to the Civil Service. It might have been wise if at that time the Government had recognised the degree of support that there was for that part of the Bill—now Part 1 of this omnibus Bill that we are considering—and had treated it as of sufficient importance, and having gained sufficient consensus, to merit enactment. There are matters before us in this Bill on the Civil Service which are not entirely satisfactory but which I think could easily have been taken out or corrected if there had been a proper opportunity to consider that part of the Bill with deliberation. The Constitution Committee of this House has drawn attention to the report and suggestions of the Public Administration Select Committee on, for example, the powers of the Civil Service Commission. It pointed to the desirability of the Civil Service Commission having a power to investigate matters affecting its role at its discretion. That does not appear in the Bill, and it clearly should.

The Bill provides for the appointment of Civil Service Commissioners on merit, but it does not say anything about promotion, and that is clearly an integral question. It ought to have been spelled out in statute when we are seeking to put the Civil Service on a statutory basis. Another example to which the committee drew attention was the Public Administration Select Committee's proposal that senior appointments from outside the Diplomatic Service should be limited in number to three. That would certainly differentiate us from our friends in the United States. It got great backing and considerable understanding. These are matters that I do not regard as make-or-break in the Civil Service part of the Bill, but they are important and they should have been considered in the regular way.

We have to recognise the disadvantages of doing constitutional reform in such a hurry. I heard the intervention from the former Speaker of another place. She asked whether a constitutional Bill has been handled in this way in the wash-up. I think there ought to be a good deal of the Bill in the wash-up because the Civil Service part of it makes a great deal of sense and there are parts that deal with the crises of the moment that ought to be recognised and enacted. They could be called tidying up operations. For some time, my noble friend Lord Steel has put forward arguments about how this House ought to operate prior to the wholesale composition reform that merit being enacted.

However, I do not think it greatly enhances trust to bring forward at this stage a proposal to have a referendum on the alternative vote. I am in favour of having a referendum, but I do not think this is the right time or the right way to do it. The right time would have been in the early years of this Labour Government, when there was a firm proposal in the manifestos of my party and the Labour Party to have a referendum on an alternative system of voting, which was to be worked on by the committee chaired by the late Lord Jenkins. That report was for a variation on the alternative vote, which would have made it more proportional. A huge opportunity was lost when that recommendation was not put to the people at least 10 years ago.

We are bound to say that Governments in this country tend to reform the constitution in a piecemeal fashion, but the pace of reform has increased under this Government, and I want to pay tribute to them for that. However, we now require serious deliberation on how to express the principles that should underlie our modern democracy and how to deal with the out-of-date prerogative powers not by tinkering with resolutions on the war powers alone but by looking at whether it is satisfactory that the Executive's decisions should be dressed up in this 18th century constitutional garb which is simply unsuitable.

I appeal to the Government through the Minister to recognise that we will have to look at these issues—not just the issues in the Bill but the issues that we all recognise need to be addressed—in a more coherent, deliberative way and involve the public and all parties in the discussion in the full expectation that the principles

that the Prime Minister backed when he published his Green Paper in July 2007 are translated into legislation that delivers what he proposed we need.

6.05 pm

Lord Pannick: In 1993, the noble Lord, Lord Adonis, wrote an excellent book, *Making Aristocracy Work*. It was about the proceedings of this House in the years 1884 to 1914. The book refers to a memorandum written in 1904 by the Earl of Selborne to Cabinet colleagues complaining that proceedings at the end of every Session of Parliament were damaging the reputation of this House. The Earl of Selborne wrote:

"The House of Commons send up in the closing hours of the session a batch of important Bills which the House of Lords has to dispose of post-haste. As a consequence, the proceedings are undignified and the work is badly done. It is not an abuse of language to apply the words 'farce' and 'scandal' to what takes place".

Since 1904, this House has become a professional, expert revising Chamber for draft legislation. We now aim to promote the highest standards of transparency, accountability and scrutiny, and we criticise ourselves, perhaps more than we are criticised by others, when we fail to meet those standards. Indeed, in opening this debate, the Minister emphasised the importance of transparency and accountability. It is therefore extraordinary—I use the word used by the Constitution Committee, of which I am a member—that in relation to this important constitutional Bill the Government should be contemplating the use of a wash-up procedure that is the very antithesis of the high standards of scrutiny, transparency and accountability that we must attain, and which we repeatedly tell ourselves we must attain, if we are to secure the confidence of the people of this country in our proceedings.

I do not impugn the good faith of the usual channels, but "the usual channels" is no more than a euphemism for a complete lack of transparency and accountability. The usual channels are no substitute for discussion and debate on the Floor of this House to examine the content and implications of clauses in a Bill and to consider possible improvements to them. That is true however important or attractive parts of a Bill appear to be.

In opening this debate, the Minister asked, perhaps unwisely, a rhetorical question—why now?—concerning one aspect of the Bill. The answer is surely self-evident: the Government now see constitutional reform as a vote winner, rightly or wrongly, and the need for proper, mature consideration of this Bill's provisions must for them take second place.

One could give many examples in the Bill of provisions that look attractive but need detailed consideration. For example, Part 12, on public records, is relatively uncontroversial, but one sees in Clause 86 that it is linked to Schedule 15, which would amend the Freedom of Information Act to create an exemption for communications by public bodies with the heir to the throne. This raises difficult and important issues. Is it really appropriate that the heir to the throne should be able to write to public bodies, with the purpose and the effect of influencing their decisions, and have such correspondence concealed from the public? If such an exemption is appropriate, it needs to be carefully considered and confined.

It is regrettable that there will be no opportunity to seek to add to the Bill much needed other constitutional reform. If the Bill had come to this House in good time and had had a Committee stage, I had intended—with the support, I know, of many noble and noble and learned Lords—to table an amendment raising the retirement age for all Supreme Court justices from 70 to 75, a reform that has the support of the President of the Supreme Court, the noble and learned Lord, Lord Phillips of Worth Matravers. It is absurd that Supreme Court justices, who inevitably take time to rise up to the highest levels of the judiciary, are required—as in the case of the noble and learned Lord, Lord Collins of Mapesbury, appointed only last year—to retire within two years of appointment. However, such matters will, I am afraid, have to wait for the next Parliament.

I hope that the Minister and the Government will have received and understood the message from all parts of the House in this debate agreeing in substance with the view of your Lordships' Constitution Committee that the Bill is simply not suitable for a wash-up procedure. The irony, of course, is that the Government's treatment of this constitutional reform Bill as a political weapon—because that is what it is—to be manipulated from time to time for partisan purposes, irrespective of basic constitutional proprieties, demonstrates with clarity the urgent need for fundamental reform of the machinery of government in this country.

6.14 pm

Lord Grenfell: My Lords, I declare an interest in that Clauses 59 and 60 of the Bill affect me personally. That is the first and only reference that I shall make to those two clauses in my intervention this evening and in any further stages of the Bill, if there are to be any.

This is not an easy speech for me to make, coming, as I do, from these Benches. I have not always been able to agree with my Front Bench and I am afraid that on this occasion I am not able to agree on quite a number of important issues. I came to the House of Lords 32 years ago. In fact, the noble Lord, Lord Henley, and I, if I remember correctly, took our seats on the same afternoon. In all that time I have never wavered in my belief that, as a Member of a revising Chamber, on some issues, particularly matters of constitutional reform, you have to say what you believe regardless of party affiliation and other considerations. That is what I propose to do.

The Bill contains some very sensible provisions, which, given its elephantine gestation period, is the least that one could expect of it, and I am sure that following proper scrutiny and debate I could support their translation into law. That said, I share entirely the view expressed in the wonderful, short, succinctly worded paragraph 47 that concludes the Constitution Committee's report. It says:

"This is no way to undertake the task of constitutional reform".

The members appear to have concluded unanimously that this House is being denied the opportunity to scrutinise properly the Bill's provisions. I have read carefully the *Hansard* report of the Committee stage in another place and conclude that there, too, far too little time was given for proper consideration of many of its provisions; indeed, some were not considered at all.

[LORD GRENFELL]

The Government can be justly proud of many of the constitutional reforms that they have put through over the past 13 years and I have been very happy to support in this Chamber their passage through Parliament. What a pity, then, that this quiet revolution, as my right honourable friend the Secretary of State for Justice has called it, should now be sullied, not by the nature of the provisions of the Bill but by the wholly inappropriate process by which Parliament, in particular this House, is asked to legislate them.

As the report of the noble Lord, Lord Goodlad, notes—it is worth repeating this—the Bill contained 56 clauses and nine schedules when it was first introduced. By the time it arrived here, it contained 95 clauses and 15 schedules, many of the new provisions being added very late in the legislative process. My right honourable friend the Leader of the House in another place informed the House:

> "If the Bill cannot find its way through the Lords, we will make sure at the wash-up that the provisions that the public want get through".—[*Official Report*, Commons, 4/3/10; col. 1019.]

We must assume that, in accordance with convention, what do get through will be the provisions that are not contested—that is the tradition—but one is still entitled to ask: what is it that we are told the public want? We shall learn that, I suppose, when the usual channels emerge from their closed-door negotiations and tell us what will and will not become law. It is an odd procedure, but one which is found necessary and has in the past proved generally useful. However, I echo the spirit of the question put by the noble Baroness, Lady Boothroyd, which was so eloquently followed up by the noble Lord, Lord Pannick: this is not, in my opinion, a procedure to be applied to constitutional reform.

I am not these days a betting man—I gave up serious betting at about the age of 11—but I would be ready to wager a fiver today that, to take but one example, Part 2 of the Bill, which deals with the ratification of treaties, is not high on the list of provisions that the public want to see got through before the general election. I take this as one example of the several that could be chosen of what we are likely to lose and have no chance of fully scrutinising anyway. This is highly regrettable because the provisions on treaty ratification in the Bill are an overdue step—albeit far too timid—towards better parliamentary control.

European Union treaties have their own mechanism for parliamentary scrutiny but, under the Ponsonby rule introduced in 1924 and as currently practised, all other treaties subject to ratification are laid before Parliament, when signed, for a period of 21 sitting days before ratification and publication in the treaty series. Since 1997, each treaty is accompanied by a government Explanatory Memorandum providing information about the treaty's contents, the Government's view of its benefits and burdens and the rationale for ratification. Few treaties are debated under the Ponsonby rule, although the Government have agreed to make time for debate in certain circumstances. Even if there is a debate and Parliament expresses its disapproval, this does not necessarily prevent the Government from ratifying the treaty. None the less, the Ponsonby rule has resulted in most important treaties having some degree of parliamentary scrutiny. Select Committees in another place have, over the past decade, become more involved in treaty scrutiny—thank heavens for that—but the extent of the scrutiny depends on the committee's other priorities and the demands on its time. Let us not forget that globalisation is one of the causes of the growth in both the volume and scope of treaty making.

Current practices rely largely on the sanction of political criticism, which all too often falls on deaf ears and which has no legal effect anyway on the Government's decision to ratify, so for some time there have been calls for parliamentary scrutiny to be enhanced. Specific proposals have been put forward in five Private Members' Bills in this House, starting in 1996 with the first of three Bills from the noble Lord, Lord Lester of Herne Hill. I see him in his place and I seize this occasion to applaud his tireless efforts in this matter. In his first Bill, he proposed, among other measures, the creation of a joint parliamentary treaties committee to keep Parliament informed about the implications of treaties and to consult the public about them. The report of the Royal Commission on House of Lords Reform, under the very able chairmanship of the noble Lord, Lord Wakeham, saw the potential merits of having a Select Committee of this House to draw our attention to any significant implications of a treaty before the end of the 21-day Ponsonby period. Similar proposals have been aired by your Lordships since then, but we have got nowhere, usually running up against the brick wall known as the Liaison Committee.

Now we have the matter before us again in Part 2 of this Bill, which, in effect, puts the Ponsonby rule on a statutory footing. I am not quite sure why that is necessary, as Governments have been complying with it for the past 86 years. Also, I sometimes have doubts about parliamentary procedures being enshrined in statute. Anyway, Clause 24, based on the Ponsonby rule, provides that a treaty is, as in the past, laid before Parliament for 21 sitting days, during which both Houses have the opportunity to resolve that it should not be ratified. If the 21 sitting days expire with no such resolution being passed by either House, the Government can proceed to ratify the treaty. If the other place resolves that a treaty should not be ratified, the Government cannot at that stage proceed to do so; they must instead lay a statement explaining why they still believe that the treaty should be ratified and then wait a further 21 days. If by the end of that period the other place has not withdrawn its opposition to ratification, another 21-day period ensues, with the Government re-laying their statement—and so on, I assume, until the cows come home. However, if this House, with all the expertise at its command, resolves during the initial 21-day period that a treaty should not be ratified, the Government simply lay a statement of disagreement and tell the Lords to get lost. Well thanks a lot.

Yet the European Union (Amendment) Act 2008—about which I know something—which ratified the Lisbon treaty, provides that before a Minister may consent in the European Council to the use of a passerelle under the treaty, both Houses must pass a Motion to approve the Government's intention. That concession was made by the Government in response

to our insistence. It was an enlightened decision, but that spirit certainly does not imbue Clause 24 of the Bill. I do not wish to sound frivolous, but if the Government are sincerely looking forward to the day when this venerable House is wound up and replaced with a 300-member senate, they should realise that that body will not accept this sort of treatment. Therefore, why do the Government not get used to the idea now and do for Clause 24 what they did for the European Union (Amendment) Act?

Lord Lester of Herne Hill: I had not intended to speak but, as the noble Lord was kind enough to refer to me, I wonder whether he would agree with me about the oddity of treating this House as inferior when it comes to treaty scrutiny. It is very strange to do that when this House, with its distinguished former Foreign Office and legal experts, has greater expertise in the area of treaty scrutiny than perhaps the other place. Does he agree with me that this is very strange, as well as on the inequality that he has referred to under the treaty of Lisbon?

Lord Grenfell: My Lords, I agree 100 per cent with the noble Lord: it is because we have this expertise here that we have that special capacity to scrutinise treaties. I know that that has been the theme of his argument all the way through since his first Bill in 1996 and I am glad that he has raised this again.

I also plead that serious consideration be given once more to the creation of a Joint Committee of both Houses to scrutinise treaties. This is a matter for the two Houses, but we need an assurance from the Government that they would do nothing to discourage, let alone try to impede, such an initiative.

I have devoted almost all my intervention to one part of this portmanteau Bill, but I have done that to illustrate the dilemma that this House faces when confronted with reforms of constitutional importance that we are expected to simply nod through without proper examination and debate. It is a distressing situation and I deeply regret it.

Finally, among the many lost opportunities in the Bill, the absence of a provision to set up a statutory Appointments Commission, as noted in the amendment moved by the noble Lord, Lord Steel of Aikwood, is particularly unfortunate. I trust that my noble friend the Minister will give us a convincing explanation for the Government's reluctance to make provision for something that surely the whole House, and indeed the public, would warmly welcome.

6.26 pm

Viscount Astor: My Lords, to bring this major, 133-page Constitutional Reform and Governance Bill before this House at what can be described only as the fag end of a Parliament is a disgrace. I suppose one should not be too surprised as this Government have made more ad hoc changes to the constitution than any previous one in recent history. But interestingly, perhaps the most important pledge that the Prime Minister made in his first speech in that role in another place—his commitment to limit the power of the Executive to declare war—is not included in the Bill.

In another place the Bill was subject to six procedure Motions curtailing debate and the Government added new provisions during the last two days of Committee. The Bill should have serious consideration in both Houses. Any idea that it can be agreed in the wash-up is ridiculous and, perhaps more importantly, unconstitutional. If we wish to attempt to restore the trust the electorate should have in Parliament, Parliament must be seem to behave in an open and honest way, not least in relation to a Bill which seeks to make fundamental changes to the way this country is governed.

When one looks at the provisions of the Bill in detail, the first few clauses relate to the Civil Service. The principle to put the Civil Service on a statutory footing is to be supported, but even a brief reading of the *Hansard* report of the Committee stage in another place shows that there are many issues that need clarification. The Government are not really clear on the definition of a civil servant—or at least the Minister in another place was not clear. Quangos are excluded—one can see the logic of that—but government-owned public corporations are also excluded. Why? More staff are now employed in public corporations than civil servants. The rights and responsibilities of civil servants should be set out clearly for the benefit of the people whose executive they administer. But the employees of public corporations are also public servants, and they should also be clear of their duties.

The proposed Civil Service Commission, whose commissioners, according to the Minister, are not civil servants, although they are appointed by the Crown, will have only to lay a report before Parliament. That does not seem to represent full, proper accountability, especially in the circumstances where the commission potentially has the ability to intervene in the way Ministers, and indeed Permanent Secretaries, run their organisations. What is more, looking at the numerous clauses in the Bill on Civil Service employment, one must wonder why these are not covered by ordinary employment law. The Bill includes clauses that stipulate that appointments to the Civil Service must be made,

"on merit on a basis of fair and open competition".

Why? Are we to understand that is not the case now? It seems to me that it has been the case since the Northcote-Trevelyan report of 1854, so why does it need to be enshrined in legislation now?

The details of ratification of treaties also need scrutiny. It is a fundamental change in the way in which the country is able to enter into international agreements. Despite its importance, it has not been made clear during the passage of the Bill how it will affect the United Kingdom's ability to conduct foreign relations.

Next on the list is the removal of the by-election system for hereditary Peers. It is of course a ridiculous system; it was a compromise; it was never supposed to last; it was set up and agreed as an interim measure. However, that it has survived so long is the fault not of the opposition parties but of the Government, who have not come forward with any proposals. I agree that this House has become too large. It is second in size only to the Chinese national party congress. We

[Viscount Astor]
are the only bicameral country with a second Chamber that is larger than the first. We need reform, but not like this.

Then we have the clause that one can describe only as the "Lord Mandelson clause", allowing Peers to return to the Commons. I did not realise that the noble Lord, Lord Mandelson, was still vying for the leadership of the party and is so missed by his colleagues in the Commons. What a tribute to his skills as Lord President. All I can say is that it is good try, but it will not succeed. If one accepts a life peerage, until reform, it is for life—no going back, pay full UK tax and stay here until reform or retirement. This House should not become an interim, mid-career resting place for passing politicians.

Then we have the proposed referendum on voting, which is an attempt by the Government to bind the next Parliament and to commit the next Government to a constitutional reform of the highest significance. I am surprised that the issue has not been brought out more by your Lordships today. If there is to be a fundamental change, it should be in a party manifesto that comes before the electorate at the election, not just tagged on at the last minute to this Bill. The alternative vote system proposed by the Government will mean that, instead of the most popular candidate being elected, the least unpopular sneaks in. However, that may just be a personal view.

One part of the Bill—I think that it is the only part—to which I can give some support is the right to demonstrate in the vicinity of Parliament. I understand concerns about noise and access to Parliament, but the right to demonstrate is central to our democracy and we need to support it.

This Bill will never have a proper Committee stage in your Lordships' House— there is no time. I have to say that I wonder why we should give it a Second Reading tonight.

Lord Tunnicliffe: My Lords, for the guidance of the House, the average length of Back-Bench speeches has been ten and a half minutes. If that continues, we will get to the speech of the noble Lord, Lord Tyler, at 10.30 pm. If we to revert to an average of eight minutes, we will get to the winding-up speeches, started by the noble Lord, Lord Tyler, at 9.30 pm.

6.33 pm

Lord Goodhart: My Lords, I shall do my best to stick to the eight-minute limit. I shall talk about a couple of matters that should be in Part 5 of the Bill but are not.

First, I believe strongly that all future Members of your Lordships' House, whether appointed or elected, should be here for a limited term of office. It is a matter of real importance. Peerages are no longer awarded as honours; it is a long time since anyone saw an honours list which included them. Peerages, whether they are party appointments or Cross-Benchers, are awarded, or are supposed to be awarded, to people who can and will make genuine contributions to the work of your Lordships' House. Members appointed as Cross-Benchers are usually appointed because of expertise. They have expertise as medics, or in running charities, or as senior officers of the Armed Forces, or as trade unionists, or diplomats, or in a number of other fields—including, perhaps, lawyers. They contribute greatly to the work of your Lordships' House. Although I believe that party Members should be elected, I hope—contrary, I have to say, to my party's policy—that we can retain a suitable proportion of Cross-Benchers as appointed Members. The speech of the noble Lord, Lord Pannick, a few minutes ago was a good example of the benefits of having Cross-Benchers present here.

However, expertise has a use-by date. I should like there to be long terms of service in your Lordships—perhaps a suitable term would be 15 years. After 15 years, surely it is time for Members to give way to other people whose expertise is likely to be more recent. This is not a matter of ageism. Term limits would also make it easier to appoint young people as Members of your Lordships' House. We need more young people; we are desperately short of them in your Lordships' House and have been so for a long time. However, it must surely be unsatisfactory to appoint a young man or woman aged 35 who would be entitled still to be a Member of your Lordships' House 50 years later. Term limits would also help to reduce the excessive number of Members of your Lordships' House at any one time. Term-limited Members should be allowed to continue use of the title that they are given, either as a Peer or a senator, after the end of term. I would not apply term limits to those who are already Members of your Lordships' House, partly because life membership may have been an important factor in their accepting a peerage and partly because I would want a Bill providing for term limits to have at least some chance of success in your Lordships' House.

Term limits should apply also to political nominees, whether they are there by appointment or, as I hope, by election. For as long as political Members continue to be appointed, the reasons for having a term appointment seem much the same for political Members as for Cross-Benchers. It is desirable to have a reasonable rotation of Members. For myself, I think that by the time I have served for 15 years in your Lordships' House, which will be in about two and a half years, I will probably have contributed about as much as I can. Whether I will retire at that point, if I am still alive and compos mentis, is likely to depend on whether another Liberal Democrat may be appointed to succeed me.

Among those who want politicians to be elected rather than appointed there is a fairly general consensus that those who are elected should serve for a single, long and non-renewable term. This would give greater independence from party Whips, as Members would not have to worry about their reselection. I support the right under Clause 56 for Members to resign from your Lordships' House, but—and it is a big "but"—only on a condition which is not included in the Bill. That condition is that Members who resign are not entitled to stand for election to the House of Commons for at least five years after their resignation. This is intended to prevent your Lordships' House being used by ambitious young politicians as a stepping stone for the House of Commons, which would be disastrous for your Lordships' House. On this, I find myself for once in agreement with the noble Lord, Lord Henley.

I turn finally to another, quite different part of the Bill. Part 9 consists mostly of Schedule 10. I am interested in that part because it mainly amends parts of the Constitutional Reform Act 2005, an Act with which I was very closely involved. The amendments seem reasonable and not, so far as I can see, controversial. The main purposes of the amendments in Schedule 10 are, first, to remove the role of the Prime Minister, who under the 2005 Act has the role simply of a postman, passing on to Her Majesty recommendations from the Lord Chancellor for appointment to the Supreme Court or to the offices of President or Deputy President of the Supreme Court. The second purpose is to give greater confidentiality to medical reports on candidates for judicial office, so that the medical report goes straight to the Lord Chancellor and is not seen, as it now is, by members of the Judicial Appointments Commission. That, too, seems entirely reasonable.

The third purpose is to extend existing powers to disclose confidential information obtained in the course of the appointment process to cases where the disclosure is made for preventing crime or for purposes of criminal investigation. The Explanatory Notes do not explain why this is thought to be necessary; but if a satisfactory explanation can be provided, that too seems perfectly reasonable.

The fourth purpose is to give effect to a recent agreement between the Lord Chancellor, the Judicial Appointments Commission, the Lord Chief Justice and the Magistrates' Association that the Judicial Appointments Commission will not take responsibility for the selection of magistrates. This was a matter of concern at the time the Act was enacted, and I think it is now seen that it is not appropriate for the JAC to take over that responsibility.

Clause 66 contains some sensible and necessary provisions about salaries to members of tribunals. If the Bill gets to wash-up, I suggest that Part 9 should go through. I cannot say that it causes much excitement among the voters, but it seems to me to be straightforward, sensible, and does some good and no harm. I have done just past the eight minutes.

6.40 pm

Lord Armstrong of Ilminster: My Lords, this Bill is an example of a trend which has become rather prevalent in the handling of legislative proposals. The Government put together a number of more or less disparate and unrelated subjects into a single, large and unwieldy Bill—a sort of portmanteau, as some people have described it. They give it a veneer of respectability with a cover-all title, burden it with an over-long Long Title, and drive it through in a manner which effectively denies Parliament the opportunity for the sort of effective scrutiny which Parliament ought to be able to provide for public legislation of this importance.

What we have today is a process of legislative indigestibility. What we are considering today ought to be not a single portmanteau Bill but a baker's dozen of separate and single-issue Bills. If we could revert to a regular process of single-issue Bills, it would act as a kind of control filter on the flood of legislation. We should have perhaps less legislation but more Bills, better prepared and better drafted legislation, and better scrutiny and improvement of Bills in Parliament. The balance between the executive and the legislative arms of the state would be improved. The effectiveness and the reputation of both Houses of Parliament would greatly benefit. I seriously commend these thoughts to those who are looking for better governance and for useful measures of desirable parliamentary reform.

The Bill which we are considering today has received a drubbing from the Select Committee on the Constitution. We are told that:

> "It is inexcusable that the Government should have taken so long to prepare this Bill that it has effectively denied both Houses of Parliament—and especially this House—the opportunity of subjecting this important measure of constitutional reform to the full scrutiny which it deserves",

and:

> "We consider it to be extraordinary that it could be contemplated that matters of such fundamental … importance as, for example, placing the civil service on a statutory footing should be agreed in the 'wash-up' and be denied the full parliamentary deliberation which they deserve".

A number of noble Lords have made the same point this evening. I say "Hear, hear" to that, with the special sense of deprivation felt as one of the independent Cross-Bench Peers who have no possibility of exerting even indirect influence on what goes on in the washroom.

It is on the Civil Service clauses that I should like to concentrate this afternoon. As it happens, the proposals for putting the Civil Service on a statutory footing have had more prior consideration and scrutiny than most of the rest of the Bill. We have, after all, had time to think about this subject since the idea of legislation was first mooted by Northcote and Trevelyan 150 years ago. As Talleyrand might have said:

> "Surtout, pas trop de zèle".

We got through that 150 years because the principles and conventions which we are now proposing to legislate have been agreed and accepted as principles and conventions by all parties in Parliament and in the country. We have not needed to have them legislated because they have been generally accepted. I accept that the time has come, sadly, when we cannot rely on that degree of acceptance, and the time has come for legislation on the lines proposed.

In recent years, we have had several attempts to bring forward legislation on this. The Public Administration Committee produced a Bill in another place; and the noble Lord, Lord Lester of Herne Hill, has produced one in this House. Now at last the Government have brought forward their own legislative proposals, but not as a self-standing Bill, as should have been done, but as one element in this portmanteau—I nearly said ragbag—of a Constitutional Reform and Governance Bill.

The Government's proposals reflect a great deal of previous thinking and discussion on this subject. In general, I and, I believe, my noble friends and successors in the office of head of the home Civil Service welcome them. We think that they are not quite as good as they could be. A number of amendments put forward in another place, including some by members of the Public Administration Select Committee, were not selected and deserved to be considered.

If the Bill were going into Committee in this House, as it should be, there would be several amendments which my noble friends and I would wish to invite

[Lord Armstrong of Ilminster]
your Lordships to consider. We think, for example, that the role of special advisers should be more strictly defined and circumscribed. We consider that the power to appoint heads of mission in the Diplomatic Service otherwise than on merit should be clearly and strictly limited. We would like to see the Civil Service Commission given the right to initiate investigations of breaches of the civil service code, subject to consultation with the head of the Civil Service.

We think that the requirements on the duties and responsibilities of civil servants in relation to Ministers need to be balanced by requirements on the duties and responsibilities of Ministers in relation to civil servants. We accept, however, that that may be more appropriately dealt with in the ministerial code than in this Bill, though perhaps the principles of the ministerial code itself should in due course be put on a statutory footing.

Nevertheless, my successors and I are realistic. We know that legislation to put the Civil Service on a statutory footing will always be at the back of the queue for inclusion in the legislative programme. We recognise that, if we do not seize this opportunity for legislation, another opportunity might not occur for another 150 years.

We accept, however, that this part of the Constitutional Reform and Governance Bill should go ahead. If the Bill is to survive the strictures of the Constitution Committee, we would be content for the Civil Service part to come through the wash-up with whatever amendments may be accepted in that process, even if it has not been improved by the detailed scrutiny in Committee and on Report that it merits, so that it reaches the statute book before the dissolution of this Parliament.

If this part of the Bill does not proceed in this Parliament and it comes forward in the next, then we shall hope to have opportunities in the new Parliament to make good provisions even better.

There is one other point that I would like to make, arising out of the points made on the likelihood that the size of this House may increase after the coming general election and the difficulties that that would create. I am old enough to remember coming here as a young civil servant, sitting in the Box over there to brief Ministers, at a time when there were something like 900 Members of this House. Of course, they did not all turn up regularly; they turned up when there was something to be debated on which they had expertise to offer. Of course, if and when the House of Lords is reformed fundamentally, that will change things; in the mean time, we should not be stampeded by the possibility of a further increase in the membership of the House of Lords. The natural good sense of people will ensure that noble Lords come when they have something to contribute and do not feel obliged to come all the time. After all, if they do not come to the House, they do not cost the taxpayer anything.

6.50 pm

Lord Campbell-Savours: My Lords, unfortunately for myself, I have forfeited the right to speak in this debate due to the fact that I had to miss the speeches of the noble Lords, Lord Henley and Lord McNally, and a part of the speech of my noble friend Lord Bach, because I am moving amendments on the Flood and Water Management Bill in the Moses Room.

Without taking up my allocation of time, I should like to address two issues in the Bill, which I believe should go into wash-up and should go through—IPSA, which has nothing whatever to do with this House, and the referendum carried in the Commons by 365 votes to 187. It would be quite wrong for opponents of AV, on an unelected House matter, to use wash-up to block the will of the Commons, whether that be the Opposition or the Government.

6.52 pm

Lord Rennard: I did not expect to reach my contribution quite so soon.

Part 3 of the Bill is different from any other part of the Bill because it does not decide anything but lets the people decide something rather important. There are arguments for and against electoral reform and for and against referendums, but I have never understood how there can be a democratic case against a referendum on electoral reform. It must surely be more democratic to allow voters to decide how their representatives are chosen than simply to argue for a status quo that allows MPs to decide for themselves the means by which they are elected. It is generally accepted now that MPs should not decide how much they are paid, so how could it be right for them to decide how they get their jobs? We know that many MPs like the present system because at least two-thirds of them are in safe seats. They are effectively chosen or reappointed by their parties. People cannot vote against them without voting out their own party. So I, too, welcome the provisions in the Bill to hold a referendum on electoral reform, although I wish it was for a more fundamental reform, a properly proportional system and, preferably, a single transferable vote.

There is opposition to the principle of any referendum on the issue of electoral reform from the Conservatives, but I cannot understand how those who have argued for a referendum on European treaties could convincingly argue that voters should have had their say on the fine print of such treaties but not on the principle of how their elected representatives are chosen. The Conservatives say that this should be the year for change, but when it comes to the most fundamental issue of reforming our political system, they are the party of no change and no say for the voters. It would also be right in this debate to ask about the Government's own sincerity in going some small way at this stage towards only partially fulfilling their promise on this issue that was the basis on which they were elected 13 years ago. They are, of course, finally reneging on the manifesto promise that they made in 1997 that people would be offered a choice between first past the post and a proportional system to be recommended by a soon-to-be-established commission on voting systems. Any promises or hints that they may make over the next few weeks on constitutional reform may therefore be received with some scepticism, but some of it would be reduced if the proposal for a referendum on an alternative voting system was reached and on the statute book before dissolution. If, however, they fail to achieve that, it will

be a clear signal that 13 years and three Parliaments with three large majorities have been wasted on this issue and they have failed to deliver.

This is not the occasion for a full debate on electoral systems—and I know some noble Lords will welcome that statement. However, I shall deal just briefly with a couple of myths. The noble Lord, Lord Henley, argued that the AV system would result in there being more Labour MPs and Liberal Democrat MPs and fewer Conservative MPs, a point made repeatedly in another place from the Conservative Benches. That would only be the case if the voting shares in future were along the same lines as those in the previous three general elections. I doubt that the Conservative Party accepts that that will be the case, so they should stop making that bogus argument.

The noble Viscount, Lord Astor, attacked the basis of the alternative vote system, but it is exactly that same system that is used by his own party in all its internal elections, including that for electing its leader. It cannot be such a bad system if the Conservatives use it for themselves. What an alternative vote would mean is that most MPs would require the support of most voters; that is a principle that is hard to argue with. Those of us who are unelected should not ask to oppose the rights of the voters to have a say on how their votes are cast and counted, whether in the wash-up or not.

On the timing of election counts, the general discussion has revolved around concerns about losing the excitement of the so-called Portillo moments being broadcast at three o'clock in the morning, as against the need for accuracy in the counting process. The staff employed by returning officers may well be tired if they have been working at polling stations all day long and are then employed to count votes in the small hours of the following morning, but the volunteers from the parties, who may well have started the day much earlier delivering leaflets, working hard on polling day and in their evenings and weekends for many weeks and months through the course of the campaign, all want to be able to see the result that night, not to hear about it when they are back at work doing their jobs the next day. A far better solution to these conflicting priorities would be to allow voting at weekends, as in many other countries, with an early Sunday evening count that may not rival "The X Factor" but would probably engage rather more people in the whole process. But in the absence of that change to voting at weekends, I think that there should not be a problem in achieving accuracy and conducting the count shortly after polling stations close, in all but those areas in the Scottish Highlands and Islands where ballot boxes must be collected from remote locations. I shall never forget acting as agent in a parliamentary by-election when we lost by just 100 votes. I insisted on three full recounts and getting exactly the same result twice before finally accepting the result at 6.30 am, at which time it was broadcast live on the TV breakfast news.

Nor will I forget the call from the Winchester count in the 1997 general election, telling me that counting had been suspended, given the doubt and uncertainty over the result. The returning officer there very sensibly suspended the count and we started it at 1 pm, concluding at 6 pm that evening with the declaration that my party had won by two votes. It is for such moments that many of us live, and we hope that election officials and the Electoral Commission will understand that and respect Clause 90 requiring counts generally to begin within four hours of the polls closing.

My Lords, that is exactly eight minutes.

7 pm

Baroness Boothroyd: My Lords, we have been in debate on this issue for some hours and it would be very nice if I could give the very popular Minister a little light relief, but I am afraid that I cannot manage it. I have to tell him, and it is with regret, that I cannot remember a more flagrant example of the mismanagement of an important constitutional Bill during my time in public life. The Government's decision to delay the Bill's arrival in this House until the eve of a general election is worse than a mishap. To me, it simply illustrates the Government's underlying contempt for this House, by not allowing us detailed scrutiny, and its disregard therefore of our duty to the nation.

It has been well minuted that after a series of Green and White Papers, the Bill was published as long ago as July of last year. If the Government had put their mind to it, it could have been on the statute book later that year, and in better shape than it is now. Instead I am afraid they dithered and, whatever Motion is on the Order Paper today, we all know—let us be honest about it—that we were given little time, if any time at all, to examine the 95 clauses and 15 schedules with the thoroughness essential for the proper scrutiny of legislation. Of course, I speak only for myself when I say that I think it is a scandalous way of dealing with this matter. I believe that the Government should think again.

We were promised a shiny new vehicle of reform. Instead, we are handed an overladen charabanc of changes that we are asked to approve without first being allowed even to look under the bonnet. The Government's negligence reminds me of a bus service that keeps its customers waiting for ages. When the bus finally arrives, it is already full up and there is no time to stop. We call out to the driver, "Hey there!", but he passes us by, just as the Government intend to do with this Bill. Ministers—even very popular Ministers—can hardly plead circumstances beyond their control, because the coming election has been on everybody's minds since Mr Brown became Prime Minister. Nor is this a minor measure, worthy only of a fag-end Parliament. Since taking its first steps a long time ago, it has grown like Topsy, as we have heard, with 39 more clauses and six more schedules.

The Justice Secretary described the Bill in a curious way at Second Reading last year. He said that its proposals,

"could be dismissed as prosaic",

and that each step in the Government's programme of constitutional reform "appeared rather prosaic". I went to my dictionary—I thought that there might be a hidden, lawyer's meaning of "prosaic", but of course there was none. It means what we all know: dull, commonplace, unimaginative—hardly a recommendation and not a word I would use about changes to the legal

[Baroness Boothroyd]
status of the Civil Service, the ratification of treaties, the rights of the Royal Family and the composition of this House. I have been called many things in life but, thank goodness, never prosaic.

In his next breath, of course, the Justice Secretary changed his tune a bit and said that the Bill was part of,

"a major shift in power away from Whitehall to Parliament and the British people".—[*Official Report*, 20/10/09; col. 799.]

That is undoubtedly true for the Assemblies of the devolved regions, but not for the Parliament of the United Kingdom. Too much legislation is still ill considered; it is rushed and flawed, as the devastating report on the Bill from the Lords Select Committee on the Constitution makes clear.

Mr Straw speaks frequently about the need to make this House more legitimate, as if we were neither one thing nor the other. He really should reflect on his comments. We are here because the constitution of this country puts us here. Constitutional legitimacy is the lifeblood of this nation and I resent it being quibbled about by Mr Straw.

I do not object to the phasing out of the remaining hereditary Peers and I welcome our right to expel or suspend Peers whose conduct warrants it, but Mr Straw baulked at the need to entrench the powers of a statutory Appointments Commission to vet new life peerages, so there is no shift here in the Government's determination to hold on to power. Nor, I fear, will there be if we are replaced by a Chamber that lacks our independence. I understand that Mr Straw looks forward to finishing us off early after the election. If he gets the chance, he will have to manage the timetable better than he has managed the Bill.

Convention requires us to give this proposed legislation an unopposed Second Reading and so we shall. However, I urge the party leaderships and those who deal with the wash-up to take our reservations fully into account when they meet in the smokeless rooms for the wash-up session. The Bill has many good things in it, which I approve of, but it would be better still if much of it could be properly examined, in detail and in a new Parliament.

7.07 pm

Lord Graham of Edmonton: My Lords, it is my pleasure to follow the noble Baroness, Lady Boothroyd. We first shared a platform in 1951, when I was chairman and she came along bringing a delegated representation. Ever since, our paths have crossed and it is a joy and a pleasure to see her here and in such good spirits, although I did not agree with her censures—but she would expect that.

I was moved to put my name down to speak in this debate because, in general, I sense as a former Chief Whip in this place that the Government will have a difficult job. The Minister, in introducing the Bill to us today, pointed out that he felt that some bits would be supported by all parties but that some would not be. I rest content that the outcome of the wash-up will be that all the parties will be satisfied with what comes out, because nothing will get through unless it has the agreement of all the parties.

We have had paraded before us aspects of the Bill that do not find favour with Members here. I do not quibble with them at all, but, as the Minister said, Parliament is in the middle of a crisis of confidence, in both system and persons. I use as a peg for what I want to say the fact that the spotlight of publicity has been shone on the noble Lord, Lord Ashcroft. We know that, in abusing the systems, he has sought to introduce a fantastic amount of money into constituencies that he has chosen as being possible to win. He hopes that, by buying the votes and the seats, he will be able to help to form a Government who are different from mine. He may be right; we will have to wait and see. I say simply that the practices that he is carefully nurturing—they do not seem to be condemned as much on the other side of the House as on this side—are not the only ones.

League tables have become part of the lexicon of politics. The league table that I am most proud of is football's Championship League, because at the top is the team of my home town, Newcastle United. The team won again last night and I believe that it will be promoted. That is not the only league table that is of interest, though. The Electoral Commission publishes a quarterly league table of constituency parties, showing the amount of cash and kind received. For the three months ending 31 December 2009, the league table records that the sums received by constituency parties were, from the bottom up, £35,000, £36,000, £50,000, £52,000, £55,000, £58,000, £70,000, £75,000 and £82,000, with, at the top of the table, the Edmonton Conservative constituency party receiving from its prospective parliamentary candidate alone the sum of £142,000. That candidate's name is Mr Charalambos. From what I know, he is a successful, locally based man who obviously has a lot of money, which he is entitled to spend as he wants. The present system allows him to spend it in that way, though, and that is wrong. This ought to be stopped and we ought to deal with it.

I hope that the Minister will be able to talk about the activities of Mr Ashcroft, which are turning back the clock. I thought, from my history, that rotten boroughs had been done away with years ago, but they have not if a man or woman can come into any town or city and, in effect, buy the wherewithal—a practice, as we know, that is rife in American politics—to hire people to do the canvassing and so on. There is a growing tendency to do this; we hear about Mr Ashcroft but there are others.

When I spoke to a colleague at a meeting today and told her what I was going to say, she said, "Well, in a constituency where I worked, an attempt was made to do that. Over £300,000 was calculated to have gone into the coffers of one candidate, but they did not succeed". Money will not always be the answer.

I do not say that the present or the past are right and that things cannot be changed. We are in the middle of change in lots of things and, in the Bill, there will be attempts to change even more. However, we need to be alerted to the fact that if the Government, of whatever colour, do not deal with the kind of thing that I am talking about, our democracy will be diminished. I hope that the Minister is able to say something kind about this idea.

We all know, as experienced politicians, what is going to happen to the Bill. I could enter into arguments about the Government's programme and their priorities and the fact that the election is going to be held and Parliament will end at Easter, whereas normally it goes right through to November. There are all sorts of reasons and miscalculations. I shall simply say, however, that we need to be aware of the fact that the practice of buying constituencies, which in effect means buying Governments, is here to stay and is successful. I am ashamed that it is happening in Edmonton.

7.14 pm

The Earl of Onslow: My Lords, I must congratulate the noble Lord, Lord Graham, on making a speech on a subject that is not in any way in the Bill.

I was extremely moved by the noble Baroness, Lady Boothroyd. Possibly this is because I feel sometimes that I have a kinship with Speakers since, at the bottom of the Speaker's stairs, there is my coat of arms because of the Onslow Speaker, and there was an even greater Onslow Speaker. When I see someone such as the noble Baroness, who filled that post with such distinction, I feel an almost—if she will forgive me—proprietorial pride in her achievement. When I heard what she had to say today, I could feel all the Onslow Speakers, of which there are three, rising up and clapping her, even though that is probably not in parliamentary order.

I am not going to say much, but I shall say again and again what has already been said about the disgracefulness of the way in which the Bill has been brought before your Lordships' House. Constitutions are serious things. Some of them are quite small; the American constitution, including all its amendments, is about 45 or 50 clauses. The Bill, however, has 95, which simply tidy up and tinker at the edges—and still they have not been properly debated.

The Bill was given a Second Reading in another place in July 2009 and comes here today. It went through the other place in a way in which, two Parliaments ago, it would not have been allowed to: on carryover. Constitutional Bills should not be carried over. It went through on a timetable. Constitutional Bills should not be on a timetable. If the Liberal Government could get the Parliament Act 1911 through without a timetable, I am sure that this Government, had they thought their way through properly—and, as the noble Lord, Lord Armstrong, said, had they produced Bills that were on one subject only, not on practically a whole *Encyclopaedia Britannica*'s worth of subjects that are poured into people's ears in indigestible form—could have done the same. I had reason the other day to read one of Peel's police Acts; it was so understandable that it read like a Mills & Boon novel. British Bills now are practically all indigestible. They are too long and suffer from long titles of Macauleyesque length.

I cannot emphasise enough the total impropriety of people from both Front Benches—the Liberals will happily join in, obviously—going behind closed doors and agreeing which bits of a constitutional Bill should go through or not. I say to my own Front Bench, "Will you please tell us what you will allow through and what you will not?". I sincerely hope that the only part that it allows through is the one regarding IPSA, because it would be wrong for us not to; here I agree with the noble Lord, Lord Campbell-Savours. All the others can wait. None of them is that urgent—after all, the Liberals promised to make this House more democratic in 1911 and they have not got much further.

Interestingly enough, one of the defences of the pre-1911 House of Lords was a quote from Cromwell, who said that if the House of Commons had total supremacy it would abuse it. What has happened? The House of Commons has total supremacy, more or less—although of course I am not advocating the repeal of the 1911 Act; that would be dotty even beyond my powers of imagination—and it is too dictatorial. What makes it worse is that, because of things such as timetabling, carryover and the party Whip system, the Executive have too much power. Our job in Parliament, in both Houses—the Commons has to sustain and provide money for the Government to go on—is to make life difficult for the Government. We should make them answer questions; we should make them come up with the right answer. Unless we do that, we are not doing our job properly. This is a perfect time for us to say, "No, we will not do anything; we will not allow it through".

It would have been much more honest not to have given the Bill its Second Reading. I understand about IPSA and about non-doms, but there is a great unfairness. This is only rumour, but it is right to raise it. I believe that the noble Lord, Lord Grenfell, will be rather unfairly treated by that provision. That, again, is a reason why things should be properly looked at and gone through word by word, not just agreed in smoke-filled rooms at the end of a Session. It is a disgraceful way to run a constitution. Lawyers such as the noble Lord, Lord Bach, and Mr Straw ought to know better. After all, they have studied the law, they know what the law is about and they should understand the spirit of the law. I am afraid to say that their behaviour, in both cases, has shown that they do not. They have treated the constitution and Parliament with contempt in producing this Bill in this state. I am sorry if I am getting worked up, because I feel so strongly about Parliament and about Parliament serving people. It should not be just frittered away through the Bill in this dreadful way.

7.20 pm

Baroness Young of Hornsey: My Lords, many noble Lords have pointed out with great clarity, rigorous analysis and some vehemence the shortcomings of this Bill, in particular the speed and nature of the process with which noble Lords have to grapple. I want to say a few words about a few areas that I hope are not too contentious. In general, I welcome very much the proposal that the Civil Service Commission be placed on a statutory footing. The independence and impartiality of the Civil Service now, more than ever, needs to be demonstrably transparent.

Before going any further, I declare an interest as a paid non-executive director of the National Archives. I followed the progress of the review of the 30-year rule and the Government's response to it with interest. This will be the main focus of my speech. I wholeheartedly

[Baroness Young of Hornsey]
support the reduction of the 30-year rule, whereby departmental records are handed over to the National Archives after that period, to a 20-year rule. I give the Government credit for instituting a wide-ranging review of the rule. I also pay tribute to the work of all the members of the review team, chaired by Paul Dacre, and to the officials from the Ministry of Justice, the Cabinet Office and the National Archives.

Both the Freedom of Information Act and the Public Records Act attempt to strike a difficult balance. On one hand, we have the right of citizens to understand how and why decisions are taken by those whom they have elected and, on the other, we have the need for government to function effectively and maintain a degree of confidentiality. The decision to lower the transfer rule from 30 to 20 years means that how government collects, manages and uses its information is now increasingly aligned with the expectations of its citizens and the demands of our information society. I also commend the government decision to simultaneously lower to 20 years, with immediate effect, the time at which historical exemptions cease to apply to freedom of information requests.

Our citizens have a right to know precisely how well, or not, they are governed and have been governed. It is the right decision and I support it. Within the Bill, it is proposed that the Lord Chancellor be given an order-making power to ensure that the transition is properly implemented across Whitehall. It is vital that this does not become an opportunity for every department to plead its case for special treatment or for exemptions. A consistent approach across all departments will be vital if this process is not to unravel in its first year. I urge the Government to limit the scope of any order to only that which is absolutely necessary to ensure compliance with the new transfer rule.

It is estimated that there are around 2 million paper records agreed between 20 and 30 years old that must be dealt with. This is a huge task, which will require careful preparation and implementation. I welcome the proposal that the National Archives will oversee this transition and report back annually to Ministers on progress by departments. Work is already under way at the National Archives to ensure that it is ready to advise and support departments during the transitional period and beyond. It will be vital, however, that departments recognise the scale of the task facing them and that each prepares an implementation plan in consultation with the National Archives, setting out how the work will be carried out across the full 10 years. Does the Minister agree that this would not only be a sensible course of action but one that every Permanent Secretary should agree to, so that Ministers have a full appreciation of the risks and costs involved?

7.24 pm

Lord Gordon of Strathblane: My Lords, I hope to get the support of your Lordships' House by undershooting my time by at least a third. As the Minister said in opening the debate, this is a major Bill. As has been instanced in every speech so far, there is a great deal that most people would support in almost every clause, but I am afraid that I must side with the general view of the House that it is simply not right to bring a Bill such as this to Second Reading with only a few days left in the legislative programme. Government managers must recognise that, when they introduced quite so much legislation in the Queen's Speech, with only half a Session to debate it, they were tempting providence. Frankly, to do it with a constitutional measure of this significance is, as the noble Baroness, Lady Boothroyd, said, treating Parliament with contempt.

I am worried about wash-ups becoming stitch-ups. It is not that I do not trust the government Front Benches, although we all know what happened in the case of House of Lords reform, when Mr Straw managed to get the agreement of the Front Benches to a lot of what he was doing; it was only when, I am glad to say, the noble Baroness, Lady D'Souza, broke ranks and indicated that there was not a consensus that that collapsed. The fact is that Front Benches, with the best will in the world, do not have a monopoly on wisdom. I have only to think back to the Digital Economy Bill, in which I played a bit of a part. A lot of the best contributions to that debate came from the Back Benches. I think, particularly, of the noble Earl, Lord Erroll, and the noble Lord, Lord Lucas. A lot of the information that they brought forward led the Government to introduce amendments quite fundamentally changing parts of the Bill. The right way to deal with this is for the Government to say, "How much legislative time do we have and what can we reasonably get through?", relying on the good will of the House to perhaps put things through with a degree of urgency and then tailoring the Bill to that amount of time. The rest of it is too important to be rushed.

I will concentrate on one other item: the amendment moved by the noble Lord, Lord Steel, on the statutory Appointments Commission. He rehearsed the number of times that the Labour Party has pledged itself to this in election manifestos, so one simply asks: why is it not in the Bill? The answer, I am afraid, without being unduly cynical, is quite clear, certainly to me. It simply does not sit well with the Government, in the form of Mr Straw, producing in the next few days, we are assured, his recipe for an elected senate of 300 seats or so. It would look as though the Government did not really believe in it. So, once again, the possibility of incremental improvement in the workings of Parliament has been sacrificed for gestural politics that, frankly, will not come to reality in any foreseeable timescale, I am glad to say.

As some noble Lords may know, in all debates I have supported a wholly appointed House of Lords, which I regard as a legitimate second stage of reform, and for that reason I do not agree with the points made by various hereditary Peers that it would be a breach of the undertakings given by my noble and learned friend, Lord Irvine. That stance can be taken by people who support an appointed House. It is less easy for Mr Straw to justify it, because if he regards reform only as requiring an elected House—I have never equated reform with election—arguably his expulsion of the hereditaries, or allowing them to wither on the vine, should wait for that as well.

I have three observations on the possibility of this becoming an elected House, which affects the statutory Appointments Commission. First, I hope that the

House authorities will ignore it. We should bear in mind the fact that planning for office accommodation for us is a long-term business. If they take their foot off the pedal and start saying that they need not worry about any more offices for Peers because there will be only 300 of them in a month or so, we will face a major problem.

Secondly, it should not be forgotten that when the House of Commons debated this in 2007, which was at the height of the cash for peerages scandal, there was none the less still a majority of Labour and Conservative MPs voting against the proposal for 80 per cent election. I confidently predict that, when Mr Straw publishes his draft clauses for election, that majority will increase when people realise the systems that may be proposed. Surely any electoral system that he proposes will be an improvement on the present and, if it is an improvement, an elected senate will be superior to the House of Commons because it will be elected on a superior system.

Finally, if the Government include this in their manifesto and win an election convincingly, they will claim an electoral mandate for it and use the Parliament Act to force it through in the next Parliament. I hope that they will recognise that the converse should also be true: if there is a swing against the Government, they should equally accept that mandate from the electorate and drop the proposal.

7.31 pm

Lord Cobbold: My Lords, I will confine my remarks to Part 5 and begin by stating my strong support for the amendment of the noble Lord, Lord Steel. I reluctantly accept the proposed ending of by-elections for hereditary Peers. As one of the 92, I consider myself to have been extremely lucky to be able to retain a seat in your Lordships' House but, looked at dispassionately, it is very hard to justify heredity by itself as a qualification for membership of the upper House. However, there should be nothing to stop an hereditary Peer applying to the Appointments Commission based on personal merit.

The other issue I wish to raise is the size of the House. As has been said, the House is already the second largest upper House in the world; with life membership, and a population living longer, it can only grow larger unless there are to be no further admissions, which is clearly not an option. Clause 56 allows a Peer to resign from the House and while this is a reasonable step, there seems to be no incentive to resign or retire when, as at present, Members can simply not attend or seek leave of absence. It does not seem to me that it will solve the numbers problem. I believe that the only way to address that problem is to introduce a limit of parliamentary service of, say, 20 years. This could be achieved over a transitional period of, say, five years to avoid a mass exodus. We can, I hope, discuss these issues further at the Committee stage if, indeed, there is to be one.

Finally, it is most important that this House should remain fully appointed and not be replaced by an elected senate. In the next Parliament, we must stand together and resist this threat to the future of our House and the valuable service that it performs.

7.33 pm

Lord Berkeley: My Lords, I shall speak about a slightly different subject from those raised so far by noble Lords in this very interesting debate. It is dealt with in a nicely hidden clause in Part 12—Clause 86—and Schedule 15. Paragraph 3 of the schedule would insert in Section 37(1) of the Freedom of Information Act 2000 further limitation on FoI requests about the Royal Family. It provides an absolute exemption from such requirements to the heir of the throne, a person who might be heir in the future, other members of the Royal Family and the Royal Household.

In his opening remarks, the Minister referred to this clause and said that its purpose is to protect the constitutional conventions surrounding the monarchy. My comment would be, "Yes, perhaps so". There is nothing wrong with that but some activities undertaken by the Royal Family in recent years have, I suggest, strayed some way from anything relating to a constitutional convention. It applies both to the number of Royal Family members receiving travel and security expenses or support and the activities that they pursue which often appear to be a long way from that.

My interest in this stems from the annual royal transport report. I am not commenting or criticising in any way the travel costs or arrangements of Her Majesty or Prince Philip. They do a great job and seek the most cost-effective means of travel where possible. That was well exemplified by a picture that appeared before Christmas in the *Evening Standard* of Her Majesty getting on to an ordinary train at Kings Cross going to Sandringham. I thought that if she can do that, perhaps some of her family should be able to as well, rather than going in helicopters all the time, as I shall explain.

There are, I believe, 12 members of the Royal Family who receive government-funded travel. Prince Charles once took a helicopter from Highgrove to Gloucester, which must be all of 12 miles. I think he has one or two cars, and could probably have gone by car. Prince William, as we all know, took a helicopter, which I think he flew himself, to the Isle of Wight to go to a party.

Sadly, the report's usefulness has been reduced because the Royal Household argued two or three years ago that it was too much effort to list individual journeys valued at £3,000 or less and that the lower limit should be increased to £10,000. So we do not know how many trips cost between £3,000 and £10,000. A helicopter trip seems to cost somewhere between £3,000 and £10,000, which is rather more than you would pay to go by car or train.

I notice from the latest report that some helicopter trips in this country taken by the Duke of York, the Princess Royal and others, are knocking on between £12,000 and £15,000 just to get from the London area to Scotland. An awful lot of them could have gone first-class on the train for that amount of money. The Earl of Wessex, too, spent £10,000 on one trip. It is reasonable for taxpayers to know the cost and the purpose of taxpayer-funded trips made in helicopters, for instance, when used by minor royals.

[LORD BERKELEY]

On security, we read in the press—I do not know whether it was because of a Freedom of Information request—that Princess Beatrice, who I do not think is first in line to the throne, had four security officers permanently with her on her gap year in the Far East and now has two with her while she is at university in this country. Again, I think that we should know.

Prince Charles has also been dabbling in a little bit of business by allowing one of his Duchy of Cornwall tenants to cultivate non-native Pacific oysters in the lower Fal estuary and the Helford river. He seems to have encouraged his tenant to get £230,000 of European Union aid, but they seem to have failed to apply for permission from the Marine and Fisheries Agency. I received a Written Answer on this, HL 2342, which showed that not only did they fail to seek permission but they failed to do an environmental impact assessment. I find that rather surprising. The consequence is rather sad—not only have all those oysters died, they have killed all the others in the estuary. However, that is beside the point. For somebody who has so much concern about the environment, it seems a slight omission not to do an environmental study on something so critical.

Security will always be used as an excuse to use helicopters and for other protection costs, but where does it end? Clearly, some members of the Royal Family need security protection, but do all 12 of them really need it, and at such a high level?

My main concern about this section of the Bill is that the Duchy of Cornwall is a business, as we all know. It should be considered a public sector business and therefore be subject to the Freedom of Information provision, because it has nothing at all to do with the constitution. Schedule 15 could prevent the release of information on all those issues and many more; so rather than having less transparency—I am afraid that the travel report produces less than it used to—there should be more.

The Royal Family should not be above the law when they dabble in oysters, or other businesses, or in the design of buildings, or in whatever we might want to exemplify. I believe that this clause has very little to do with the main purpose of the Bill. It has crept in there because it is a nice way of stopping people from doing too much work but, if and when we get to the wash-up, I hope that it will be removed and, if necessary, brought back and given proper scrutiny.

7.41 pm

Lord Wright of Richmond: My Lords, I have three brief points to make on this Bill. The fact that the first two are words of welcome does not in any way contradict my strong support for those who have said that this is no way to undertake the task of constitutional reform. I add one further point. As the noble Lord, Lord Armstrong, has pointed out, the process of the wash-up, which has been widely criticised this afternoon, excludes altogether any input from the Cross Benches—now the second largest group in this House.

Having said that, first, I welcome the proposal to put the Civil Service and the Diplomatic Service on a statutory footing. It may not go as far as some would want but it is nevertheless very welcome, if long overdue. Perhaps I may correct my friend and former colleague, the noble Lord, Lord McNally, who is not in his place; it is in fact 156 years late. Secondly, I welcome the attempt to clarify and limit the status and responsibilities of special advisers—if not their numbers, as the noble Lord, Lord Howarth of Newport, pointed out. I also welcome the emphasis on the political objectivity and impartiality of the public service.

Thirdly, does the reference in Clause 10(3)(a) to persons selected other than by promotion on merit reflect any intention on the part of the Government to increase the number of political appointments at ambassador or high commissioner level? I doubt whether during my 36 years in the Diplomatic Service, or subsequently, there have ever been more than two political appointees abroad at any one time. Although I pay tribute to several past appointees in this House—most recently, the noble Lord who is the chairman of the Constitution Committee—I hope we can be given an assurance that the Government have no intention of following the example of the United States, where frequent political appointments have sometimes been blatantly inappropriate, a system which, in my view, would have a most undesirable effect on the morale and efficiency of Her Majesty's Diplomatic Service.

To add a postscript, I support strongly the noble Baroness, Lady Young of Hornsey, on the need to identify the resource implications which departments like the Foreign and Commonwealth Office, and others, will face in implementing the reduction of the 30-year rule.

7.44 pm

Lord Borrie: My Lords, I very much agree with the points that have by now been made again and again from all sides of the House; that the process in the Bill for the considerable degree of change in the constitution, which has been embarked upon at the fag end of this Parliament, is quite wrong. Inadequate scrutiny is bad for any Bill but it is, surely, particularly bad for a Bill of constitutional significance. I felt that the noble Baroness, Lady Boothroyd, spoke for—I had better not say all—a great many of us on all sides of the House when she expressed herself in very clear, forthright and condemnatory terms about what is happening.

To quote the noble Lord, Lord Henley—the beginning of the debate is now some time ago, so perhaps he will forgive me if I have not quite got it right—some parts of the Bill may not be objectionable but they still need scrutiny. That is a good general point. I would apply it to the only part of the Bill I shall speak on, which is Part 5 on the House of Lords. Despite the words of the noble Lord, Lord Denham, who is not now in his place, and the right reverend Prelate the Bishop of Durham, there surely must be very wide agreement on the principle embodied in the Bill for ending the arrangements, in operation since 1999, for by-elections to fill vacancies for hereditary Peers when one of them dies. It was notable for me that the noble Lord, Lord Cobbold, himself an hereditary Peer, took the same view. There is no merit in continuing with these by-elections.

I can agree with the Lord Chancellor, Mr Jack Straw, who said at Second Reading in the other place that the arrangements were "utterly risible", particularly

when there were sometimes more candidates in those by-elections than there are electors. I can also agree with the Conservative spokesman, Mr Dominic Grieve, who, speaking in a very measured way as he normally does, said that the present arrangement for elections of hereditary Peers was a "peculiar anomaly".

As the noble Lord, Lord Steel, and others have said, nobody anticipated 10 or 11 years ago that these arrangements would still continue. They can be got rid of only by legislation, so here is legislation. It cannot be done by mutual agreement or something of that sort. Of course, it may take a few decades for all current hereditary Peers literally to die off, but so what? The principle that being in this House is a result of heredity will have been banished. That will gradually take effect and—as I think that the noble Lord, Lord Pannick, said earlier—it is indeed a more civilised way if it is done by the Grim Reaper than by some other method.

There seemed to my mind to be a certain amount of general agreement that people who are guilty of serious criminal offences should not be Members of this House and that there should be expulsion as well as suspension powers for this House when Peers bring it into disrepute in some way; that is in Clauses 54 and 55. On the first part of that, I will express some doubt. I suppose there is a certain logic that a legislative body whose Members help to make laws should not itself include anyone who has committed a serious breach of the law. Yet the House could lose something by the very absolute nature of Clause 54, which is not discretionary.

I recall that, in the 1980s, the late Lord Spens was convicted of a serious offence and on completing his sentence was of course able to return to this House, where it so happened that there was an interesting debate about prisons. He took an impressive part in that debate. He spoke from rather more experience than most other Peers attending on that day, and his speech was obviously enhanced by that experience. I also note that if only as a result of pressure from the European Court of Human Rights, plus the pressure from the noble Lord, Lord Ramsbotham, it may be that the UK will be obliged in the near future to allow all convicted persons to exercise the right to vote for the other place.

If persons convicted of a serious offence, and even those still serving a prison sentence, can take part in the electoral process, it seems to me that the case for automatically depriving convicted Peers of a right to return to the House after they have served their sentence—a right enjoyed for hundreds of years—is reduced. Clause 55 is a discretionary clause to expel people who bring the House into disrepute, but surely that could be used because of the offence of which they have been convicted.

The only point of talking about such things in a Second Reading debate is to put down a marker for the Committee stage. I am afraid we all know that there will not be a Committee stage, and I fully understand the Cross Bench irritation, expressed by the noble Lord, Lord Armstrong of Ilminster, that the Cross Benches do not have a role.

Lord Henley: Even under the wash-up process, I understand that there will still be a Committee stage, so it will be open to noble Lords to table amendments. Whether they are discussed will be a matter for the House, but the noble Lord is free to table amendments in due course.

Lord Borrie: I am grateful to be corrected by the noble Lord. If he is right it will be of tremendous interest to many people, not only those here now but others who have ideas for amendments. I say good luck to them and I thank the noble Lord for that comment.

7.52 pm

Lord Williamson of Horton: My Lords, when we receive a Bill containing a part specifically entitled, "The House of Lords", we might expect a slight shiver to run through the calm environment of your Lordships' House. Having sat here for many hours since the debate began I think that I will withdraw the word "shiver" and insert "a deep frost" in this case—at least in relation to the Government's presentation, handling, timing and treatment of the Bill at the final stage of its arrival in this House. The Minister will be glad to hear that I shall not go over that ground again. He can hardly fail to have noticed the comments not only from the Constitution Committee but from all around the House.

After the Bill's elephantine gestation I want to say a few words about its substance. I doubt whether they will affect the wash-up but we can dream. I want to comment, first, on the long-awaited Bill establishing for the first time a statutory basis for the management of the Civil Service. We know that this has been delayed for more than a century and a half—some Members have quoted different figures, but I have my own. I was a member of the Joint Committee that examined the draft Constitutional Renewal Bill, as it then was, which now appears with all the extra clauses on the pick and mix system that we have in this Bill, and with a new Title. I am happy to see that some provisions in the earlier draft Bill are not in this one. For example, the role of the Attorney-General was not ready for legislation and it does not appear in the Bill. It is always a cause for personal rejoicing when something is not being legislated on. On the other hand, I congratulate the Government on the proposed legislation for the Civil Service, which may survive the wash-up.

On the substance of the Bill, it is necessary to look at the different parts separately. Despite the ingenuity of Ministers and civil servants it is extremely difficult to see any common theme. Part 1 is a Civil Service Bill and I declare an interest as a former civil servant. I am glad that the Government have shown discretion in not overloading this part with detail on the role and duties of civil servants. The Bill's formula on this point is simple: the Minister for the Civil Service has to publish a code which will be laid before Parliament that requires civil servants to carry out their duties with integrity, honesty, objectivity and impartiality. That code will form part of the terms and conditions of any civil servant covered by the code. Similar provisions, of course, apply to the Diplomatic Service code that the Secretary of State must publish and lay before

[Lord Williamson of Horton]
Parliament. I do not find that controversial. I make that point in case it comes up in the wash.

Perhaps more controversial is the treatment of special advisers. A code will be laid before Parliament which will again form part of the terms and conditions of service of special advisers. It is perhaps weird to read in Clause 7(5):

> "But the code need not require special advisers … to carry out their duties with objectivity or impartiality".

That is specifically stated in the law, which I can understand, but it sits rather oddly in the Bill.

There has to be an annual report from special advisers. So far, so good, but we have a number of questions that we will perhaps not have the time to deal with unless amendments are tabled for the extremely brief Committee stage that we expect. First, how are we to treat restrictions on special advisers' functions? That is an important point. Secondly, should there be a limit on the number of special advisers? Paragraph 296 of the Joint Committee's report suggests that it might be done by limiting the number of special advisers that each Cabinet Minister can appoint. That is a serious point which we may never get to, but I would like to record it.

I turn briefly to Part 2 on the requirement that a treaty should not be ratified unless it has been published and laid before Parliament for 21 sitting days, during which time either House can resolve that it should not be ratified. That reflects the Ponsonby rule dating from 1924, which is generally followed. The Bill provides for a further statement to Parliament explaining why the Government can none the less ratify a treaty when either House has resolved that it should not be ratified. There are special exceptional cases and other elements in this part of the Bill. Obviously this is not a lock on the Government's position, but it is an advantage to formalise a role for Parliament on treaties and in general I support it. It could perhaps be done better but I would like to see this in law. The definition of a treaty is very wide and this again could be open to question—for example, a large number of treaty-like operations, such as Memoranda of Understanding, exchanges of letters and so on. That is how government is carried on. For example, there is the agreement between the Prime Minister and the United States President in 2006. It was not strictly speaking a treaty at all; it was an exchange of letters that would probably not be covered by this text. There are serious points about how that would be handled, but overall there is a lot to be said for putting in statutory form some greater control over treaty-making and a greater power for Parliament on that matter.

Part 3 covers the referendum on the alternative vote system. As an unelected parliamentarian, I never object to asking the people for their opinion; it seems a very good idea. I have nothing to say about that, but I note that several colleagues are thinking of proposing amendments in relation to voting. For example, I believe my noble friend Lord Ramsbotham intends to table an amendment about prisoners' voting rights. I just mention that to the Minister; we may see it before too long.

I must move quickly through these various parts of the Bill. I shall certainly not cover all of it, but only a selection. I come to Part 5, which relates to the House of Lords. I am very pleased to see some of the provisions of the original Steel Bill. We were not allowed to have these before, but we are invited to have them now. That is a very good thing. I support the amendment that has been moved by the noble Lord, Lord Steel. I supported the original Steel Bill and it would be good to have a statutory Appointments Commission. Most people have spoken on the House of Lords and I do not wish to speak in more detail about its composition—a subject on which I have heard much said so often. I may now rest on that point.

The other provisions about discipline in the House and the position of those who have been sentenced to various forms of imprisonment or fallen into bankruptcy are perfectly reasonable and in the same spirit as those in the other place. I come to Part 7, on which I have a brief comment. My speech is very brief, really. Part 7 would remove Sections 132 to 138 of the Serious Organised Crime and Police Act and put in effect a much better system for demonstrations in the area around Parliament. It would also set a limit of 300 metres from Parliament, which could be determined as the area in which such demonstrations could still be controlled by a senior police officer. There was a much wider area before, which was a serious mistake. Overall, Part 7 is very much to be welcomed.

I conclude now, but I have noted that the next speaker on the list is the noble Lord, Lord Phillips of Sudbury. I welcome him back. He will be able to recall how calm this House was when he left and contrast it with how we now deal with legislation. That is what we have to put up with. As I said, there are points in the Bill which, in substance, are desirable. I would like to cheer the Minister up by saying that I support some of what is in the Bill and take a positive attitude to those matters. I will not deal further with the question of how the Bill arrived here, or with the process, the deep freeze and all the other things from which we have suffered this afternoon.

8.03 pm

Lord Phillips of Sudbury: My Lords, first, I thank the noble Lord, Lord Williamson of Horton, for those kind words. All I can say is that whatever other feelings are going through my breast, it is a genuine pleasure to come back to such a friendly, civilised place as this. It is a triumph of human creativity to have a place such as the House of Lords. When you are away from it, you appreciate rather more its extraordinary organic functioning; the grace and lack of partisanship; the friendship and warmth; and the willingness to listen to people and have, as far as possible, open minds. I have missed all of that. It is something of an irony that the last time I was on my feet in this Chamber, in the summer of 2006, it was to lay before the House a Private Member's Bill permitting the resignation of life Peers. It was partly the provocation of that provision in this Bill that ultimately forced my wavering hand.

Many have said, very eloquently, that this is not the way to treat a major constitutional Bill. There is nothing to add to that. The one point that I have not

heard emphasised, and is worth emphasising, was made by the noble Lord, Lord Henley, at the beginning. He said that in the Commons a third of the Bill was not even debated.

If I have learnt even more than I already knew in the nearly four years that I have been away, it is from the quite stupendous number of times that people have come up to me, knowing that I had stood down. They said many things but two prevailed. One was a great respect and regard for this House, over and above the House of Commons. The people of this country appreciate what we do here and the manner in which we do it. They appreciate the intelligence and experience we bring to bear on it.

The other thing that was and is said to me again and again is, "We are completely lost. You legislate so much, so furiously and so complexly that we cannot feed into the process". There is a lack of ability for the public—those who might be inclined so to do—to react to this very important Bill. The lack of opportunity, which will not be there because of the way in which the Bill is being dealt with, is not a small issue. It is part and parcel of the disconnectedness and disaffection that so many of our fellow citizens feel towards this place at this time, quite apart from the sad expenses saga, and so on. I had to make that point.

I will refer briefly to some of the drafting in the Bill. It is interesting. I recently had cause to look at the public Acts of 1906. That was the year that Bonar Law lost to Campbell-Bannerman. The total length of all the public Acts of 1906 is less than that of this Bill. That gives pause for thought. Some of the drafting in the Bill is of extraordinary complexity. We will not have the chance to unravel and improve it in the normal way, as we should. I cite Clauses 54 to 57, which deal with the removal, expulsion, resignation and disclaimer of life peerages, and with Peers convicted of crime, and so on. They are almost impenetrable even to Members of this House. They are not fit for purpose. Had we the time, I think we would have uncovered internal contradictions within those four clauses.

If you suffer from insomnia, take to bed Clause 29 of the Bill. When you cannot get your mind off whatever it is, read subsection (4)(d) of that clause. In trying to understand it, you will surely nod off. I defy anybody to make sense of that subsection. Contrast this with the Bill of the noble Lord, Lord Steel, which is, I am afraid, a stunning indictment of what we have here.

I will briefly say, as many have, that had we had the opportunity to consider the Bill and table amendments to it, many of us would have done so. Many examples have already been given. Why, for example, do we still not have votes for Members of this House? That is not quite true, because the Bishops have them. On what conceivable basis can the Lords spiritual have more temporal power than the rest of us? It is bonkers! We might also, I suggest, have considered putting in a clause which allowed those of us who do not like titles not to have them forced on us. We could simply call ourselves Andrew Phillips MHL—Member of the House of Lords. It could be entirely voluntary. Titles are great for those who want them and, for those who want to keep them to their graves, better still. However, for those of us who do not like them, why should they not be voluntary? It might be a small step in the direction of lessening the distance that can exist between us and the public.

I would have liked to have seen reference in the Bill to what has certainly been referred to in the debate—I cannot remember by whom; I think it was my noble friend Lord McNally—a referendum on the composition of this House, with choices. Was not the noble Lord, Lord Willoughby de Broke, the author of that idea? Why should it not be in the Bill? The disagreement between us on the composition of the House is considerable and the public should decide who comprises this Chamber, not us. This is classically an issue for the public.

I wish to make two further points. The first relates in particular to Clause 65 which deals with the appointment of justices of the peace. Noble Lords may remember that the Constitutional Reform Act 2005 removed this power of appointment from the advisory committees under the Lord Chancellor to the Judicial Appointments Commission. A number of us said at the time that that might not be a great idea, and it was not. The commission simply cannot cope with the appointment of JPs. Perhaps the noble Lord, Lord Bach, may not be able to reply tonight, but I should be grateful if he let us know whether, under the change made by the Bill, the Lord Chancellor will take up that appointment role and, in particular, use local advisory committees—I hope under their present distribution, because there are indications that, as with everything else in our nation, consolidation is in mind, whereby bigger always equals better. Of course, we know it does not.

My final point was touched on by the noble Lord, Lord Williamson of Horton, and relates to protest law. Some of us were involved in the Bill that became the Serious Organised Crime and Police Act 2005—SOCPA. My only contribution to it was to object to Sections 132 to 138, which I and many others thought gave far too wide powers to the police to manage protests. Many of those provisions, which would fortunately be repealed by this Bill, related to that wonderful eccentric Brian Haw, who insisted on living with his tatty placards opposite the entrance to the House. I commend much of the repeal of SOCPA, but there is one blemish which, if we had time, we should have dealt with. Clause 61 and Schedule 9 of this Bill add a new Section 14 to the Public Order Act 1986 to allow the Secretary of State, by secondary legislation, to provide the requirements subject to which the police will in future manage protests outside this place. It is wholly contrary to our tradition to allow matters of basic personal liberty to be dealt with by means of secondary legislation. This is yet another matter which is not little, but is potentially very important, because we know well enough that secondary legislation is quite useless in terms of the powers of this House. We cannot amend it and throwing it out in toto is extraordinarily rare and, even then, ineffectual.

With those points I shall come to a close, and I am sorry that I have overrun my time.

8.13 pm

Baroness Jay of Paddington: My Lords, it is a great pleasure to welcome back the noble Lord, Lord Phillips of Sudbury, and to congratulate him on what I suppose we might describe as his second-act maiden speech. It is many years since I followed the noble Lord in a debate which included House of Lords reform. It takes me back to a time when we were young, or at least younger, and very enthusiastic about constitutional reform.

Turning to today's business, I very much welcome most of the content of the Bill, but, like many other noble Lords who have spoken from all around the House, I very much regret its timing. None the less, it is worth stating briefly what in my view should be vigorously pursued in the Bill and, if necessary, be taken into the next Parliament. Whatever the niceties of potential Committee stages in a formal sense, none of us know how much or what will survive the lottery of the wash-up.

I am very pleased that at last we have the clauses in Part 1 putting the Civil Service and Diplomatic Service on a statutory footing. I particularly welcome the proposals to make the Civil Service Commission a statutory corporate body, and the specific measures to remove existing nationality restrictions on employment and office-holders, as well as those measures which create a separate code for special advisers. I agree with my noble friend Lord Howarth of Newport, who is not in his place at the moment, that if these and some of the other important provisions in Part 1 are enacted, we should be able in future to avoid some of the political controversies about advice to Governments which have plagued Ministers and officials in recent history. I hope that when the deals are done at the end of this Parliament, Part 1 will be relatively uncontroversial.

Turning to Part 3, on balance, I support the proposed referendum on adopting the alternative vote system for the House of Commons. I would have preferred to legislate for a referendum which offers a choice between AV and other systems, but a simple question should at least produce a clear answer on AV. I am a member of your Lordships' Constitution Committee which, apart from the much-quoted assessment that it has made of this Bill, has just completed a rather sceptical report on the general value of referendums. None the less, our findings support the potential use of referendums on constitutional matters, and changing the voting system for Westminster would certainly qualify. However, it is highly unlikely, given the opposition of the Conservative Party, that Part 3 will make it, because of the 11th-hour appearance of the Bill. However, I hope that your Lordships will return to the different voting systems and referendums at another stage.

I have to say that my greatest disappointment is with Parts 5 and 6, dealing with the House of Lords. Let me say immediately that I have no argument with the proposed reforms—although I sympathise with the amendment of the noble Lord, Lord Steel, on a statutory appointments commission—but my disappointment, indeed my sadness, is that the Bill has come so late and that the Government have not taken all the earlier opportunities that there have been to get these changes onto the statute book. It is no good for the Government to say now that the Bill has broken the decade-long stalemate on Lords reform. This stalemate could have been broken one year ago or two years ago if the Government had, as several speakers have emphasised, either picked up the Private Member's Bills introduced by the noble Lords, Lord Steel and Lord Oakeshott, or, as the noble Baroness, Lady Boothroyd, trenchantly pointed out, moved more rapidly on their own legislation. I would even agree with the noble Lord, Lord McNally, that we could have made progress on these or similar measures nearly 10 years ago if we had followed the Royal Commission report of the noble Lord, Lord Wakeham.

We are now in a position where these very sensible measures in Parts 5 and 6, which almost exactly reflect those in the second Bill of the noble Lord, Lord Steel, and those in the 2009 Bill of the noble Lord, Lord Oakeshott, on taxation, will now almost certainly be part of what we can all understand is frantic horse trading in the wash-up. It is worth reminding your Lordships—the noble Lord, Lord Steel, has done so already—that this time last year his Bill was properly considered in a Committee of the whole House. Although there were no votes in Committee, significantly his Bill was supported at Second Reading all around the House. I noted from the record that by the end of that debate, there had been 27 speakers in favour of that Bill and five against, but on that occasion the Bill did not find favour with the Government.

My noble friends on the Front Bench, notably my noble friend Lord Hunt of Kings Heath, who has passed this chalice to my noble friend Lord Bach, have always previously argued that accepting the limited and possibly interim measures suggested by the noble Lord, Lord Steel, would threaten more substantial and long-term change. My noble friend Lord Hunt of Kings Heath on 27 February 2009 said that the measures would be inconsistent with the Government's intention to legislate for long-term reform. But today, just a year later, we have the Government themselves introducing these types of provisions and, at the same time, my right honourable friend Jack Straw is shortly to produce clauses to create an elected second Chamber. I have to agree with my noble friend Lord Gordon of Strathblane that, without being entirely cynical, it is hard to understand the legislative or political logic behind this.

On the proceedings today in your Lordships' House I, perhaps surprisingly, agree with the noble Earl, Lord Onslow, on the important question that us Back-Benchers should ask the Front-Bench spokesman when the noble Baroness, Lady Hanham, winds up for the Opposition. What exactly will they support out of Parts 5 and 6 during wash-up? In spite of the opaqueness of that procedure, I understand it will largely depend on Opposition co-operation whether particular clauses go through. Considering the substance of Parts 5 and 6, I imagine the clauses which relate to our disciplinary regime in this House will be generally agreed. I am glad to hear from the noble Lord, Lord Henley, that the same will be true of the tax and residency measures in Part 6. We have already heard that the plan to abolish by-elections for hereditary Peers is opposed by the Conservative Party and presumably will not survive. To repeat what the noble Lord, Lord Steel, said, in the

new Parliament we will continue to have what he described as the bizarre arrangement whereby the elections of Old Sarum seem positively democratic.

Like my noble friends Lord Howarth of Newport, Lord Lea of Crondall and many others, I am in favour of the amendment of the noble Lord, Lord Steel, on the appointments commission, for reasons I do not need to repeat which he eloquently advanced, as did my noble kinsman Lord Jay of Ewelme. I was particularly impressed by the recitation by the noble Lord, Lord Steel, of the nine previous occasions on which the proposal for a statutory appointments commission had been put. I re-emphasise to my noble friend the Minister that this was a commitment in the last two Labour Party manifestos. If the Government are now prepared to take forward some measures which they had previously criticised as piecemeal, I cannot understand why we cannot extend that inconsistency to the important question of the appointments commission.

In conclusion, as I said earlier, my overall feeling about this Bill is sadness that so many opportunities to make these kinds of important changes have been missed and concern that, because of the timing, some of those proposed today will not now happen. After the general election, I expect to be sitting exactly where I am today. My gloom this afternoon and evening may well be lifted when I see a radical reform Bill in the Queen's Speech. Given some of the abandoned manifesto promises of the last years, and Mr Cameron's stated preference for delay on House of Lords reform, those of us who genuinely want to continue change in your Lordships' House will probably need to go on in the new Parliament pressing for the kinds of incremental measures which I welcome today. I hope the momentum that my noble friend the Minister referred to in opening the debate will, in the next decade, be much greater than in the last.

Lord Denham: My Lords, would the noble Baroness really be prepared to see the agreement broken between the Government and the Opposition on hereditary Peers?

Baroness Jay of Paddington: I am sorry, I do not follow the noble Lord.

Lord Denham: The noble Baroness said that she would like to see the elections for hereditary Peers end. She was in on all the agreements and ways the promises were made. Would she really sleep happy in her bed tonight if she let those promises be broken?

Baroness Jay of Paddington: My Lords, the noble Lord invites me to enter yet again the argument about what constitutes phase two of House of Lords reform. The package of proposals that the Government have now brought forward would constitute such a stage.

8.23 pm

Lord Wilson of Dinton: My Lords, before the noble Lord, Lord Steel, leaves the Chamber, I should say that I sympathise with what he said about a statutory Appointments Commission. I was a little involved in the setting up of the Appointments Commission and clearly remember the commitments given. They were an integral part of what happened and of the policy at that time. His cause is just.

I shall confine my remarks more generally to Part 1 of the Bill, dealing with the Civil Service. Speaking as a former head of that service, I follow what the noble Lord, Lord Armstrong, said about those provisions. I strongly support them. If they could reach the statute book they would put an end to a discussion which began some 150 years ago. There is a slight disagreement about how long it is, depending on whether you make your calculation from when the Northcote-Trevelyan report was submitted or implemented. There was a deferral at that time because Mr Disraeli opposed the proposals—he was a strong supporter of patronage. I do not intend to follow him in what I say.

I believe that the noble Lord, Lord Clark of Windermere, was the first person in recent times to express the Government's support for a Civil Service Bill, a few months after new Labour won power in 1997. As long ago as July 2000 in their reply to the Committee on Standards in Public Life, the Government made a firm commitment, collectively approved, that there would be such a Bill. As head of the service, I confirmed on behalf of the Government that there would be consultation on what the Bill would contain. In a speech made before I retired in 2002, I set out what it would cover. No one could call this part of the Bill rushed, except in the sense that it has finally come in right at the end of a Parliament.

I will briefly address two questions: why are these provisions in Part 1 needed and are they the right provisions? First, they are needed because, after decades of change and uncertainty—conditions which are set to continue—we need to be sure that those qualities of the Civil Service which have helped to make it the finest in the world are properly enshrined and protected, and not liable to be washed away and lost in a sea of relentless and sometimes impatient change. The report of the Fulton committee in 1968—on which the noble Lord, Lord Sheldon, who was in his place earlier, sat—was perhaps the start in modern times of continuous, some might say even Maoist, reform of the Civil Service. A great deal has been accomplished since then and much has changed, mostly without fuss. It would be tedious to go through a litany of those changes but it would also be unfair not to recognise how much has been done.

No Government own the Civil Service. Each Government, however rightly keen on modernisation, also have a duty of stewardship to respect those features of the service which are perennial—selection on merit, honesty and integrity, political impartiality and giving its best advice—and to leave it in a condition which will serve future Governments equally well. In return, the service is under an obligation to serve the Government of the day to the best of its ability, to support it in formulating its policies and to implement them excellently and energetically. In practice, that usually involves change. The service has never remained the same for long. That is the deal, but it must be based on respect for the fundamentals of the service. That is what Part 1 of this Bill is about. It is not about protecting

[Lord Wilson of Dinton]
vested interests or stalling reform but assuring Parliament and the public that those characteristics which they are entitled to expect in the service—the ones I mentioned just now and other features such as the absence of political patronage—are being preserved and respected.

Secondly, are the provisions in this Bill the right ones? In an imperfect world I believe that Part 1 has a pretty good shot at what is needed. Looking back at what I said in 2002 when I outlined what a Bill would contain, virtually everything is covered. I pay tribute to the sterling officials in the Cabinet Office who have patiently beavered away over the years under my successors in working up these proposals. I also pay tribute to the contribution of the Public Administration Select Committee in another place and to Dr Tony Wright. They have all prepared the ground well. As I said, this is not rushed legislation. The present Cabinet Secretary will be entitled to feel proud if Part 1 reaches the statute book on his watch.

Making the Civil Service Commissioners statutory, as Northcote and Trevelyan recommended, with powers to investigate, which are in the Bill, is hugely important. The battle between merit and patronage is never really over, and the commissioners are constitutional bedrock. In this connection, I note that a power is proposed in Clause 12 for the commissioners to make limited exceptions to the principle of selection on merit. That is sensible, but they must be in control. There must be no backdoor route for cronyism. Therefore, I am surprised to see in Clause 10(3)(a) a wholesale exemption from the merit principle for an appointment to the Diplomatic Service either as head of a mission or as governor of an overseas territory—a point which the noble Lord, Lord Wright, rightly raised. It is hard to see the reason for that exception. Is it really the case that such appointments are to be made on some basis other than merit? If so, on what basis? It would be much more sensible for any Government who wanted to make an appointment other than on merit to seek the agreement of the Civil Service Commissioners under the exemption in Clause 12, and I think that this provision could be dropped. I know that the Public Administration Select Committee said that up to three appointments could be made not on merit. I do not understand why it is all right to make three such appointments. Why not rely on the power of the commissioners?

I also welcome most warmly the regularising of the position of special advisers. I should like to speak for a moment in defence of special advisers. I think that most people in departments who have worked with them recognise that most do a job that is both valuable to the department and of use to the service. They play many different roles but it is wrong to represent the service as having been overrun by them. In my time—I believe that this is probably still the case—the *Ministerial Code* limited the number of special advisers to each Secretary of State to two. There may be exceptions. I remember that Mr Blunkett had one or two more to help him with his disability but I do not believe that that has changed. The main places where there are more than two are the Treasury and No. 10. It is not fair to most of them that their role has become a matter of public interest and concern, but the simple fact is that it has. There have from time to time been problems and the public are interested in them. Anyone who gives a lecture on modern government will know that one is always asked two things—one is about the role of special advisers and the other is whether "Yes Minister" is accurate.

I am particularly glad to see Clause 8(5), which specifies the things which a special adviser may not do. It is a late amendment but a very important one. I wonder whether the Government might also be prepared to amend Clause 16(4) so that the annual report to Parliament about special advisers contains information about their roles as well as their number and cost.

In conclusion, I hope very much that Part 1 of the Bill can reach the statute book and that all political parties will support it. It is a very important piece of potential legislation. It is tantalising that we have something so precious so close to achievement after so many years. I add my name to the list of those who are deeply unhappy about the way that the Bill has come forward so late in the day but I hope that this part will survive the wash-up.

8.33 pm

Lord Norton of Louth: My Lords, like the noble Lord, Lord Williamson of Horton, I served on the Joint Committee on the draft Constitutional Renewal Bill. The Joint Committee worked extremely hard, holding two two-hour sessions each week over a three-month period, in order to report by the end of July 2008. The energy and commitment of the committee was clearly not matched by that of the Government. Despite having considerably more resources than those of the Joint Committee, the Government took a year to respond to the committee's report and to introduce the Bill into Parliament. That was a delay for which we have received no persuasive explanation—indeed, as far as I can see, no explanation at all. When the Lord Chancellor appeared before the Constitution Committee last month, I put it to him that there had been a massive gap between the report of the Joint Committee and the introduction of the Bill. His reply was:

"There was, I agree, and I am frustrated about that. I am afraid that it is water under the bridge".

It is important that this House is not swept away in that water. What we are confronted with is not only a Bill of constitutional significance but also, as we have heard throughout today, an issue of process that is of constitutional importance. The primary task of this House is legislative scrutiny. It is our job to examine Bills in detail and to ensure that the provisions fulfil the intended purpose of those Bills. Our reputation—and, in large part, our legitimacy—rests on our capacity to fulfil that task.

Given that, what do we do with a Bill of constitutional import that is having a Second Reading only days before the likely end of the Parliament? It is a Bill that could and should have been brought before Parliament at a much earlier date, that was slow in being taken in Committee in the other place, that was loaded with new government clauses towards the end of its passage in the other place, and that was subject to time limitations both in Committee and on Report. Many important amendments that MPs, including members of the Public Administration Committee in the other place, wished to discuss were never considered.

The deficiencies with the process are all too clear, yet the Government appear not to fully appreciate this and to believe that much of the Bill can be agreed in the wash-up. This morning, the Constitution Committee received a response from the Government to its report on the Bill. The letter from the Minister, Michael Wills, is silent on the reason for the delay in introducing the Bill, adopts a completely Commons-centric approach, and makes statements such as:

"I must say that the Bill was before the Commons for seven months".

It would be more appropriate to say that the Bill languished in the Commons for seven months, with the Government showing no enthusiasm for getting it through in reasonable time to reach this House.

The Government appear to have had no qualms about letting the Bill get to this late stage, apparently on the assumption that it will go into the wash-up. The Lord Chancellor, in his evidence to the Constitution Committee, said that particular provisions would have priority in the negotiations in the wash-up. The Leader of the House of Commons has gone further, saying that if it goes into wash-up,

"it will be for the Opposition parties to negotiate with the Government so that we can get through a great deal of what was in the Bill",

adding:

"If the Bill cannot find its way through the Lords, we will make sure at the wash-up that the provisions that the public want get through".—[*Official Report,* Commons, 4/3/10; col. 1019.]

I invite the Minister, in replying, to put on the record that the responsibility for where the Bill has reached rests solely with the Government. Perhaps he will also tell us what provisions are demonstrably those "that the public want". By "demonstrably", I mean where there is clear empirical evidence, not some spurious assertions of the sort the Minister advanced this afternoon. Perhaps he will also put on the record that it is not, in any event, the task of either House simply to nod through what the public want. Indeed, we know that the public would not expect it. Surveys, not least that carried out by Ipsos MORI for the Constitution Unit in 2007, show that what the public want is a House of Lords that considers legislation "carefully and in detail". That is what 73 per cent of those questioned want. That is what we are being denied the opportunity to undertake—careful and detailed scrutiny.

We are being denied that opportunity not least because of the presumed convention that a Bill that completes its passage in one House and is given a Second Reading in the other is then eligible to be considered in the wash-up. The genesis of this convention is unclear and its rationale unsustainable. A convention is only such when those who are affected by it accept that it is necessary to abide by it in order to make the process work efficiently and effectively. Even if the Front Benches have been parties to it, it is not clear why the House should be bound by it. We make much of the fact that we are a self-regulating House, but on occasion we appear to abdicate that responsibility.

I advance the proposition that we should not accept that because a Bill has reached Second Reading, that makes it automatically eligible for going into the wash-up. That applies especially where the Bill is of constitutional significance, has been subject to time limitations in the other place and has had substantial provisions introduced late in its passage in the other place. The fact that the parties may agree it does not negate the principle involved. The integrity of Parliament, and certainly of this House, is at stake.

What, then, do we do? There are two options. The clearest and most sustainable in terms of principle is that the Bill does not go into wash-up or that we do not accept anything emerging from it. The other is to agree only those provisions which are either small, uncontested clauses, where no queries have been raised about their substance and drafting, or provisions which have already been considered in detail by the Joint Committee on the draft Bill or by the other place and where the need for the provision is compelling and could not be left to be implemented through a Bill in the next Parliament. If we are persuaded that some substantial provisions may be considered, then we should apply sunset clauses to those provisions.

Mitigating against any claim that the case for enactment is compelling is Clause 95. Few clauses take effect upon enactment. Eighty-one clauses will come into force on such days as Ministers may by order appoint. Mitigating against any claim that the provisions have been examined in depth are the reports of the Constitution Committee and the Delegated Powers Committee. The report of the former makes clear that core parts of the Bill, as on the Civil Service, were subject to partial scrutiny in the other place and that others were not considered at all. Both reports raise questions about the provisions of the Bill, questions that cannot be adequately addressed in the time remaining before the end of this Parliament. This Bill, as so many Members have said today, demonstrably requires further detailed consideration.

The onus rests on the Minister to justify why this Bill is only now before us and to demonstrate which provisions, if any, meet the criteria I have outlined. If he cannot do that, then I suggest that the best solution is for the two Front Benches to commit whichever party is returned at the election to reintroduce the Bill at the start of the new Parliament. Then, and only then, can we subject it to the thorough scrutiny that it requires and fulfil the fundamental role expected of us by the public.

8.42 pm

Baroness Miller of Chilthorne Domer: My Lords, one of the great pleasures for me this evening has been the return of my noble friend Lord Phillips of Sudbury. It is a tremendous moment for me. I have often listened to him in debate and it gives me great confidence to pick up his theme at the end of his speech because I want to talk about Clause 61. It concerns the right to protest in Parliament Square. As my noble friend said, those restrictions were ostensibly imposed because of security risks posed by the possibility of bombs being hidden in Brian Haw's sleeping bag, but they were actually imposed because the Government were getting so embarrassed by and fed up with the continuing anti-war protests.

Like this evening's proposals, those provisions were passed in great haste without proper scrutiny. That led to the most ridiculous situation where the legislation required protestors to apply at Charing Cross police

[Baroness Miller of Chilthorne Domer]
station for permission to protest. Overnight, this gave the police a mountain of paperwork and less time to tackle real issues of crime and security. Noble Lords will remember that the police had to issue permission for someone who wanted to have a picnic with the word "peace" iced on their cake. The whole crazy system was brilliantly ridiculed by the comedian Mark Thomas in his lone demonstrations. However, it had serious consequences for some people conducting peaceful protests. They were fined substantial sums because they had not got permission—£250 for a tea party protestor—and they got a criminal record. In an effort to stop that state of affairs, I introduced a Bill to end the system, but Conservative amendments meant that it never got past Second Reading.

When Gordon Brown became Prime Minister in July 2007, he said that he would change the protest laws. What we have before us in Clause 61(1) is the realisation of that commitment. However, it is a typical Labour idea of a change. Clause 61(1) repeals what is unpopular and unworkable, but Clause 61(2) immediately replaces it. The Minister said that this change has broad public support. It does but, as the Select Committee on the Constitution states, we have to be wary of Part 2 because the new powers,

"confer considerable discretion on the Secretary of State and on senior police officers".

It makes an important point about the stark contrast between this approach, which gives the Secretary of State the power to have these orders, and the draft Constitutional Renewal Bill, which simply repealed the draconian SOCPA powers without replacing them.

The Delegated Powers and Regulatory Reform Committee also has great reservations. It does not believe that we should deal with this issue so lightly. It recommends that, if orders need to be made under Schedule 9, that must at least be done by affirmative procedure and not, as the Government propose, by negative procedure.

The Minister may say that the Bill states that the order may not apply to an area more than 300 yards from any entrance to Parliament and claim that that is an improvement. However, that effectively takes out Parliament Square, Old Palace Yard, Abbey Gardens, College Green, Victoria Gardens, Westminster Bridge and most of Whitehall—in other words, any place near enough to Parliament to make yourself seen and heard by parliamentarians arriving at Parliament. Anyone who was outside today will have seen a large number of demonstrations and a large number of the press on College Green, who could almost be said to be more aggravating to get through than all the demonstrators put together. Parliament cannot be said to be at the heart of our democracy when ringed around by a cordon sanitaire. It is already removed enough from the real world. E-petitions and virtual protests are not a substitute.

The Minister knows as well as I do that there are sufficient powers under the Public Order Act to control demonstrations, marches and assemblies. There are also sessional orders to control access to Parliament. We also extended the powers in the Terrorism Act, which gives the police extremely wide powers to stop and search, including in the area around Parliament. The attempt to clamp down on demonstrations has always been more about cleansing the area around Parliament, a practice that is more associated with totalitarian regimes. We will not get a chance to amend the Bill, so I can only hope that in the wash-up this outrageous backsliding is removed, with Clause 61(1) remaining and Clause 61(2) taken out.

8.48 pm

The Earl of Sandwich: My Lords, I return to Part 5. It is already 100 years since noble Lords embarked on the first substantial reforms of this House and we are fast approaching the centenary of the Parliament Act, which made major changes to the powers of the House. Since then, we have had a succession of attempts, culminating in the 1999 Act, which at times have appeared to come very close to a conclusion. I am one of a substantial group in the House who would like to have seen all the sensible provisions of the Steel Bill implemented and fully discussed in this Bill—not as a last throw of the present Government but as a reasonable, practical way forward for this House. I pay tribute to the noble Lord, Lord Norton, for all that he did for the Steel Bill and for the advice that he has again offered to the Government this evening.

The Government have not only missed this opportunity but, as others have said with more authority, after five White Papers and numerous reports they have offered up an extraordinary hotchpotch of legislation that offends against every convention of the House—"mismanagement" was the term used by my noble friend Lady Boothroyd. It seems that, for the lack of a Committee stage, even the welcome provisions derived from the Steel Bill may not survive the wash-up. I fully concur with the judgment of the Constitution Committee. I am sure that by now the noble Lord, Lord Bach, is among those who are sorry, if not ashamed, at his own party's performance. The burden falls on him personally to explain to his very senior noble friends what has happened.

As a so-called excepted hereditary Peer, I should like to say a word about the group of 92 men and women who have been lined up, for more than 10 years, to walk the plank. It is surely time that the by-elections were ended, the sword of Damocles lifted and the rest of us allowed to continue our work in peace. After years of family service—in my case, nearly 350 years this summer—and after a contribution of considerable time, experience, colour and vitality to the work of the House, as we have seen this evening, it is disparaging to hear ourselves referred to in a casual and negative way. Phrases such as "ending the hereditary principle" easily slip into "withering on the vine", "dying off" and even "killing off". Such comments, whether made here or in the media, have been harmful to a significant group of noble Lords who represent, perhaps, one in five of the active working Peers in the House. Hereditary Peers do not complain very much and keep their heads down—perhaps for self-preservation—but there is no doubt that without them the work of the House would come very nearly to a standstill.

I of course accept that there has been a small but vocal minority of hereditary Peers who would like to delay the reform process—I thought that a few of them might turn out today—but they have a point;

they genuinely believe that the pact agreed in 1999 should still be honoured. They have become a deterrent to a sensible conclusion, but I hope that they have listened to the noble Lord, Lord Steel, or will read in *Hansard* what he said this evening. I do not agree with them because, like my noble friend Lord Cobbold, I believe that the passage of time is important and that attitudes must move on if we are to reach a solution.

I have no faith in Mr Straw's many times half-baked proposals to phase in an elected House. We already have an elected House and our constitution requires that we should respect the role of the Commons and not compete with it. I cannot see why the House should waste any more time on such proposals when we already have a mainly efficient and effective second Chamber that commands public confidence, another point made by the noble Lord, Lord Norton.

I should, however, like to see the provisions in Clauses 54 and 55 on suspension and removal enacted; I would go further than Clause 56 on resignation; and, like my noble friend Lady D'Souza, I would include fuller proposals for retirement, which in the long run—perhaps with modest financial inducements—would help to reduce the size of the House. I regard the establishment of a statutory independent Appointments Commission as an urgent matter, as do the noble Lord, Lord Steel, and many other noble Lords who have spoken. The Minister will have to explain why the Government cannot keep to their promises and why this important element has been left out or consigned to the never-never land of Lords reform. When will the parties agree to give up the system of patronage?

In conclusion, I take up a point mentioned by the noble Viscount, Lord Astor. I was a member of the Constitution Committee in 2006 and 2007 when it published its reports on war making—HL 236 and the follow-up HL Paper 51—proposing a new interpretation of the royal prerogative vested in the Prime Minister. The committee is quite right to remind the Government that they still have not revised let alone published the draft resolution that would give Parliament a more formal role in the process of deploying our Armed Forces outside the United Kingdom. Again, can the noble Lord kindly explain why this is the case? Against the background of the Iraq war, this was an important concession from the Government; it must not be allowed to disappear just because of the passage of time and when another conflict may be around the corner.

8.55 pm

Lord Hart of Chilton: My Lords, I am well able to spot mental fatigue when I see it and so I shall be extremely short and associate myself with the remarks of the noble Lords, Lord Norton of Louth and Lord Pannick.

I was a member of the Joint Committee on the Constitutional Renewal Bill and I am also a member of the Constitution Committee, so what I am going to say will not be surprising. In paragraph 7 of the Joint Committee's report, we drew attention to the fact that we were given just 10 sitting weeks for pre-legislative scrutiny instead of the recommended three to four months. We also noted that the risk of a constricted timetable may not have allowed us,

"to realise the full potential of the pre-legislative scrutiny process".

That sounds rather ironic now: we reported on the Bill in July 2008 but it took the Government almost exactly one year to produce a response and publish the Bill. That is not the mark of a vigorous Government responding to a report, almost all of whose recommendations they have in fact adopted; it is characteristic of a comatose rabbit.

It is obvious that neither House will have been able to scrutinise the whole Bill as major constitutional reform should be scrutinised. I have said that I am content with many of the Bill's proposals. That is not surprising, because the provisions in the main—in half the Bill—follow the recommendations of the Joint Committee. However, almost half the Bill has not received pre-legislative review. Points made at Second Reading in this House do not constitute and cannot substitute for detailed scrutiny, which is the very essence and raison d'être of this House. Any suggestion that this, a constitutional Bill, should be left to wash-up is not right in principle or practice. For a Bill that deals with constitutional reform to be handled in this way shows, I am saddened to say, that this House is regarded as an irrelevance.

8.57 pm

Lord Turnbull: My Lords, this Bill falls way below its advance billing with which we were provided in July 2007. It fails to address the most important constitutional questions: funding of political parties, which I do not think has been mentioned today; strengthening the ability of the legislature to hold the Executive to account; the anomalies left by the devolution settlement; the composition and role of this House; and many more issues.

Picking up the Shakespearean theme started originally by the noble Lord, Lord McNally, I compare this to the witches' cauldron in *Macbeth*—lots of disparate things like,

"Eye of newt and toe of frog",

thrown into the pot, some of which will deserve to survive the wash-up, and some of which will not. However, this debate has served an important purpose: it has allowed those of us who will not be in the metaphorically smoke-filled rooms to mark the card of those who will be. I hope they will listen to the views we have expressed in deciding whether to allow something to go through or to perish.

Like the noble Lord, Lord Maclennan of Rogart, I support a referendum on our voting system, but like him I also question the timing. The public have not been taken through the process in which we get to AV. There are many systems; people need to be taken through them more, and this process has been skipped. In my view, it would be better if after the election someone is commissioned to analyse the results and produce some view of what might have happened under these different systems, then people would have a clearer idea of what these different systems offer.

I support the shortening of the 30-year rule. I suggested to the Dacre committee two years of release every year until the target time was hit. However, something has gone wrong with the drafting of Clauses 85 and 86 which even Andrew Phillips MHL has not spotted. There are in fact two 30-year rules: the time for transferring

[LORD TURNBULL]
documents to the Public Record Office, and the time for which the FOI exemptions apply. In their response to Dacre, the Government said that the two procedures should be "concurrent"—in paragraph 36—but that the first moves to 20 years after a phased transition and the second moves to 20 years immediately. I think that it is a case of two different parts of Whitehall having got into muddle and needing to sort it out.

An important proposal, about which many noble Lords have spoken, is placing the Civil Service on a legislative basis. The Northcote-Trevelyan report recommended this 150 or so years ago, saying that it could be accomplished in a "few clauses". This is precisely what we have. I would describe what is proposed as minimalist. That description should be regarded as a compliment, as it is precisely what the approach should be. It leaves most of the status quo unchanged. The Civil Service remains a professional career service recruited on merit and through competition. It serves the Government of the day, but stands ready to serve with equal commitment the Government of the next day. It is managed by a Minister for the Civil Service—a role which in practice is delegated to the Permanent Secretaries—and not by either Parliament or, as some have suggested, a board of governors of the great and the good. The Civil Service Commissioners are independent, appointed by the Queen. The *Civil Service Code* is not enshrined in the statute, but the statute lays down certain fundamental principles which it must embody. It describes in a better way than has been done previously the role that special advisers are allowed to play, but it does not set a limit on their numbers. That is the right approach, because I absolutely guarantee that, whatever limit one has set, there will that many special advisers immediately afterwards, and it would become an obstacle to efforts to reduce their number.

Virtually all this is in the present understanding. If the Bill changes very little, what, some may ask, is the point? The point is that it entrenches the existing arrangements which have served this country well for 150 years. It does not, however, freeze the development of the Civil Service. If the Government want to make a change— for example, and I would not recommend it, to allow Ministers to appoint their own senior officials—they can do so, but only by bringing that proposal to Parliament and seeking approval.

It is often said that the Civil Service is being politicised. Could it mean that people are being appointed for their political views? There is no evidence of this; indeed, the Civil Service Commissioners are involved in more senior appointments than used to be the case. Does it mean that civil servants have become too pally, too partisan? They are occasionally, but usually such cases are addressed, as in the case of Damian McBride, who was basically thrown out of the Civil Service and told to become a "spad". The real issue is that some of the work of the Civil Service, particularly policy advice and communications, has been diverted down political channels; that is, Ministers and their special advisers.

We have an opportunity to reaffirm the long-standing relationships and safeguards around the Civil Service. Should we take it, even it is not perfect? The principle of legislation has been on the agenda for 150 years. Specific drafts of these clauses to put it into effect have been in the public domain and been discussed, particularly in the Public Administration Select Committee in another place, for more than a decade. So this is not of those Johnny-come-lately proposals.

There are issues to refine in the proposals, some of which my noble friend Lord Wilson listed. I would support such refinements if opportunity allowed. However, my advice is to capture and enact what is before us, even if much of the rest of the Bill is jettisoned, because I fear that it may be some time before we have another opportunity.

9.04 pm

Lord Rooker: My Lords, I have been here for the greater part of the debate; I intended no discourtesy whatsoever to the Front Bench or to your Lordships' House in not being able to arrive earlier today. There are also the unique circumstances of the fact that this is the only opportunity that we will get to speak on this Bill. I would like to take a few minutes to speak against Part 3 regarding the referendum on the voting system.

I speak as a former supporter of the first past the post system, who changed his mind in the late 1980s to supporting proportional systems. Like most people who make the journey from first past the post to PR, I stopped off briefly in supporting the alternative vote; it is seductive, but a sham.

I also speak as the former chair of the Labour Campaign for Electoral Reform for four years. At the time, we succeeded in getting the Labour Party to have an inquiry into voting systems, which was chaired by my noble friend Lord Plant, and later getting the party to promise the referendum on the matter, which has been referred to earlier today.

The 1997 manifesto was crystal clear:

> "We are committed to a referendum on the voting system for the House of Commons. An independent commission on voting systems will be appointed early to recommend a proportional alternative to the first-past-the-post system".

We now get to 24 March 2010, with this Bill in the House. Part 3 was not even in the Bill when it was published. It was put in in February this year, months after the Bill was originally published. After years of inaction with the Cabinet, which is broadly speaking against reform of any kind, we get this phoney proposal. I am very sad. It is a proposal which, by common consent, is the least radical change one could make to the existing, unfair first past the post.

The Secretary of State, in his introduction, made it clear that the alternative vote is a majoritarian system. It is not supposed to deal with any of the existing difficulties of the present system, such as unfairness, wasted votes, representation of substantial minorities, regional imbalances, and rural and urban balances. The alternative vote is open to and encourages tactical voting; that is, voting for something you do not really want to stop something else. The second preference is a tactical vote. Under the Bill, in Clause 29, it is possible for the ultimate tactical abuse of the election procedure to take place. This involves—and I guarantee that this will happen in some parts of the country—candidates asking supporters not to use the second

preference where there are several candidates, so that close opponents do not benefit from the preferences. Anybody who has been involved in any votes like this knows that, if you have a choice about using the preferences, that is what happens.

So what do we do when we come to Committee? Do we make using the preferences compulsory, as in Australia's system—for the first time, encourage compulsory voting? Many people have fundamental objections to that. This Bill builds in an abuse. How can voters make a real choice with the alternative vote when they do not know who will top the first preferences, yet are asked to list everyone all in one go as a choice?

We should have a system in which voters vote positively for what they want and believe in, as opposed to negative voting, which I think this Bill encourages. The Canadian experience of the alternative vote makes wonderful study for the cognoscenti, which we will all become. Alternative voting may result in one party winning all the seats; in another case, a party may win 99 out of 101 seats on a bare majority, less than 60 per cent of the vote. The alternative vote does not allow for effective representation.

The alternative vote—I say this in particular to the noble Lord, Lord Rennard, who made one of the speeches I disagreed with tonight—damages a third party whose vote is evenly spread. It will be the second preferences of that party which elect the others. Those third-party voters will not obtain any representation due to the alternative vote. Furthermore, it may not elect the person with the widest support. It is worth putting this sentence on the record: in the jargon of political theory, which my noble friend Lord Plant is much more versed in than I am, it may not elect the Condorcet winner. This is defined as the option in which a candidate who could beat all the other candidates in a straight fight should be the winner. Imagine four candidates in an election, three of them evenly divided with partisan support, but the supporters of each loathe the other two. The fourth candidate has few partisan supporters, but would be the alternative for all the others. The fact of the matter is that that candidate would go out on the first ballot and would never be able to go off against any of the other three.

Lord Campbell-Savours: Would my noble friend concede that on the supplementary vote that would not happen, which is why it was designed?

Lord Rooker: I did not want to get into this. The supplementary vote is more unfair than the alternative vote, as the London Assembly elections show anyway. I did not want to go down that route because I wanted to stick to talking about the alternative vote. That is what is in the Bill.

There are very unfair aspects to the alternative vote—it is a sham. It maintains the concepts of safe seats whereby voters are ignored by one party and taken for granted by the others. No real contest, where candidates offer choices to electors, takes place in those seats. We all know that the electoral battle is in the marginals under first past the post. The thing that makes me sad and a little angry is, frankly, the sheer arrogance of the Government, who are dragged to the promise of a referendum after 13 years and try at the same time to provide the answers to the present system. It is clear that there is no consensus among the politicians. If the promise originally made of a proportional alternative—a family of choices—cannot be kept, which is patently the case, the honest approach is to have a referendum as happened in New Zealand asking, first, if voters want to retain the present system or have a change and, secondly, if they vote for a change, to offer them a family of choices. Let the people decide. What is the problem with letting the people decide on the voting system for the House of Commons—by which time we will have had such reform that we will all have a chance to vote, I hope. Why should Ministers, most of whom do not want any change, make this decision? That is what is in the Bill and it is fundamentally wrong and unfair. It is also worse because, under the Bill, Ministers will write the question and set the date. What on earth did we set up the Electoral Commission for? It should have that power, not just to check the wording and the propaganda and look at how the money is spent. It should not be down to Ministers to write the question, which is then presented in secondary legislation to Parliament. Some of these people are my friends, but they are political leaders who in a lifetime have shown not the slightest interest in fair voting. Indeed, they have slagged many of us off who have converted or been there all the while—then they suddenly see the light. It is too late, too little; it is a phoney proposal and for the wrong reasons. It is treating the voters like fools, and I do not think that the public will buy it.

Nobody has raised this, but I would naturally expect that all the votes on this part of the Bill in this House will naturally be free votes. I assumed that they were so in the other place. If and when the chance arises—and I have been absolutely negative on this, because I wanted to concentrate on the alternative vote—I shall come forward with positive amendments so that a choice can be made. Those amendments would meet the criteria of the Hansard Society report of 1976, the Plant report of 1992 and the Jenkins commission in 1998.

9.13 pm

Lord Tyler: My Lords, as usual, I am delighted to follow the noble Lord, Lord Rooker. I think that he has made it possible for my speech to be slightly shorter, because he said some of the things that I might well have said. However, I would have found it difficult to do so with such vehemence, because he speaks not only as a member of the Labour Party but also as a former Minister.

This has been a fascinating and very wide-ranging debate, as we have had a good look for the first time at an extremely long-awaited Bill. The Prime Minister, as noble Lords will recall, took Parliament and the public on a roller-coaster of expectations from the moment when he entered Number 10. First he promised a substantial and steady diet of reforms, ranging from limiting the prerogative powers right through to changing the invidious double role of the Attorney-General, in 2007. Then we got a draft Bill that diluted many of those objectives, building in acres of ministerial wriggle room. Treaties were to be ratified by Parliament, except when they were not; war would be authorised by Parliament, except when it was not. The role of the Attorney-General would change, but not very much.

[LORD TYLER]

Along with several other speakers, I sat on the Joint Committee which considered that draft Bill and we found it pretty disappointing. I agreed very much with the noble and learned Lord, Lord Falconer, who called it the constitutional retreat Bill. Taking up that title, I was delighted to see—because I participated in the exercise—the work done by Democratic Audit, which I recommend to Members of your Lordships' House, because there in an annexe is a complete analysis of all the promises at various stages from the Prime Minister and other Ministers, and what has actually happened in terms of delivery from the moment those proposals were made.

Now we have this Bill, the CRAG Bill. It is on the edge of the election precipice, weaker in many places, more radical in a few others, but in all respects—as has been reflected so often today—very, very late. The Government have spent so long fiddling over the timetable—commissioning reports and committees—that they have missed the train. Worse, they have consolidated public disillusion with Parliament, rather than responding to the crisis of confidence that has been referred to so often today—by the right reverend Prelate the Bishop of Durham and the noble Baroness, Lady D'Souza, in particular, but also by my noble friend Lord McNally and the noble Lord, Lord Graham. There is a crisis of confidence in this House as well as in the other place and, sadly, the golden opportunity to change our politics is disappearing into the distance rather than coming any closer.

There have been references to the Bill being a Christmas tree and to the baubles that have been added to it. There have also been some boughs cut off, notably, of course, the role of the Attorney-General, referred to by other noble Lords. Another one is war powers: what should Parliament's role be when the country is on the brink of war? Reform of party funding has been referred to by the noble Lord, Lord Turnbull. This is extremely important if we are to get back confidence in the way in which our politics are run. Then there are fixed-term Parliaments: suddenly, out of the blue, the Prime Minister is apparently prepared to give up his opportunity to play party games with the timing of general elections.

I have listened to 38 contributions today and I cannot possibly deal with them all, but I shall make brief reference to my noble friend Lord Phillips of Sudbury, who we are delighted to see back here. We have missed him, because it is so evident from his contribution that he would have made a major contribution this evening to the interminable discussions we have had on some of these issues. For example, he was always a great protagonist for pre-legislative scrutiny. As has been referred to by many Members of your Lordships' House, we did give pre-legislative scrutiny—albeit, as has been accepted by the noble Lord, Lord Hart, it was inadequate for the timescale. We took evidence on, for example, the extremely important sections about the statutory role of the Civil Service.

The other theme which has been very strong today is the very detailed discussions that we have had on my noble friend Lord Steel's Bill at various stages. We went into great detail on that—I participated myself—so to suddenly pretend that it has appeared on the agenda this afternoon is naive in the extreme. We have had interminable discussions about taking a first step towards more comprehensive reform of your Lordships' House. It would be absurd to pretend that those sections of the Bill that pick up my noble friend's Bill have not had proper scrutiny.

Time and again, the dilemma that has come through our discussions today is that Members of your Lordships' House have said how outrageous it is that we suddenly have this Bill at this stage, there is not proper time to consider it and we doubt that there will be time to consider it in future—but, of course, there is one section of the Bill that they themselves think is absolutely vital to get on to the statute book in the next few days. The only problem is that it does not always seem to be the same section. That is the dilemma that the Government have thrown at us and it is their fault.

I was struck by the fact, for example, that the Constitution Select Committee conclusion—we have all paid tribute to the very good work that that committee does on our behalf, and the current report is part of that—says,

"we consider it to be extraordinary that it could be contemplated that matters of such fundamental constitutional importance as, for example, placing the civil service on a statutory footing should be agreed in the "wash-up"".

We have been at it for 150 years; we are not suddenly coming to this today. It was interesting that the noble Lord, Lord Armstrong of Ilminster, followed by the noble Lord, Lord Wilson of Dinton, and then the noble Lord, Lord Turnbull, have all pleaded with us to get on with that job. I find it extraordinary that the Constitution Select Committee should have picked up that particular part of the Bill as needing more scrutiny. We gave it a great deal of scrutiny in the Joint Committee on the draft Bill and, as has been so apparent in the important contributions from the distinguished selection of your Lordships' House on the Cross Benches, there are strong reasons for taking that part of the Bill forward to the statute book.

Fourteen years ago, the then leader of the Labour Party, Tony Blair, promised,

"a proper, directly elected second Chamber",

yet we are still worrying about whether this appointed Chamber should have a statutory commission. Ninety weeks after Gordon Brown promised to reinvigorate our democracy, we are now facing the prospect of reactionary Tories fighting in the last ditch to preserve the hereditary principle in this House. They want to stop the public from having a say about the way in which they—not we in this House, but the public outside—elect Members of the other place. The noble Lord, Lord Campbell-Savours, gave us a serious warning: it would look very odd if this unelected House started to put major obstacles in the way of how the public have a say in this matter.

The Government seem to have set a dinosaur trap, hoping that Tory Peers will seek to delay and destroy these reforms. They have deliberately left it to the fag-end of this Parliament to introduce the Bill so that they can go to the electorate in the coming weeks and say, "Look at what those unelected relics in the House of Lords have been doing, stopping us getting through sensible and popular changes".

Lord Howarth of Newport: That objection did not seem to trouble the noble Lord's party very much a couple of evenings ago on the Norwich and Exeter orders.

Lord Tyler: I was going to come to that point but, since the noble Lord overstayed his welcome by so many minutes on that occasion, I do not intend to do so simply to respond to his intervention.

Those who have been defending the indefensible today are going to fall heavily into that dinosaur trap. That is what the Government want them to do. For decades there has been a growing consensus, inside and outside Parliament, on the need to put the Civil Service on a modern statutory basis, on the urgency of the next steps towards comprehensive Lords reform and, more recently, on the clarification of the parliamentary standards legislation. We should not let Ministers play more games with those proposals that have broad agreement. Given that there has been such strong support across the parties in the other place for so many of these remaining reforms, pontificating about constitutional outrage begins to sound very hollow.

The same applies to the AV consultative referendum. I happen to agree with the noble Lord, Lord Rooker, that the question that the Government have come forward with is not the one that we should be putting to the electorate. As he says, we should be following the New Zealand formula. If we do not get acceptance in principle, though, which is what a Second Reading is all about, then the public should be asked this question—not MPs, nor even Members of your Lordships' House. Then we can move to discussing what sort of questions should be put to the people.

Let us recall, as the noble Lord, Lord Campbell-Savours, said, that the biggest single majority in the whole of this Parliament, 178, was in the other place in favour of a referendum. It would be extraordinary if, led by the noble Lord, Lord Henley, and the noble Baroness, Lady Hanham, Members on these Benches were to deny the public's right to have a view on how they elect the other place, and to do so in this House.

I come to the point made by the noble Lord, Lord Howarth. After several days of being told that this House should not vote to stop the orders that we have seen in recent weeks, for us to do that on this issue would be quite extraordinary.

The public, who will be watching, would be outraged if this still unelected House—now or later, before or after the general election—stopped them from having their say on fair votes. If any Member of the House does not want a fair voting system, fine—let them vote in a referendum. I am sure we can permit them to do that. Let them persuade others that a system which gives a party 55 per cent of the seats in the House of Commons in return for 35 per cent of the votes should be kept. Let them try to argue that. Let them argue, too, that it is right that not one single Member of the current House of Commons enjoys the support of more than half of the people entitled to vote in that constituency—not one. That is surely an important issue for the public to consider, and it is right that they should be given that opportunity.

We on these Benches will consider carefully the case for getting that single vital change through. If we are given the necessary time, we will co-operate on the other elements where progress can and should be made. After interminable discussion, we could at least show the public that we are taking action to revive our democracy, and we will try to meet the crisis of confidence in Parliament. But if the whole Bill fails, the public will know that the Conservatives—unelected ones at that—stood in its way. It will also be all too obvious that this is exactly the outcome that Ministers were hoping for.

9.26 pm

Baroness Hanham: My Lords, it is quite clear from the many speeches that we have heard from around the House that the Government have, by pushing ahead with this legislation at this late stage of their life, introduced a largely unadmired dog's dinner of a Bill, with serious procedural flaws. There have been fascinating speeches and, while I cannot hope to mention all those who have spoken, I will pick up some of the points as we go along.

First, on the constitutional issues, the most glaring comments were those about the damning report of the Constitution Committee—"damning" was the word of the noble Lord, Lord McNally. The right reverend Prelate the Bishop of Durham suggested that nobody had thought through the constitutional changes. That was picked up by many other speakers this afternoon and this evening. The noble Lord, Lord Pannick, a member of the committee, ended his contribution by saying that the wash-up procedure was not suitable for this Bill. That was underscored by other speakers. The noble Lord, Lord Grenfell, said that the Constitution Committee was right to conclude that this Bill is no way to undertake the task of constitutional reform. The noble Baroness, Lady Boothroyd, expressed deep concern at the manner in which this Bill has been constructed and brought forward. My noble friend Lord Onslow said that he believes that the Government have acted with contempt for Parliament. This was a great collection of comments for a constitutional Bill.

While there are some sensible reforms in Part 1, on the Civil Service, as identified by my noble friend in his opening speech, they are limited in their effect, as others have said. My noble friend said that it omits the whole sector of quangos; it does not refer to them at all. My noble friend Lord Astor drew attention to problems on these clauses and the noble Lord, Lord Armstrong, was strongly of the view that the changes to the Civil Service needed further discussion, although the noble Lord, Lord Wilson, was more in favour of letting it all go through.

Parts of the Bill are nothing short of government grandstanding. The government colleagues of the Minister have produced those. My noble friend Lord Henley drew attention to the political gimmickry of those attempting to introduce, as an add-on to this hotchpotch of a Bill, a system of proportional representation for general elections. I listened with great interest to the noble Lord, Lord Rooker, who dissected and filleted the alternative vote, which I think we all agree would, by virtue of its principles of elimination and redistribution of votes, undermine the party system that is part of our democratic process. The noble Lord, Lord Howarth, said that it would ensure that the outcome of the election might well not reflect the wishes of the electorate.

[Baroness Hanham]
Far from providing a system to repair the status of MPs, as suggested by the Minister, it will serve only to muddy the water further.

There are, too, the Mandelson escape clauses in Part 5, which would tinker with the membership of this place but not improve it and would breach the undertaking given by the noble and learned Lord, Lord Irvine, on the hereditary Peers. My noble friend Lord Denham gave an authoritative exposition on the background to the undertaking, which recognised that a transitional House would still have the electoral system for the hereditary Peers. His views differed from those of the noble Lord, Lord Steel, but the noble Lord may not have been part of the original discussions.

Lord Campbell-Savours: Perhaps I may ask the noble Baroness a very simple question. Would a Conservative Government give priority to a constitutional reform Bill?

Baroness Hanham: My Lords, when the Conservative Government come in, they will be faced with a great many problems and I do not know where a constitutional reform Bill would fit in their considerations. I do not believe that the noble Lord, Lord Campbell-Savours, really expected an answer.

As I was about to say, we welcome Part 2, which allows parliamentary ratification of treaties. In the Commons, the Government introduced clauses in Part 4 making amendments to the Parliamentary Standards Act 2009. They were endorsed by my honourable friends in another place and, indeed, concern only the other place. I will therefore not comment on them further other than to note, as did other noble Lords, the point made by the Constitution Committee that the necessity of making so many changes to a law less than a year old demonstrates the inadvisability of making legislation in haste. Even though we are aware of the circumstances behind it, it is perhaps something for the Government to reflect on carefully, particularly as they have presented us with a Bill in the dying days of a Parliament that, if it got through, would make far-reaching changes but, as many noble Lords have said tonight, can never be subject to proper scrutiny in this place or the other. My noble friend Lord Norton of Louth underlined this; he also drew attention to the inordinate delays that have taken place, with the Bill having languished for months in the other place.

My noble friend Lord Henley made it clear that we do not think that Part 5 has been adequately thought through. Although a number of noble Lords have spent time discussing it, we do not believe that it has a place in the Bill. However, we think that Part 6 on the tax status of MPs and Peers is probably worthy of support. Indeed, my right honourable friend the leader of the Opposition has been pushing for something like this for some time.

We also support in principle Part 7. It repeals Sections 132 to 138 of the Serious Organised Crime and Police Act 2005, which had imposed restriction on access to Parliament Square. However, the Bill contains replacement provisions that are of concern. Schedule 9, referred to by the noble Baroness, Lady Miller, amends the Public Order Act 1986 by inserting new sections. The schedule applies to public processions or public assemblies where the route or assembly is being held wholly or in part within the area around Parliament. It provides that the Secretary of State may by order—this is a negative order—made by statutory instrument specify,

"requirements that must be met in relation to the maintaining of access to and from the Palace of Westminster".

This order-making power is very broad. I would be grateful if the Minister could clarify how the Government intend to use those powers if they ever have the opportunity to do so.

My honourable friends at the other end tabled an amendment that drew attention to the sometimes obnoxiously loud noise that protesters make. It is regrettable that the Government did not make time for it to be debated.

I shall also mention Clause 90, which my honourable friends in the other place did so much to get into the Bill. It will ensure that the count starts as soon after an election as possible. I know that creeping delays, which were becoming prevalent in some areas, meant that election results were not available on polling night. That was of concern to members of all parties and it is good that the Government were able to work with the Opposition to introduce this clause. However, the Electoral Commission has drawn attention to the difficulties of ensuring that returning officers, who may have to change their arrangements so close to an impending election, have time to do so. It has just issued draft guidance to that effect.

Sadly, however, there has been too little of that spirit of co-operation in evidence in this Bill. The Government have been much more concerned with putting down the Prime Minister's pet dividing lines than they have with true and fair constitutional reform. The fact that the Government have chosen to proceed with this Bill to Second Reading in this House, thus ensuring that its provisions will be among those considered at wash-up—but at wash-up only, without allowing this House its normal time to scrutinise the legislation properly—means that even those areas where we may agree might not be in proper form for implementation or support. Twenty-eight clauses, or nearly a third of the Bill, were added to it without proper debate in the other place, where the Government control the business. They will get none here. As many noble Lords have said, the Government could have found time to bring the Bill here sooner but clearly chose not to.

Noble Lords, including my noble and learned friend Lord Howe of Aberavon, have said that this Bill should not be the subject of wash-up but should just fall. The noble Lord, Lord Pannick, gave a clear view on the limitations of wash-up, particularly on constitutional issues. We deplore how little time we have been permitted to scrutinise this Bill. It is absolutely inevitable now that this is the only opportunity that this House will have and it is for self-serving reasons that that is so. If the Government are unable to reach agreement on any or all of these provisions, they must know that they have only themselves to blame.

9.37 pm

Lord Bach: My Lords, first, and quite genuinely, believe it or not, I thank all noble Lords who have spoken in this debate. I have not agreed with every word—not with many of them, actually—but the quality of the speeches has been great. The expertise that we have seen on Civil Service reforms around Part 1 of the Bill has been especially illuminating. It was great to hear the "second maiden speech" of the noble Lord, Lord Phillips of Sudbury; I think that I recall his first, some years ago. For him to see the Government kicked from pillar to post must have been as though he had never been away, but it was good to see him back and I hope that he is here to stay.

Next, I particularly enjoyed the refreshing speech of my noble friend Lord Graham of Edmonton. It was one that it was good to hear in this House and on the kind of subject that we have kind of shied away from, no doubt for good reasons. I listened with bated breath for whether the noble Baroness, Lady Hanham, or anyone else on the Conservative side would try and answer the points that he made so well, but I am afraid that answer there was none.

I shall turn to a couple of quick points before going onto the amendment tabled by the noble Lord, Lord Steel. At the very end, if I have time, I shall come back to the Constitution Committee's comments. The noble Lord, Lord Naseby, who is not in his place now and was never down to speak, asked me in the opening whether Part 4 undermines the independence of the trustees of the MPs' pension scheme. The answer is that the measures in Part 4 do not undermine the independence of the trustees. These provisions have been agreed with the trustees themselves; they will still be able to manage the assets of the scheme. In the other place we accepted a number of amendments put forward by the trustees. I said that I would answer the noble Lord's query and I have.

The noble Lord, Lord Tyler, made a refreshing speech, if I may say so. It was not so full of the—I almost said self-righteousness, but I dare not use that word in this House even at this hour of the night—strong feeling that was expressed throughout the debate. His speech was a welcome difference. He asked about war powers. I should point out that war powers were never in the draft Bill. The Government concluded that they should be dealt with by way of a parliamentary resolution, as recommended by the Constitution Committee.

I now come to my main point. The very severe criticisms of the Government today in a sense cover up the fact that a large part of the Bill is agreed by a large number of noble Lords in the House. The Official Opposition describe it as a dog's dinner of a Bill. The noble Lord, Lord Henley, criticised Part 6 on the tax status of Peers and presumably MPs, but it worth reminding noble Lords opposite that on Third Reading of the Bill in another place, the honourable Dominic Grieve, shadow Secretary of State for Justice, welcomed large parts of the Bill.

He welcomed the move to put the Civil Service on a statutory footing; he welcomed the "Crown employment: nationality" provisions in Chapter 4 of Part 1; he welcomed ratification of treaties in Part 2; he welcomed the clauses relating to IPSA in Part 4; he welcomed what he described as some sensible amendments in respect of the House of Lords, which we also welcome. He said that he awaited with interest how the other place responded to them. I do not know how he expected the Front Bench in another place to respond to them, but it was certainly different. He welcomed the tax status of Peers; he welcomed the human rights claims against devolved Administrations; he welcomed the work on judicial appointments; he welcomed the proposal to beef up the Comptroller and Auditor-General's national audit role; and not least, he welcomed Clause 37 and Clause 90 on overnight counting, adopted from an amendment tabled by the Conservative Front Bench.

Listening to a Front Bench spokesman on the Conservative side one could not believe that the shadow Justice Secretary, presumably officially on behalf of his party, welcomed all those many provisions. The truth is that the Constitution Committee in its report was not very critical of many of the parts of the Bill which it looked at. There is a lot of support for the Bill and—

The Earl of Onslow: Does the Minister not understand this vital point: constitutions are not changed by wash-up; they are changed by due process and by people, irrespective of the things with which I may or may not agree in the Bill? It should be done only by due process. In America, two-thirds of all states have to agree. We are doing this by wash-up. What a pathetic way of doing it.

Lord Bach: The noble Earl makes his point, which has perhaps been made ad nauseam today. It is a good point, which I shall deal with in my own time at the end of my remarks.

I want to deal with the amendment of the noble Lord, Lord Steel, and I genuinely praise him. He has had to put up with a great deal of frustration, I suspect, over the past two years as a consequence of reactions to his proposals, not just from the Government but from other parts of the House as well. He has worked tirelessly to modernise the House in this respect and we pay genuine compliment to him on his work. I cannot, though, support his amendment to the Second Reading tonight. He may not be surprised to hear this. Peers will have different views on this but, rightly or wrongly, the Government are committed to creating a second Chamber with a democratic mandate—one where the House is elected. We will, as I said, shortly bring forward concrete proposals for further reform.

If a reformed second Chamber were to be 100 per cent elected, an appointments commission—as I think the noble Lord, Lord Steel, said in his own speech—will obviously not be needed. However, if the House were, for example to be 80 per cent elected, any commission would need a different remit and different powers from the commission proposed by the noble Lord.

Lord Lea of Crondall: What is the earliest date that the new elected Members could possibly join this House?

Lord Bach: I am not in a position tonight to give details of the Government's proposals. Much as my noble friend may tempt me, I will not fall into that

[LORD BACH]

trap. The aim of the Government, if re-elected, would be substantial reform of the House of Lords in the way I have described.

My point was that any commission would need a different remit and different powers, which would have to be appropriate for a partly appointed House. This really is an issue that is best left to a properly reformed House. If it should turn out to be a partly appointed House, the issue of a statutory body arises then and there. I am sorry not to be able to support the noble Lord tonight. I appreciate what he and many of his supporters around the House—I accept that he has many supporters on this point—have said.

I will now deal as quickly as I can with some of the major points raised on the Bill. Part 1, on the Civil Service, is one of the crucial parts of the Bill. Many noble Lords—I will not name them all—spoke to this part. There was general agreement that this reform was not only very long overdue, but—as importantly in a way—that the Government had pretty well got it right. Certain noble Lords had concerns about parts of it but, on the whole, it was seen as not a bad attempt.

The noble Lord, Lord Armstrong of Ilminster, said that he would like to see the PASC amendments made to the Bill. He mentioned the amendments to Part 1 recommended by PASC in another place. The noble Lord will, I hope, be pleased to hear that we tabled an amendment in the other place which places restrictions on the activities of special advisers. This mirrors amendments put forward by PASC. If I may say so in passing, I was delighted that the noble Lord, Lord Wilson, made some favourable comments about special advisers. My experience as a Minister in several departments is that, by and large, special advisers do a very good job and the civil servants who work alongside them think so, too.

The noble Lord, Lord Armstrong, criticised the fact that heads of diplomatic missions are excepted from recruitment on merit. I know that there is a lot of feeling about that. The noble Lord, Lord Wright of Richmond, and other noble Lords mentioned this. I say this about diplomatic appointments: the exception which allows appointments to certain senior diplomatic posts has only ever been used very sparingly. I think that was also said in argument in the debate. It will continue to be used only on an exceptional basis and will involve the direct approval of the Prime Minister.

The noble Lord, Lord Maclennan, also spoke on this issue. He raised the issue of the commissioners' involvement in promotions within the Civil Service. The Bill attempts to replicate existing practice in that field. He also raised the issue of the commission having the power to conduct investigations into potential breaches of the code, irrespective of whether a complaint had been made. There was considerable discussion on this in pre-legislative scrutiny of the draft Bill. The Government strongly echo the Joint Committee's views that the proposals should not place any undue pressure on the resources of the commission or risk politicising its role.

I wish to move on, due to limited time, and say how much the Government are grateful for the support that they have had at least on that part of the Bill.

On ratification of treaties, one or two noble Lords—not many—thought that noble Lords should be afforded power to veto ratification of a treaty. The noble Lord, Lord Grenfell, who has a lot of experience, suggested that, and other noble Lords discussed it. I am afraid that we do not agree. The House of Lords has a vital role to play in providing expert advice on treaties, but I have to be blunt: legislation should reflect the primacy of the House of Commons as the elected Chamber. The matter was considered by the Joint Committee on the Draft Constitutional Renewal Bill, which agreed with the Government's proposals as they concerned the balance of power between the two Houses.

My noble friend Lord Grenfell asked: will the Government support the setting up of a parliamentary Select Committee? The Government are not opposed in principle to a Joint Committee or Select Committees on treaties if there is sufficient support. It is for the Houses to decide upon the development and operation of such arrangements. There is no need to legislate to set up such a committee. Nothing in the Bill would preclude it.

Why are the Government putting the Ponsonby rule on the statute book? The answer is that the Government are of the view that the present arrangements for parliamentary scrutiny of treaties should not only be placed on a statutory footing but strengthened to give legal effect to a negative resolution in another place. Part 2 achieves that purpose.

I move on to Part 3 relating to the alternative vote. I certainly do not have time to enter into the expert argument about AV compared to other systems. I enjoyed very much the speech of the noble Lord, Lord Rennard, but was a little worried by what it is that he lives for. I hope that there are other things in his life that give him as much pleasure as winning by two votes. His expertise obviously shines through in any discussion on this. There can be no reason at all why there should not be a referendum and, obviously, that is what we propose in the Bill. We, too, would very much like it to become law.

The Lord Bishop of Durham: Would the noble Lord, Lord Bach, not agree that, in the light of what has been said—not least by the noble Lord, Lord Rooker—there is a strong case to be made for having more than two options on the referendum paper? Having just two options would seem to close us in in a way that several speakers have said would be undesirable.

Lord Bach: I would like to agree with the right reverend Prelate, but for me, at least, and, I should have thought that for many Members of another place and many noble Lords, the idea that there should not be one Member of Parliament for one constituency makes the issue very difficult indeed. That is absolutely the primary reason. Having multi-constituency MPs would indeed be of great concern to the Government. It is an important principle.

Lord Maclennan of Rogart: Does the Minister not recognise that the proposal of the Jenkins commission accepted the argument for having single-Member constituencies? That is why it proposed AV+, which would involve additional Members to ensure proportionality.

Lord Bach: I think that it is the issue of additional Members that caused the Government some problem with that. All those who serve in the House of Commons should represent a particular constituency. I do not want to get into this argument tonight. I know that there are strong feelings on all sides.

Lord Norton of Louth: My Lords, I do not quite understand the argument. The Minister seems to be saying that there should be a referendum and that people should be asked about AV because the Government approve of it but that they cannot be asked about other systems because the Government do not approve of them.

Lord Bach: Most Members of Parliament, even on the noble Lord's side, would agree that we break with great difficulty the principle of one Member in one constituency.

On the House of Lords, the issue is pretty stark. I was most impressed by the noble Lords elected as hereditary Peers, two of them on the Cross Benches, who seemed to see the sense in what we propose in getting rid of the hereditary by-elections. I know that there are strong views on the other side, but we think strongly that the time has come to end the farce of these elections. Noble Lords may remember a few years ago when we had a vote on our side for a hereditary Peer. There were 11 candidates—surprisingly few by the standards of all those who could have stood. The electorate numbered three. Do I really need to say more about what frankly now looks an absurd system?

The other parts of the Bill on the House of Lords seemed to get fairly general support. On whether there should be an ability to retire rather than resign, we are concerned about what the difference would be between the two. I suspect that, if both words were used, a resignation would be looked at in a slightly different light. No doubt we can discuss that issue in another context, too.

Noble Lords asked whether the measures in the CRAG Bill are designed to allow—

Lord Denham: Before the noble Lord leaves Part 5, I believed that the whole package offered by the Government to hereditary Peers would be honoured until the final and definitive stage of reform had taken place. Where did I go wrong?

Lord Bach: Undoubtedly, the noble Lord and others feel strongly about this matter. We are now 10 years down the line. For 10 years, these by-elections have taken place.

Lord Denham: The whole point is that this was a promise given by the Government that caused me to vote for getting the Bill through quickly, which I would not otherwise have done. The Government are reneging on that promise. I cannot understand how they can do that.

Lord Bach: The answer that the noble Lord, Lord Steel, gave to this question a bit earlier—

Lord Denham: I am not interested in what the noble Lord, Lord Steel, said. I would like an answer from the Government.

Lord Bach: You are about to get one if you will be patient. The answer is the same as that given by the noble Lord, Lord Steel. The changes to be made to the House of Lords, some of them in this Bill, represent a change from the position as it was after the Act was passed in 1999. I am amazed that the Conservatives are going to go into the general election on the basis that hereditary by-elections should be part of their manifesto.

The Earl of Onslow: Constitutional anomalies such as me, one of the few elected Peers in this House, are here to remind people of our idiocy so that they will go for an elected House rather than an all-appointed House. That is the point of us. I will vote for an elected House and not for an all-appointed House.

Lord Bach: The noble Earl has reminded me yet again tonight why he is here—I will not use his phrase. That is why we will have in our manifesto a commitment to an elected House of Lords as quickly as possible.

I must move on. I should say something about the tax status of MPs and Members of the House of Lords. That subject has hardly been mentioned at all during the debate, which I presume means that the measures have pretty wide support. Again, it is an example of cross-party support for the Bill that somehow has not come out enough during the discussions.

I know that there are issues concerning public order. The noble Baroness, Lady Miller, as always, made a powerful speech, and it was a subject on which the noble Lord, Lord Phillips of Sudbury, concentrated. He said that it is wrong that the specification of the requirements that must be met in relation to access to and from Parliament should be left to secondary legislation. The power for the Secretary of State is strictly limited; it relates only to specifying requirements for access to and from Parliament. Secondary legislation here allows those requirements to be set out clearly and flexibly—for example, regarding what would happen if an entrance were closed for repair. The draft order is, in fact, in the Library. The Delegated Powers Committee has recommended enhancing scrutiny and making the order affirmative. The Government are happy to accept that recommendation, which I hope goes some way towards meeting the noble Lord's point.

The noble Baroness, Lady Miller, argued that the area around Parliament is too large. Directions within this area are limited. They relate only to the requirement to maintain access to and from Parliament. The 300-metre area is required mostly to secure vehicular access. We consulted the House authorities and the police on the size of the area. The provisions in the Bill are different from those in the SOCPA. They do not require prior consent for protests.

Other matters in the Bill were discussed, not least the Dacre report. Various comments were made by the noble Lord, Lord Pannick, and by the noble Baroness, Lady Young. The speech of my noble friend Lord Berkeley concerned one aspect of the review. The noble Baroness, Lady Young, asked why the change was being phased in gradually and wondered why it could not be done straight away. She asked whether we were covering our backs. The Dacre review recommended a phased approach to a reduction in the 30-year rule.

[LORD BACH]
Current estimates suggest that in central government alone departments hold at least 2 million files between 20 and 30 years old. I was asked about consultation on the transitional order. We will be working closely with central government and the wider archive sector to ensure that the transition to the new rule can be achieved in a fair and transparent manner.

The issue concerning the Royal Family was referred to by the noble Lord, Lord Pannick, and by my noble friend Lord Berkeley. This matter relates to the monarch herself and the next two in line to the throne. Just as it is a sovereign's right and duty to counsel, encourage and warn her Government, it is also the right and duty of the heir to the throne to be instructed in the business of government to prepare him for the time when he will be king. Both these sets of rights and duties rely on well established conventions of confidentiality that were never meant to be superseded by the Freedom of Information Act. Therefore, we think that we have approached this part of the Dacre review in the right manner.

I return briefly to the Constitution Committee. Its criticisms were stark and have been mentioned by many in the House this evening. I remind members of that committee and other noble Lords that this draft Bill was subject to pre-legislative scrutiny. Not all of it was subject to such scrutiny because some of it has been added since, not least at the invitation of the opposition parties. The draft Bill was included in the draft legislative programme, which is a public consultation programme, and it was preceded, as I said earlier, by 18 publications and consultation. I think that the fact that the Bill enjoys a lot of cross-party support is important. Many aspects of it have been endorsed by Select Committees. It should be noted that the Bill was amended by the Government but also by the Opposition and Back-Benchers in another place.

The other place did not have a vote at Second Reading or at Third Reading. Anyone who knows anything about the other place knows that that normally happens on a Bill that is fairly consensual. I know it does not take away from the need to scrutinise a Bill of this kind—indeed, of any kind—carefully. That is an important role of this House. I accept that, but to pretend that this Bill has just come from nowhere and has suddenly been plumped in front of the Constitution Committee and the House is not reality. The noble Lord, Lord Tyler, made that point in his speech.

I hope that large parts of the Bill can become law, because they are cross-party and are agreed by many people to be essential—

Lord Norton of Louth: The Minister has not addressed the point about why it took a year for the Government to respond to the Joint Committee and introduce the Bill.

Lord Bach: Let me be frank with the noble Lord. He has more knowledge of government than I will ever have, and he will know better than most that sometimes within government it takes time to come to an agreement about what should or should not be in a Bill. Various departments have different views about it.

Lord Norton of Louth: There was a draft Bill so the Government already knew what was in the Bill. Why did it take a year?

Lord Bach: The noble Lord should know that a draft Bill is not always the Bill that is finally produced. The workings of government are such that sometimes these things take longer than they should. I concede that, but for the noble Lord to get too high and mighty about that happening seems very strange, given his great knowledge of how our system works.

Lord Norton of Louth: It took a year and, as a result, this House is being denied the opportunity to subject the Bill to proper scrutiny.

Lord Bach: I think I have got the noble Lord's point. I am coming up to 30 minutes. The House has been very patient with me. I hope that large parts of the Bill will become law because I think that they are not contentious but will add value in a number of areas of our life. I ask all noble Lords to consider carefully when deciding what in the Bill they want to see become law. Nothing could be worse than the Bill and all the hard work that has been done, for example, on the Civil Service or on the ratification of treaties, disappearing because of what is undoubtedly thought to be justified criticism of the process of this Bill.

Lord Steel of Aikwood: I have a couple of minutes to reply on my amendment. The whole House should be indebted to the Minister for the patient way in which he sat through the whole of this afternoon and evening and responded generously to all the points that have been made.

I shall first deal with the part of Part 5 that deals with retirement. I was a bit concerned by the wind-up speech from the Opposition Front Bench. I hope that the noble Baroness, Lady Hanham, made a slip of the tongue when she declared that Part 5 has no part in the Bill because, as the Minister said, that is totally contrary to what Mr Dominic Grieve said in the House of Commons on behalf of the Conservative Party, which appeared to be backed up by the noble Lord, Lord Henley, when he spoke at the beginning. I did not mention this in my opening speech, but I remind the House that in the Commons an amendment was tabled that provided that the retirement provision should include a reference to a five-year delay before any Member retiring from the Lords could stand for election to the Commons. That was one of the many amendments that were not reached; however, it was spoken to by Dominic Grieve and implicitly endorsed by the noble Lord, Lord Henley, the noble Viscount, Lord Astor, and my noble friend Lord Goodhart. I hope that the Government will accept that amendment so that the Conservative Party will feel able to support the retirement provision.

I say to the noble Lord, Lord Armstrong of Ilminster, for whom I have enormous respect, that it really does not do to go back to the years when it was a largely hereditary House of 900 people who came in when they felt like it. The House has changed completely since then. We have all accepted appointments as life

Peers. Under the Bill, we will be able to retire if we do not want to come any more, but basically we are expected to do a job of work. We expect to have some reasonable facilities in the Lords and to receive all the papers. All of that will continue for people who may want to retire and it is only right that that provision should be made.

Secondly, on the question of hereditary by-elections, I have come to the conclusion that the noble Lord, Lord Denham, and I are both right. I am correct that the by-election provision was not in the Bill when the undertaking was given, but he may well be right that it was implicit in what was going to happen when the legislation went through. I do not know—I was not party to those discussions—but I do remember that at the time when the hereditary Peers were being retained there was a thought that they might all be given life peerages. If that had happened, of course, there would have been no by-elections. The Government are not removing the hereditary Peers but, as the noble Lord, Lord Cobbold, and other hereditary Peers have said, we have now moved way beyond the time when it was considered necessary to keep the by-elections going. They are now in their 10th or 11th year and they really are not sustainable. For that reason, it is right that they should go.

My last point is on the statutory Appointments Commission. The Minister gave me exactly the reply that I anticipated, word for word. The noble Lord, Lord Lea, was right to ask when we are going to see an elected Chamber; with the best will in the world, it will not be for many years. I noticed that every Member who spoke on the subject of the statutory commission supported it. We have had 100 per cent support for this provision and it is a great pity that it is not in the Bill.

I now come to the question of whether we should have a vote on this. My noble friend Lord Phillips of Sudbury keeps passing me notes saying that if we press it to a vote we will win. I should point out to him, rather rudely, that just because he has not been here for four years there is no reason why I should provide him with exercise. To be realistic, the section on the Appointments Commission as drafted in the Bill presented by the noble Lord, Lord Norton, and me, contained nine clauses. If this was a normal Bill going through to a normal Committee stage, I would be tempted to press the amendment to a Division. However, it will be in the wash-up—and we cannot seriously expect nine new clauses to be entered into the Bill in the course of wash-up. It would be pointless.

We have made our point. The Government have heard what the House has said. It is quite clear that we wish to have a statutory Appointments Commission. I hope that in the next Parliament we will get one. In the mean time, I beg leave to withdraw the amendment.

Amendment to the Motion withdrawn.

Bill read a second time and committed to a Committee of the Whole House.

House adjourned at 10.14 pm.

Grand Committee

Wednesday, 24 March 2010.

Flood and Water Management Bill

Committee (2nd Day)

3.45 pm

The Deputy Chairman of Committees (Lord Colwyn): My Lords, should there be a Division in the Chamber, the Committee will adjourn for 10 minutes.

Clause 9 : Local flood risk management strategies: England

Amendment 23

Moved by ***Lord Dixon-Smith***

23: Clause 9, page 7, line 8, at end insert—

"( ) the breach or over-topping of a sea-wall"

Lord Dixon-Smith: My Lords, this group of amendments has a serious purpose. I hasten to assure the Minister that these are probing amendments which try to elucidate and gain clarity on a part of the Bill which I find slightly confusing. I need to start my explanation with Clause 7, which deals with the national flood and coastal erosion risk management strategy. That clearly lies with the Environment Agency. I have no difficulty at all with that statement except that, further on in the Bill, reference is made to a lead local authority, and below that we find a second layer of local authority, a district authority, which would have flood management responsibilities. My problem is not particularly with floods but with the other half of the responsibility, coastal erosion.

I am an Essex man. I should perhaps explain that, during the 1951 floods, I was in America on an exchange scholarship, but many of my friends and colleagues were caught by the tidal surge which flooded a very large area of Essex and the south shore of the Thames estuary in Kent. It caused a great many problems. I want to be absolutely sure of where responsibility for dealing with these subjects lies. I am not convinced that the Bill is clear. Although Clause 7 is quite clear, subsection (2) states:

"flood and coastal erosion risk management functions that may be exercised by those authorities in relation to England".

My problem is with the word "may". Perhaps it allows differentiation between authorities which have coastal problems and inland authorities which do not. However, the word "may" also implies "may not". The question then arises, if they may not, where might they go? Or is the Environment Agency simply to retain responsibility for that aspect of the work?

One of my amendments, which applies to Clause 9(2), would add words to make it clear that coastal problems can be the responsibility of both the lead local authority and, if need be, a coastal authority. My Amendment 41 is to Clause 13, which proposes that a,

"coast protection authority may, with the appropriate consent, arrange",

et cetera. My difficulty is that I have found no definition of a "coast protection authority". As far as I can see, that is the first and only time that it is mentioned in the Bill.

I have tabled my amendments to make it absolutely explicit where these responsibilities would lie. They would allow the three clauses that I have mentioned to be cross-referenced. The coast protection authority's responsibilities would be made clear, as would the lead local authorities' and the district local authorities'. We would not have to worry about the Environment Agency anyway, because it is already carrying the can.

I tabled these amendments to try to clarify the little bit of uncertainty in the drafting of the Bill. I am sure that the Minister—or anyone else who wants to get involved in this argument, but if not, the Minister——will be able to put my mind at rest, or at least to make explicit what the Bill is intended to do. That would be enormously helpful because what Ministers say on these occasions can matter in subsequent discussion, if there is such discussion.

Earl Cathcart: My Lords, I have added my name to that of my noble friend Lord Dixon-Smith in these two amendments which deal with seawall breaches. Clause 9 appears to give a definitive list of the types of flood risk for which a lead local flood authority must develop a strategy. However, there is no need to mention the flooding caused by a breach in sea defences. Could that be because the Environment Agency is given the task of looking after the coastline?

In Clause 13(1) we are told that "coast protection authority" has the meaning given in Section 1 of the Coast Protection Act 1949. This states:

"The council of each maritime district shall … be the coast protection authority for the district".

That suggests to me that the matter is one for local authorities. However, Clause 9 is silent on the point. Like my noble friend, I am puzzled by the omission of this source of flooding, given that district councils appear to be the responsible authority. Will the Minister explain exactly who should concern themselves with the kind of flooding outlined by my noble friend? Is it the Environment Agency or the maritime district councils? Given the damage that can be caused by high tides and strong winds—here I refer to the damage caused by the high tides and high winds in 1953, which was referred to by my noble friend Lord Dixon-Smith, and to the deaths in Norfolk, my home county—it would be helpful for the Government to make clear where responsibility lies.

Lord Cameron of Dillington: My Lords, I support these amendments. Without wishing to belittle the damage to property that has occurred from rain in recent years, when the seawalls were overtopped in 1953, 300 people died and £5 billion of property was damaged. Any flood risk strategy that does not include the fallout from floods caused by a breach of the seawall seems to me to be missing the biggest piece of the jigsaw.

Lord Faulkner of Worcester: My Lords, I am grateful to the noble Lord for moving his amendment, and I hope that I can reassure the noble Lords,

[Lord Faulkner of Worcester]

Lord Dixon-Smith and Lord Cameron of Dillington, and the noble Earl, Lord Cathcart.

Amendment 23 would add risks from breaches and the overtopping of seawalls to the definition of a local flood risk in Clause 9, which would then need to be covered alongside surface run-off, ground water and ordinary water courses in the local flood authority's strategy for local flood risk management in its area. This does not make sense, as flooding from the breaches of seawalls can extend large distances inland in areas such as the Wash, the Romney Marshes and the Somerset Levels. It is therefore important that the Environment Agency, rather than the lead local flood authority, considers the strategic approach on a catchment basis.

Amendment 41 would replace "A coast protection authority" with,

"An authority with responsibility for flooding resulting from the breaching or over-topping of sea-walls",

in Clause 13(6). This provision has been drafted to give a coast protection authority the power to enter into arrangements with another person to carry out functions in relation to coastal erosion risk. This amendment, together with Amendment 23, would give a lead local flood authority power to enter into arrangements with another person to carry out functions in relation to coastal erosion. However, under the Bill, a lead local flood authority has no coastal erosion risk management functions. These are the functions of coast protection authorities under the Coast Protection Act 1949, so this amendment would have no beneficial effect. Furthermore, by removing the reference to coast protection authorities, the amendment would remove their powers to enter into arrangements, which would seriously impede their capacity to co-operate in carrying out their functions.

At present, the authorities with responsibility for the breaching or overtopping of seawalls, as the noble Earl, Lord Cathcart, rightly said, are the Environment Agency and the internal drainage boards, as well as district councils in areas in which there is no internal drainage board. Such breaching or overtopping may also be the responsibility of a coast protection authority, which is a maritime district council, where the event is linked to coastal erosion. The Bill already provides for the delegation of sea-flooding functions through Clause 13(4), although this arrangement may be only with other risk management authorities and for the delegation of coastal risk management functions by a coast protection authority through Clause 13(6). We therefore take the view that this amendment is unnecessary to ensure that a body that has the responsibility for dealing with floods caused by breaching or overtopping has the powers to arrange for another to exercise its functions. In addition, the amendment is unclear and would produce a result that was more detrimental than the present circumstances. In the circumstances, I very much hope that the noble Lord will be willing to withdraw it.

Baroness Knight of Collingtree: My Lords, I have listened with some puzzlement to what the Minister has said. I made the point very clearly previously that there is a difficulty with the Bill in that it constantly couples the whole question of flood risk with coastal erosion risk. I have said many times that I am concerned that those who look at flood risk will be forced by the Bill to look at coastal erosion risk as well when that has nothing to do with it, and the Minister has made my point precisely today. Will he explain why it has not been quite acceptable to recognise that these are two separate problems, when his comments indicate that the two do not go together?

Lord Faulkner of Worcester: My Lords, the coast protection authority is defined in the Coast Protection Act 1949, and it is the maritime district council. The coast protection authority is responsible for coastal erosion. Local authorities will continue to participate in coastal groups and shoreline management plans, but if we carry through the amendment and delete the reference to coast protection authorities in Amendment 41, that would remove their powers to enter into arrangements, and that could seriously impede their capacity to co-operate in carrying out their functions. The two have to work together. The way in which the Bill is drafted enables that to happen.

4 pm

Lord Dixon-Smith: My Lords, I certainly would not have expected to put down a perfectly worded amendment that made absolute sense, but the amendments were put down quite deliberately in order to provoke a discussion and produce clarity. The Minister's explanation has clarified the situation and the background. From the point of view of the purposes of the exercise, I have made real progress, which is helpful. There is nothing else we can do because, given the stage the Bill has reached, this will probably be the last time we meet to discuss it until it goes into the tumble dryer, or washing machine perhaps. I have to hope that the soap that is used is sufficiently clean to produce a decent Bill at the end of it all. However, I cannot say that I am happy about the result. When you look at the way in which these structures are allocated, we have one lot of structures under this Bill and another lot under another Bill. That concerns a point that I will raise later this afternoon if we make sufficient progress. We ought to be looking at the confusion that arises from having these two structures in different legislation. This would have been the perfect opportunity to try to make sense of it all and not leave these functions in two separate Bills dealing with similar subjects in separate ways. That is not a good solution. With that, I beg leave to withdraw the amendment.

Amendment 23 withdrawn.

Amendments 24 to 26 not moved.

Amendment 27

Moved by ***Lord Taylor of Holbeach***

27: Clause 9, page 7, line 27, leave out "be consistent with" and insert "have regard to"

Lord Taylor of Holbeach: My Lords, in moving Amendment 27 I wish to speak also to the other amendments in my name in this group. I note the amendment in the name of the noble Lord, Lord Campbell-Savours, in this group and I look forward to hearing what he has to say.

We have been debating for some time how local strategies for dealing with flood risk relate to each other and who plays what role. Indeed, much of the previous debate was on that subject. As I have said before, we are pleased with much of the Bill's drafting. It recognises—as do we—that putting plans in place to manage water resources and cope with flood risks requires a strategic overview and direct local knowledge. The latter point is crucial because, regardless of how efficient or well managed the Environment Agency is—it is both of these things—it cannot possibly get to know every local stream, flood plain or community and all the needs and expectations that local communities have.

In Grand Committee last week, when discussing an earlier group of amendments, my noble friend Lady Knight of Collingtree raised some very pertinent points about how frustrated local communities can become when they do not think that proper attention is being paid to their views. That is unfortunate and should be countered because much of the work that will be done in this area will involve members of the community volunteering their own efforts for the good of their neighbours. There is a vast resource in the knowledge, expertise and experience of local people who have coped with the risk of flooding to their areas, perhaps for generations, and who have very sensible and reasonable opinions on, for example, whether river defences are up to scratch or whether it is a good idea to build thousands of new houses on a flood plain.

The Bill is drafted in such a way as to involve local communities, which is certainly welcome. Lead local flood authorities will be responsible for creating strategies that tie in with the Environment Agency's national strategy. Those proposals will, if all goes to plan, involve public consultation and the input of members of the public. That is how it should be. However, our concern is that, when all this has been done, local plans will become subservient to national ones. The requirement in the Bill that local strategies should be consistent with the national one could be a worrying straitjacket on the ability of local authorities to perform their functions in a way that serves their populations in the best way. If that scenario were to arise, I and other noble Lords would find it regrettable and foolhardy. Why should local authorities be deemed to be acting outside the parameters of the legislation if they are doing what is right, regardless of whether it matches what has been set down at national level?

I will raise another matter that fits in with this need for local input. Previously, we discussed the key strategic role that IDBs can play, both nationally and, with their local knowledge in management and planning, at local level. I know that the Minister shares my view of their importance. This matter has been drawn to my attention by the chief executive of the Association of Drainage Authorities, Mrs Jean Venables. She was the first female president of the Institute of Civil Engineers, and is the institute's immediate past president. I have explained my association with that organisation, of which I am vice-president. The IDBs would like some assurance of their role in joint projects.

In Committee, I declared my interest in the subject. The IDBs are seeking assurances about whether they will be empowered to sign up for joint projects that will involve the formation of limited liability companies in which they will play a role alongside other public bodies that will be so empowered. If we had been dealing with IDBs in detail in this legislation, we would have had a chance to table amendments on this point; but, as the Minister will know, that element was removed from the draft Bill.

The IDBs would like to be part of joint ventures, and have given the example of a project in Lincolnshire where a partnership group has been involved in creating and improving grazing marsh habitat. There are plans to set up a limited company to limit the liabilities of the partners in this future project. I will list the partners: English Heritage, East Lindsey District Council, FWAG, Lincolnshire County Council, Lincolnshire Wildlife Trust, Natural England and Lindsey Marsh Drainage Board. These are all bodies whose aims and objectives we support. Current legislation does not expressly state that IDBs can be part of such arrangements, but neither does it state that they cannot. It would help the situation considerably if the Minister could give some assurances on that point.

Further to my amendments in this group, I draw noble Lords' attention to the sixth report of your Lordships' Delegated Powers and Regulatory Reform Committee. There is a copy on the table next to me. As we have noted before, the committee was surprised to see that compliance with national guidelines will be mandatory. However, it goes on to recognise that there is a precedent in the 20 year-old Environmental Protection Act. I acknowledge that earlier the Government introduced their own amendments that will subject the guidelines to parliamentary scrutiny, and in due course we will be able to examine them in detail. But before we get to that point, it is worth examining whether the Government have the balance right. I have proposed that local strategies should "have regard to" the national strategy because it will allow some flexibility for unique local circumstances, which does not seem to be present under the Government's planned compulsory consistency requirement.

I am encouraged by meetings with and briefing papers from the Environment Agency, which has stressed the importance of the agency and local authorities working in partnership and with the support of other local bodies, the better to ensure that the management of flood and coastal erosion risks is co-ordinated and that all risks are managed equally and consistently. I believe that I can reflect with authority the sentiments of the Environment Agency when I say that it is keen to point out that it supports the proposed localised approach to managing flood risk and will assist local authorities in this by providing guidance and data to help develop local strategies. The agency also acknowledges that local strategies will be vital in managing flood risks, and that while they should be consistent with both national and local strategies and guidance, it does not intend that the national strategy should prescribe local flood or coastal erosion risk management decisions. That sounds promising, and it is language that I am pleased to hear. However, I remain concerned that such a pragmatic approach, which essentially it is, depends on the benevolence of the Environment Agency rather than being enshrined in legislation which could be interpreted differently at a future date.

[Lord Taylor of Holbeach]

I am strongly in favour of the twin-track approach, but for this to be fully effective, the Government must live up to their stated intentions and allow for the entirely appropriate localism which the management of flood risk requires. I beg to move.

Lord Greaves: As a militant localist, I have considerable sympathy with the proposition put forward by the noble Lord, Lord Taylor, although I think that in this instance he is probably worrying a little too much. I shall explain why in a moment. First, I should like to thank those members of the Bill team who met me on Monday and took the time and trouble to talk about some of the remaining issues in the Bill. Whether they found it useful to talk to me, I do not know, but I certainly found it useful to talk to them.

We are talking about the difference between the words "be consistent with" and "have regard to". I am not sure that there is a great deal of difference between them, but if they were ranged on a spectrum that stated at one end, "Must do exactly as we say", while at other end it said, "Do exactly what you want", then clearly they are not in exactly the same place. The phrase "be consistent with" is a bit stronger. We are talking about the relationship between local flood risk management strategies in England and Wales and the national flood risk management strategy. I have to say that the words "be consistent with" seem to be reasonable in this case in that they allow for a sufficient degree of flexibility. It is perfectly possible to think of circumstances in which a range of local options are all consistent with the national strategy, but it is also possible to do things that are not consistent with it. The example of drainage, for example, means that we could be talking about what starts as little dribbles and seepages but ends up as big main rivers; this is going a step too far.

In considering the actions of local flood risk management authorities, we are also talking about whether they should be consistent with both the national strategy and the local strategies which the lead authorities are responsible for setting up in the first place. I think that the words "be consistent with" are perfectly reasonable. They do not introduce a degree of subservience that offends my deep-seated sense of localism. On this occasion, therefore, I support what I assume the Minister will come to say.

4.15 pm

Lord Campbell-Savours: I have had to make a choice about to whom I am going to be discourteous. I want to speak in this debate on the Floor, and of course it is courteous to be in the Chamber when the opening speeches are made, but I have listened to only part of the noble Lord's speech. Equally, I could have been discourteous and simply failed to turn up for two of my own amendments. So I hope that I am forgiven all round.

My Amendment 38A refers to Clause 11. The Explanatory Notes state:

"This clause requires English risk management authorities in exercising their flood and coastal erosion risk management functions to act in a manner consistent with the national flood and coastal erosion risk management strategy and guidance under Clause 7. These risk management authorities must also, with the exception of water companies, act consistently with relevant local flood risk management strategies and related guidance".

In other words, all but water companies have to act consistent with local flood risk strategies. However, the Bill also says that water companies are,

"required, in exercising a flood or coastal erosion risk management function, to have regard to local strategies and guidance. In other words, water companies need only have regard to local strategies and guidance".

This was picked up by someone in the Keswick Flood Action Group, with which I am closely involved, and they wondered why there is an inconsistency here. Surely "have regard to" is weaker than "act consistently with". Surely water companies should at least treat seriously strategies in which local authorities have been involved, in the sense that water companies would "act consistently with" those strategies. The question is why—why the distinction between the two? That is all I have to say on the amendment.

Baroness Young of Old Scone: Last week when we debated Amendment 14 and the amendments grouped with it, I indicated that I would like to quote some of the things said on that amendment in opposition to this group of amendments. This is right at the heart of the Bill. One of the main reasons why the Bill is coming forward is that the Pitt report demonstrated that there was a lack of clarity and responsibility which caused problems with the co-ordination of flood risk management. The Bill therefore aims to try to clarify the responsibility to reassure communities which, at the time of the 2007 floods, expressed concern about a lack of clarity.

When we discussed Amendment 14 and those grouped with it last week there was considerable support around the Committee for the idea of co-ordination between authorities and a belief that that is a very important part of what the Bill is about. So I am a bit surprised that the amendment seems to weaken the requirement to co-ordinate and co-operate. It seems to run the risk of there being two sets of authorities which take a different view on the same issues.

The Bill is not entirely successful in clarifying who is responsible for what, because there are still lots of players on the pitch—the Environment Agency, the local risk management authority, the IDBs and so on; and the water companies, in the case of the noble Lord, Lord Campbell-Savours. That is why these strategies are so important. The national strategy covers all sources of flooding, but the local strategies cover ordinary water courses, surface water and ground water, and the two really need to be plugged into each other if there is not to be continued confusion of the sort that arose graphically in 2007 in Leeds, where there was flooding from both groundwater and the main river; in Sheffield, where there was a great dispute about where the water was coming from; and also in Hull, where the management of the surface-water and ground-water flooding had to be very closely co-ordinated with management of the river and tidal flooding. It seems entirely reasonable that there should be consistency, with the national overarching strategy giving guidance to local strategies, enabling co-ordination for the effective management of floods and coastal erosion, and enabling clarity to be given to local people, while making sure

that the development of solutions that meet local needs is dealt with locally, while solutions that must be resolved on a more strategic basis are part of the national strategy.

I hope the Minister will reassure those who wish to substitute "have regard to" for "consistent with". It is important. We might be arguing about angels on the heads of pins, but the noble Lord, Lord Taylor, hit the nail on the head when he said that this was about local relationships between national bodies such as the Environment Agency and local authorities and IDBs. For the most part, they work well together locally. We may be straining inconsequentially on this matter, but it would give the wrong signal if the words were changed.

Baroness Byford: My Lords, perhaps I may seek clarity from the Minister. I thank the noble Baroness for raising the question of the lack of clarity and responsibility. My question comes back to the debate that we had last week about the link between England and Wales. Flooding in England is often caused by the flooding of rivers in Wales that come into England. Is the Minister satisfied that the overlap of management between the two countries is strong enough in the Bill?

Lord Cameron of Dillington: My Lords, I suspect that it will come as no surprise, in the light of my previously stated concerns about catchment cohesion, that I do not support this group of amendments. The role of the Environment Agency in co-ordinating catchment management is very important. If anything, I would prefer to see the role of the Environment Agency as overall arbiter between local authorities strengthened. Consistency within each catchment area is vital. If local authorities have a majority on regional flood and coastal committees, that is where they can exercise their control over the regional programme of the Environment Agency. However, they will have to do it as a co-ordinated body: they will have to work in concert to assert themselves over the agency. We will come to that later. For the time being, I would not want individual local authorities to have any excuse to ignore the co-ordinating role of the Environment Agency in any catchment area.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): My Lords, I am grateful to all noble Lords who have spoken in this important debate. If the noble Baroness, Lady Young, will forgive me, I will echo her remarks, which I very much appreciated, but I preferred the analogy of the noble Lord, Lord Greaves. I do not think that we are dancing on the head of a pin; but I do think, as the noble Lord, Lord Greaves, suggested, that on a spectrum with compulsion at one end and complete freedom at the other, we are close together in the middle. The Government do not disagree with a great deal of what the noble Lord, Lord Taylor, said. I would like to convince the Committee that our positions are close together, and will indicate through assurances how we expect the Bill to work. I hope thereby to confirm that the Government's stance is acceptable to those who have tabled amendments.

We are firmly committed to ensuring that local authorities have considerable discretion in respect of their flood management strategies. However, we do not consider that these amendments are necessary. It is intended—we had this discussion last week, as several noble Lords have mentioned—that the national strategy will set out broad approaches. It is not meant to be prescriptive: it is not a diktat. It outlines a broad strategy that is not to be prescriptive in respect of flood risk management in any particular area. We have given an indicative outline of the likely strategy that we foresee being developed.

The content of the national strategy will be the subject of consultation before it is approved by Ministers. That is why we also emphasised last week when we tabled our Amendment 20 that the national strategy will be subject to formal parliamentary scrutiny. Scrutiny in Wales will have parallel arrangements, as defined by the National Assembly. The national strategy will get full consideration and therefore will reflect the points I have made that it is not meant to be prescriptive but to give space for local discretion where we recognise that that has an important part to play with regard to the overall position. Local strategies need to be consistent with the national strategy. They will need to follow the national strategy to avoid having detrimental impacts on other areas within the same catchment or just further along the coast. While, at a local level, a decision to manage risk in a certain way may make sense, in the wider context it may not. That is why we need an overarching national strategy and why I was sympathetic to the concept that was advanced the other day in Committee about the catchment areas broadening the issues beyond the local authority. However, I did not want to take away risk management from local authorities as that responsibility is properly vested in them. This is a question of ensuring that risk management authorities have areas where they can develop their risk management policies in line with local needs but having regard to a national strategy which does not set out to prescribe how they should do it but guarantees that there is consistency if that is the way in which the risk management makes sense.

It is vital also that the risk management authorities act consistently with the local strategies to ensure that they work together and that the management of some risks in an area does not exacerbate others. We discussed this at some length in a previous Sitting. I assure the noble Lord, Lord Taylor, that we are not hostile to the thinking behind his amendment. However, we think that it is unnecessary. We consider that we have the balance right between the national strategy and the necessary role of the local strategy. Our Amendment 20, which the Committee debated and approved last week, responds to the Delegated Powers Committee and provides for the necessary parliamentary scrutiny. I say emphatically with regard to prescription that it is dependent on parliamentary approval, not on government diktat. When we say that the local strategy has to have some consistency with the national strategy, we are talking about a national strategy which has been thoroughly considered by Parliament.

The noble Lord, Lord Taylor, emphasised a particular dimension with regard to the internal drainage boards. I am grateful to him for giving me notice that he would raise their anxieties regarding local strategies. As he indicated in his opening remarks, the Government value the work of the internal drainage boards. We

[Lord Davies of Oldham]
want to see them working in partnership with the Environment Agency, Natural England and local authorities in exercising their statutory functions. I am aware of the importance of the point that he made that some see participating in limited liability partnerships or companies as a desirable way of pursuing their business. I understand that statutory bodies may take actions that are incidental to their statutory functions. These incidental powers do not need to be expressly set out in legislation, although this has become more common in recent years. The Bill in effect requires partnership working by the internal drainage boards by making them risk management authorities, giving them a duty to co-operate and requiring them to act consistently with local strategies. Depending on individual circumstances, a court may find that participating in companies or limited liability partnerships in cases such as this is within their ancillary powers, and that is how they would go about their business and meet their obligations and the needs of risk management.

We are looking at whether further provision might be necessary in potential future legislation, but I assure the noble Lord, Lord Taylor, that we do not see this Bill as inhibiting internal drainage boards from carrying out their function in that way. I understand the point made by my noble friend Lord Campbell-Savours and I note the persistence with which he ensures that his concerns are considered. I want to assure him within this framework, because it seems to me that we are arguing about the relationship between the national strategy and the local position of the risk management authorities. As for my noble friend's point about water boards—I know his anxiety about water boards—the reason why they are not included in the Bill in the way that he suggests is that they already have a statutory regulatory authority: Ofwat. That is the governing structure for their responsibilities. Their national responsibility in those terms might inhibit them from following the local strategy that my noble friend recommends.

4.30 pm

We anticipate of course that in most cases the water boards will fit into the overall strategy and will not ride roughshod over local positions, but the water board might be concerned about a development which might put extra costs on its consumers. It has clear statutory responsibilities in those terms. The water boards are not the same as the other risk management authorities; they have other obligations; they are under a different regulatory regime. That is why, although I know that my noble friend is eager to bring them within the framework, the Bill requires them to "have regard to" local strategies and guidance in exercising any flood or coastal erosion risk management functions. Under the Bill, their position cannot be foursquare with a local risk management authority. Their obligations are greater than that. I am sure that my noble friend appreciates why that must be so.

Lord Campbell-Savours: I think that I understand what my noble friend is saying: a conflict may arise over the use of resources between Ofwat and the local strategy. Surely that applies equally to the national strategy.

Lord Davies of Oldham: Of course it does, but the difference is that the Environment Agency is charged with the national strategy. Clearly, that national strategy is not possible without the water boards having a clear relationship to that strategy and recognition of it, but they are governed by a different regulatory authority: Ofwat. Within that framework, their obligations are defined in those terms. I do not suggest for one moment that the water boards will not have regard to the local strategies; they are bound to do that; that is an important part of their work.

I emphasise that the national strategy is not as determinant as my noble friend hints at in his question. The national strategy will not define activities in a particular location. That is what we want left to the local risk management authorities. I think that that is the burden of the amendments tabled by the noble Lord, Lord Taylor, and his general approach, and a point that the noble Lord, Lord Greaves, recognised that the Bill accepts. We will not be prescriptive on activities in a location, only the broad approaches and principles which should be followed.

That is rather different from the statutory regime which governs the water authorities. I hope that my noble friend will accept that point.

Lord Campbell-Savours: I think I am being summoned back to the Chamber. I do not want to be discourteous.

Lord Davies of Oldham: My Lords, I have concluded my remarks, but it is the first time that I can recall a noble Lord walking out on one of my contributions. I hope he did not do so in total disgust.

Lord Taylor of Holbeach: I am sure that we can disapprove of the Minister in all sorts of ways and that the noble Lord, Lord Campbell-Savours, has the capacity to do so. We on these Benches will forgive the Minister for many things, except perhaps for the fact that he sits on the government Benches and not on ours. I am very grateful for the point that he made because it was very interesting. There is an exception for the water companies to some degree, and I understand exactly how it comes about, but I hope that the Minister will understand that we see them as an integral part of this partnership. It is very important that they are consistent with a strategy that is being developed both nationally and locally, and we hope that the regard which they must have is not too far from the consistency to which the Bill refers and which the Minister advocates.

This has been a very useful debate in the sense that we have been able to talk about these things. I think that the focus is on the degree to which the success of all flood management will depend on local input and on the local partnerships that are formed between government agencies and the local flood authorities. It is really important to have been able to debate that point. I am very grateful to the Minister for his particular comments on IDBs, which are quite important for particular project managements. I thank all noble Lords who have spoken in what has been a very worthwhile debate. I beg leave to withdraw the amendment.

Amendment 27 withdrawn.

Amendments 28 to 31 not moved.

Clause 9 agreed.

Clause 10 : Local flood risk management strategies: Wales

Amendments 32 to 37 not moved.

Clause 10 agreed.

Clause 11 : Effect of national and local strategies: England

Amendments 38 to 39 not moved.

Clause 11 agreed.

Clause 12 : Effect of national and local strategies: Wales

Amendment 40 not moved.

Clause 12 agreed.

Clause 13 : Co-operation and arrangements

Amendment 41 not moved.

Clause 13 agreed.

Amendments 42 to 43A not moved.

Clause 14 : Power to request information

Amendment 44

Moved by ***Earl Cathcart***

44: Clause 14, page 11, line 22, leave out "information in connection with" and insert "such information as is reasonably necessary to perform"

Earl Cathcart: My Lords, Amendment 44 is fairly straightforward. Clause 14 allows the Environment Agency and lead local flood authorities to request a person to provide information in connection with flood and coastal erosion risk management functions. On first reading, that sounds quite reasonable, and undoubtedly a flow of information will be required to set up strategies to carry out flood risk functions and to co-ordinate properly with other relevant bodies. However, I am concerned that there is a lack of proportionality here. The obligations in both cost and time that could be imposed on a land manager, for example, could be huge. The power to request information should therefore relate only to information that is "reasonably necessary" in connection with the authority's flood and coastal erosion risk management functions. That is what the amendment seeks to do. Moreover, we do not see why the information has to be provided in the form and manner requested. If the provider can supply it in a relatively understandable alternative form which is cheaper and easier for him, he should not be prohibited from doing so. I invite the Minister to comment on that.

When this point was raised in another place, the Minister's honourable friend Huw Irranca-Davies said that it is important that authorities can ask for information from different organisations in a consistent way to manage the cost of collating information centrally. However, that rather misses the point. The power is not limited to organisations, because information can be required from anybody. Clause 14 quite clearly states "request a person". More significant is that it seems somewhat unreasonable that the legislation is based on the convenience of the agency rather than the land managers and businesses that may be required to provide the information. I do not doubt that the clause is necessary, but I feel that the wording is too stark and potentially open to cause considerable inconvenience where, I am sure, none is intended. What I am asking for is a certain proportionality and flexibility. I beg to move.

Lord Faulkner of Worcester: I am grateful to the noble Earl, Lord Cathcart, for giving us an opportunity to hold a small debate about the use of the English language as much as anything else. Amendment 44 expressly requires authorities only to make reasonable requests for information which they require to fulfil their functions. It would have the effect of slightly reducing the scope of information that authorities can request for their flood and coastal erosion risk management functions. We take the view that it is important that authorities should have sufficient powers to acquire information from those who would be expected to have it so that they can effectively manage what are often complex and interrelated drainage problems.

There may be little practical difference between information that is "reasonably necessary" and that which is connected with the authority's flood and coastal risk management function. However, it may not be possible to judge what information is necessary until some of it has been reviewed. This could lead to multiple requests for information, increasing the overall burden on both the authority and the person providing the information. As an example, until information on the standard of protection afforded by a flood defence has been considered, the necessity of obtaining information on the assets at risk of flooding behind it might be difficult to ascertain.

The noble Earl asked particularly about the situation where a person who was asked to provide the requested information felt that it could not be provided in the manner or, I would guess, within the timescale requested. In practice, we would expect there to be informal discussion before an enforcement notice is served and that authorities will agree reasonable time periods with the relevant person. Where the person providing the information is unable to comply with the request either by fulfilling the requirements to the specified standard or within the timescale requested, they can make representations under Clause 15(2)(c) in respect of any enforcement notice. There is a right of appeal against any penalties imposed. I should also make the point that it is implicit in all legislation that public

[Lord Faulkner of Worcester]
authorities should behave reasonably, so the wording set out in the amendment is not needed. With that explanation, I hope that the noble Earl will agree to withdraw his amendment.

Earl Cathcart: I thank the Minister for explaining the Government's point of view. At this stage, I beg leave to withdraw the amendment.

Amendment 44 withdrawn.

Clause 14 agreed.

4.45 pm

Clause 15 : Civil sanctions

Amendment 45

Moved by ***The Duke of Montrose***

45: Clause 15, page 12, line 19, at end insert—

"( ) Any regulations under subsection (8) may not be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament."

The Duke of Montrose: I move this amendment in the name of my noble friend Lord Taylor. I will also move the others in his name that are in this group.

Amendment 45 applies to Clause 15, which allows for penalties to be imposed should anyone fail to provide the information requested under Clause 14. Given our concerns about that provision, some of which were discussed in the debate on the previous group of amendments, it is particularly important that there should be an appeals process. One option would be to put in the Bill how an appeal might be made. Our fears were somewhat assuaged by the explanation from the Minister in another place that there would be a right of appeal.

The clause gives the power to the Minister to make regulations specifying the appeal route. Your Lordships' Committee on Delegated Powers and Regulatory Reform has once again struck a blow. It has this power in its sights, as well as others covered by amendments in this group. Our amendments were intended to give effect to the committee's recommendations. The Government subsequently tabled their own amendments, which are neatly paired with ours. They concern other areas of the Bill that would benefit from proper parliamentary scrutiny. It is therefore satisfactory that the Government have taken on board these recommendations. I beg to move.

Lord Greaves: My Lords, I was waiting for the Minister to speak, because Amendment 80 in my name is an amendment to a government amendment. However, I will say briefly that in general we sympathise with the points put forward by the noble Duke and by the Conservatives. The amendment that we are putting forward states that the government amendment concerning appeals which we will debate in a minute should require affirmative status throughout, and not just on the first occasion. Appeals seem to be sufficiently important for this to be entrenched.

I will make one further topical and ironic comment. I wonder why the Conservatives bother with insisting on all these affirmative resolutions when they are never prepared to vote against any of them, however unfortunate the contents, when they come to the House. There seems to be an inconsistency. As I said, that was an ironic comment. We support the amendment.

Lord Taylor of Holbeach: I thank the noble Lord for giving way. The custom of the House is that we do not vote down government statutory instruments. We seek to reason with the Government over statutory instruments, but it is not our practice to table fatal amendments. Unfortunately, other parties take a different view. We consider that there is a long-standing agreement between the two Houses of Parliament that this is the way in which we conduct our business. It serves the House well because it gives us an opportunity to debate issues. We have found that it is possible to reason with the Government on statutory instruments through this process. I am sorry that I cannot accept the criticism of the noble Lord, which may contain a certain amount of provocation. The truth is that tabling fatal amendments to statutory instruments is foolhardy and counterproductive, given the custom of the House.

Lord Greaves: I will respond briefly—I do not want to waste too much time on this. Historically, the House of Lords has voted down statutory instruments. Our clear view is that if the House is not prepared to do that in exceptional cases and very occasionally, there is no point in having them, because it is the ability to vote down statutory instruments that makes the Government look carefully at them to make sure that they are not undesirable. I am tempted to say that all that the noble Lord has proved is that the Tories here are wimps, but perhaps that is too provocative.

Lord Faulkner of Worcester: My Lords, I do not wish to intrude on a slightly unpleasant private argument between the two opposition parties, particularly as we had the benefit of hearing an extended debate on orders in the Chamber earlier this week.

The noble Duke, the Duke of Montrose, and others are proposing amendments on appeals provisions in the Bill. All their amendments would make any and all use of the powers to make regulations on appeals subject to affirmative resolution. I am sure that they have been tabled as a response to the recommendations of the Delegated Powers and Regulatory Reform Committee report.

The government amendments in this group also respond to the recommendations of that committee and would make the regulation-making powers under Clause 15, paragraph 15 of Schedule 1, paragraph 25 of Schedule 3 and Sections 2E and 19A of the Reservoirs Act 1975, as inserted by Schedule 4 to the Bill, subject to affirmative resolution in the case of the first regulations made in each case.

We take the view that, in doing that, the House will be presented with a full opportunity to scrutinise and debate the detailed appeal provisions proposed in each of the regulations. That approach is fully in line with the DPRR Committee's recommendation and has precedent—for example, in Section 2(9) of the Pollution Prevention and Control Act 1999.

The Bill requires the Minister to make these regulations establishing a right of appeal in each case. The first set of regulations in each case is, therefore, crucial if the Minister is to fulfil this obligation. They will also set out important matters such as the grounds for appeal. However, once the appeals provisions have been established, changes are likely to be largely procedural and involve technical detail which is unlikely to be of significant interest or concern to Parliament or to the Welsh Assembly.

Small changes may be needed to keep the provisions up to date or to reflect changing circumstances. To require a debate every time this happened would, in our view, be disproportionate. The negative procedure for subsequent exercise of the power provides an adequate and proportionate level of scrutiny. If there were concerns, the Merits of Statutory Instruments Committee could draw the legislation to the attention of Parliament and a debate could be called in the normal way.

With that explanation, I hope the noble Duke will feel able to withdraw his amendment.

Baroness Byford: I thank the Minister for his explanation, although obviously I support my noble friend's amendment. As he will be aware, I am never very happy about secondary legislation and having to do everything through secondary legislation, so I am grateful that, in this case, he has returned with amendments.

Perhaps I could also reply to the noble Lord, Lord Greaves, as the Minister started to speak before I could get to my feet and it seemed rude to interrupt him when he was in full flow. There is an important understanding in the House concerning statutory instruments. However, when we consider the procedures of the House, perhaps we could look at that aspect. As the Minister indicated, we can speak to a statutory instrument but we cannot alter it. Some of us feel very frustrated with secondary legislation because of the inadequacy of the original Act itself; one will have discussed a Bill, seen it become an Act and then later have to deal with the secondary legislation arising from it. Sometimes these things take years. It was only last week, I think, that we dealt with the Commons statutory instruments—

Lord Greaves: It was yesterday.

Baroness Byford: I am sorry—I have lost five days. It seems a long time ago. To do something four years down the line is not very satisfactory for whoever is in government. My noble friend has raised an important amendment. I do not know whether the Government's response will be similar, but I support the amendment. I also would like to clarify things with the noble Lord, Lord Greaves, because he and I will certainly not agree on the position that he took.

The Duke of Montrose: I thank the Minister for laying out so clearly where we will stand with the secondary legislation and how the appeals will go forward. I merely ask the noble Lord, Lord Greaves, to be very careful before he comes out with such accusations. I believe that there was one case about four or five years ago—

Lord Greaves: There have been three cases.

The Duke of Montrose: We would like to know exactly what the noble Lord intends, because it has been a very well established convention in the House that it must be a very serious matter before something in a statutory instrument is overturned. In the mean time, I beg leave to withdraw the amendment.

Lord Greaves: Before the noble Duke withdraws the amendment, perhaps I may say that he is agreeing with the point that I was making, which is that it must be a very serious matter, but it is possible. I believe that there have been three cases in historical time.

Amendment 45 withdrawn.

Amendment 46

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

46: Clause 15, page 12, line 21, at end insert "to reflect a change in the value of money"

Lord Faulkner of Worcester: Amendment 46, like Amendment 47, is in response to the Delegated Powers and Regulatory Reform Committee. The committee recommended that the power to vary the penalty should either be limited to rises that relate to the rate of inflation or that it should be subject to the affirmative procedure. We are happy to accept the DPRR Committee recommendation that power to vary the penalty be limited to rises that relate to the rate of inflation. Therefore, our amendment to subsection (9) restricts the power to vary the maximum penalty to changes in the value of money. I beg to move.

The Duke of Montrose: I speak to the amendment in the name of my noble friend Lord Taylor of Holbeach, Amendment 47. As the Minister explained, Clause 15(4) provides that a penalty imposed for failure to comply with an enforcement notice must not exceed £1,000. Subsection (9) enables the Minister to substitute some other amount by negative order. Without the amendment, the power to do so could in theory be unlimited. As the Minister explained, this was another point picked up by the DPRRC, which our amendment sought to address and which has been met by the government amendment.

It is a matter of regret that a Bill that has been circulated through government departments for so long should repeatedly fall short of what we expect of good legislation. That highlights the important role that this place plays in scrutinising legislation and holding executive power in check.

To be fair to the Government, they have used the opportunity of this possibly truncated Grand Committee to make the changes recommended to them. For that, we are all thankful. This has been a fairly dismal run of amendment groupings which has eaten into the time available for scrutiny of the Bill. The Government have been very reticent to tell us whether we will be given enough time properly to scrutinise the whole Bill. I invite the Minister to tell the Committee what representations he has made to his colleagues to ensure that we will get time to do the job properly.

Lord Faulkner of Worcester: I fear that the final question of the noble Duke, the Duke of Montrose, is a bit above my pay grade.

We attach huge importance to the Bill. We are grateful for the general support of the opposition parties and of other Members on the Cross-Benches for what we are seeking to do—especially in the implementation of the Pitt report. We believe that the Bill will have the opportunity for adequate scrutiny when we combine what was done in the other place and what we are able to do in Grand Committee. Whether the Bill will go any further after today is, as I said, not a matter for me, but I am sure that the noble Duke's comments have been noted.

Amendment 46 agreed.

Amendment 47 not moved.

Amendment 48

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

48: Clause 15, page 12, line 35, at end insert—

"( ) The first sets of regulations under subsection (8) may not be made unless a draft has been laid before and approved by resolution of—

(a) each House of Parliament, in the case of the first regulations made by the Secretary of State, and

(b) the National Assembly for Wales, in the case of the first regulations made by the Welsh Ministers."

Amendment 48 agreed.

Clause 15, as amended, agreed.

Clause 16 agreed.

5 pm

Clause 17 : Levies

Amendment 49 had been withdrawn from the Marshalled List.

Clause 17 agreed.

Clause 18 : Environment Agency: reports

Amendment 49A

Moved by ***Baroness Knight of Collingtree***

49A: Clause 18, page 13, line 17, at end insert—

"( ) The Minister must, as soon as practicable after he has received the report under subsection (1), publish it."

Baroness Knight of Collingtree: Yesterday, I was rather worried that Amendment 49A was not on the Marshalled List. I am very glad indeed to see that that mistake has been put right today and the amendment is included.

I was most disappointed not to be able to be in the House on 24 February to take part in the Second Reading of the Bill, although *Hansard* records my words in the debate on the Queen's Speech with regard to this subject. I admit that I am not a farmer and that I do not own a reservoir, nor can I claim to be a very active gardener, although I love my garden. My interest is that I am the president of the Nene Flood Prevention Alliance. For the information of noble Lords, who may not be aware of this fact, there is a river whose name is spelt Nene, which runs through the whole of Northamptonshire, but in the south of the county its name is pronounced as the river "Nen", while in Peterborough, which is also in the county of Northamptonshire, it is pronounced as the river "Nene". That is a little confusing.

As I say, I am president of a group of volunteers who have studied our local flood problems for many years. They are now extremely knowledgeable about every aspect of the matter and have convinced me that there must be not only openness but a public right to question what is to be done to save our area from floods. They have already suffered several grievous floods. This amendment seeks not only availability but clarity and opportunity. None of this can happen if reports go only to the Minister and probably finish up in either a drawer or a filing cabinet where the sunbeams of public knowledge can never reach them. Our Nene committee has met repeatedly with impenetrable stonewalls when seeking information from the Environment Agency. I wish to quote a letter written only last month which illustrates this problem. It is from a member of the Nene committee who was studying a problem in our area with regard to the operation and management of the Washlands. The letter states:

"I am most concerned to be made aware that not only do you not have the original design drawings and calculations, but that you have now indicated that even the operational figures related to the control sluices are also not in your possession".

Nobody knows where they are. The letter continues:

"In such a situation I am somewhat mystified to understand how you are able to be so clear, that the whole flood management systems installed in this area meet all the necessary storm and flood criteria. This missing data is not only necessary, but essential, to ensure that the right decisions are being made to protect both the town and the downstream areas".

But apparently none of it is anywhere to be seen. I wish to quote one further sentence from quite a long letter. It states:

"In respect of the lack of so much basic information, I question whether your office has ever carried out an investigation into when these documents were 'mislaid'".

I think that all noble Lords must recognise that that situation is very far from ideal.

Earlier, I had sought information on a flood matter from the then chief executive of the Environment Agency and I was sent a letter that those who informed me on the committee were able to show me was incorrect. It was an important matter because it dealt with the likelihood, and the frequency of likelihood, of floods in my area. The information I was given from that source was incorrect. I was very grateful for a gracious letter of apology in which it was agreed and admitted that the details I had been given were wrong. We were not likely to have floods only once in 200 years. In fact, it could be once in less than 50 years and, in some parts of our county, only 10 years. Noble Lords will see that the difference was very great.

At Second Reading, the noble Lord, Lord Smith of Finsbury, was wonderfully encouraging in his clear acknowledgement that improvements need to be made. He said that,

"there has been real confusion about who is responsible for doing what".—[*Official Report*, 24/2/10; col. 1040.]

He is so right. He gave me another reason to cheer when he stressed the need to work with and to "consult", which is important, with "local communities". Members of my local community know so much and have studied so thoroughly that their input will be crucial.

Neither of these things will happen unless the reports are made public. Last week, in Committee, the Minister gave me the impression that the Government might be prepared to look favourably on this amendment, which refers to matters of huge concern. These people are most concerned because their lives will be blighted if they do not know, if they are not told or if they cannot consult. I feel that the Minister has been good enough to listen to these pleas. However, without seeking to look this gift horse in the mouth too much, will the Minister say what security risks, which he mentioned last week in Committee, may be involved in so doing? I beg to move.

Lord Taylor of Holbeach: My Lords, I support my noble friend Lady Knight's amendment, which calls for the Environment Agency's report on flood and coastal erosion risk management to be published by the Minister when he receives it. She has pointed out why it is important that this is done in the interests of transparency and reassurance for the people who feel that their lives may be affected. As my noble friend has pointed out, it is of considerable, even acute, interest to people to know where they stand. The risk of flooding is a grave concern for many communities which have suffered terribly from inundation. The cost, in financial but also emotional terms, of having your house flooded is likely to be considerable.

As my noble friend pointed out, there is a great hunger in communities for information which directly affects them. She has mentioned the trouble that people in her area have had in trying to find out what has happened to resources that they expected to see after flooding has damaged their homes and businesses. It is a matter of immense frustration to come up against bureaucracy, as I am sure noble Lords will know only too well. The publishing of reports will not necessarily help to solve all problems, but if we operate, as I think that we should, on the principle that as much information is available to the public as possible, we can be sure that we are at least helping people to information which they could use to help themselves.

In our previous Committee debate the Minister gave his response to this amendment, even though it had not been moved, and he indicated that his response would be the same today. In fairness to the Minister, there was considerable confusion about whether the amendment was being moved in that group; we understand that. He agreed that reports should be published, although he added the caveat that publication may have to be delayed because of security or other reasons. Indeed, my noble friend has already asked if the Minister could indicate what those reasons might be. It is frustrating, as I said, not to be able to gain access to information, and I would not like any unnecessary delays to be allowed to creep in. Will the noble Lord therefore set out what protocol will govern the publication of agencies' reports and why a Minister might withhold immediate publication?

Lord Davies of Oldham: Let me begin by saying that it is all right for the noble Lord to be a little prickly when the noble Lord, Lord Greaves, produces a line or two, and I am entitled to be prickly about procedure. The Committee will recall that the amendment of the noble Baroness was grouped with an amendment that was moved. It being grouped with that, when I respond I expect the debate to revolve around all the amendments in the grouping. Whether noble Lords choose to speak at that point is entirely for them, but if an amendment is grouped with others, it is only reasonable, from the ministerial position, to assume that comments are expected in response to all the amendments. That is exactly what I delivered, and having delivered those comments once, I do not see why I should have to deliver them a second time. I would run the risk of departing from what I said on the last occasion, which would be catastrophic.

I want to reassure the noble Baroness, as I did last time—although in her terms rather prematurely, but in my own terms quite accurately—that of course we accept that the report would ordinarily be published as soon as practicable after it has been received. I want to assure her again that that is our position. She asked why there should be any deletion from the report, and I accept entirely her argument, one that has been reinforced by the noble Lord, Lord Taylor. Such information should be in the public domain as far as possible because people need to know where they stand on such an important issue; I could not agree more.

However, the noble Baroness will appreciate that there are some parts of our water environment that we might not wish to put into the public domain because that information could be of assistance to those who wish us harm. Here I make the obvious point that very large dams and reservoirs could attract the attention of terrorists, so we have to take care of such information, to say nothing of the fact that we have certain security and national defence positions with regard to the use of water. That is why we have some hesitations, but the general position is clear. Unless there are issues of security, which was the only reservation I expressed, all the information in the report would be made available to the public as quickly as possible. That is broadly what I said on the last occasion and I am delighted to reiterate the position.

Baroness Knight of Collingtree: I am sorry if I seemed to be difficult. That is the last thing in the world I wish to appear to this Minister because I join with many people in admiration of the way in which he deals with and answers questions. With the greatest respect, I do not feel that I have had an awfully good answer, but I appreciate what he has said about accepting the broad thrust of what I am trying to do here. Therefore I look forward with eagerness and optimism to seeing the thrust of the amendment being included in the Bill. At this time, however, I beg leave to withdraw it.

Amendment 49A withdrawn.

Amendments 50 and 51 not moved.

Clause 18 agreed.

5.15 pm

Amendment 52

Moved by ***Lord Taylor of Holbeach***

52: After Clause 18, insert the following new Clause—

"Monthly recovery reports

(1) Following a major flooding event, the Secretary of State must publish monthly reports summarising the progress of the recovery phase until the recovery process is considered complete.

(2) The reports must specify—

(a) the number of households displaced from all or part of their homes, and

(b) the estimated date for the completion of the recovery process.

(3) The Minister must consult other relevant bodies before making his reports."

Lord Taylor of Holbeach: My Lords, I hope that the Minister is convinced that the only reason we pursued the debate on the last amendment was that we liked his answer so much, we wanted to hear it twice. I am very grateful to him for his response. This is a similar amendment. It concerns the way in which information is distributed, in order to give people the opportunity of feeling that they are in the picture. It is a simple amendment that has a great deal of merit. It would place a duty on the Secretary of State to publish and update a report on the month-by-month progress being made, or not being made, after a major flooding event. As a good Conservative, I am in favour of adding to bureaucracy and paperwork in Whitehall only when it is strictly necessary. However, there is a good reason for my suggestion in this amendment: it will assist the Secretary of State to make the most of his powers to help people who are in need.

We have already discussed the devastation wrought by the flooding in Cumbria last year. I make no apology for returning to it. Anybody who has visited the area, as I and other noble Lords have, will be well aware that, despite the sterling work being done by the authorities and by local communities to get themselves back on their feet, there is still a great deal of work to be done. Any noble Lords who saw "Countryfile" on Sunday will have seen that there is still an enormous backlog. Robert Jackson, whose farm I visited, faced the devastation of all the stone on his fields. It was good to see the Minister from another place, Mr Huw Irranca-Davies, visiting at that time.

The point of the amendment is to put in the public domain details of the progress that is being made. The Government still have little or no idea how many people are still waiting to return to their businesses and homes. If the Minister has that information, it would be good to hear it; but it has not been in the public domain as far as I know. To be flooded out of one's home is traumatic, and the work required to make it habitable again can be daunting. Housing is one of our society's most basic requirements. It would be useful, to say the least, if the Government and the local authorities concerned were aware of any hold-ups in the recovery process after the flood. To be armed with this knowledge would not of course be a panacea, but it would allow the Secretary of State to use the influence of his office, and his powers, to direct assistance to where it was needed most. With this Bill we are setting up a system of co-ordinated co-operation in advance of flooding events. It would complete the circle if we inserted a mechanism that would assist co-operation and provide us with a record, as well as object lessons that could be learned by other flood risk management authorities in other parts of the country in how to deal with similar situations that might arise. I beg to move.

Baroness Byford: My Lords, I support my noble friend's amendment. None of us will forget the scenes that we saw on our screens, not just last year but also in York and in Tewkesbury not that many years ago, and the devastation and upset caused to individual families. It seems to take ages before those families can get back into their homes. I hope that the Minister will not say that this measure is too costly. One could post a monthly update report on the web. We have modern communications: things do not always have to be in hard copy. I support my noble friend's comments about bringing to the Minister's constant attention the fact that people are still waiting, and perhaps the fact that things could be moved along more quickly than they have been in the past. I hope that the Minister will accept that.

I can add little more, except to say that over the years we have seen some major flooding. With changing climate patterns, I fear that we will continue to see flooding in the country. Anyone who has experienced water coming into the house will know how bad that is, but sewage coming into the house is a most horrendous experience, which many people have been through. My noble friend also mentioned the cost to those whose land has been affected. Many families lost livestock in the Tewkesbury incident and recently there has been flooding in Cumbria. A great amount of debris has landed in fields and it takes time to clear it away. I hope that the Minister will look at that sympathetically, and, even if he does not like my noble friend's wording, I hope he will take on board the thrust behind these amendments.

Lord Faulkner of Worcester: I certainly agree that this is a well-intentioned amendment. What the noble Lord wishes to achieve is intended to be entirely constructive and helpful. As the noble Lord, Lord Taylor, explained, the amendment requires regular monthly reporting to Parliament on recovery following a major flood.

The Government's response to Sir Michael Pitt's review, published in December 2008, made it clear that we support that idea in principle but that it would be necessary to depart from a monthly cycle if operational considerations meant that information was required, and that it could therefore be published more or less often than monthly. The Government's emergency response and recovery guidance has been updated to that effect. It also makes it clear that such reports should include, where possible,

"the numbers of households still displaced from all or part of their homes".

On the flooding in Cumbria and the number of people who have remained displaced, based on a questionnaire that went live on 25 January and has since been responded to, the number is about 150. That is based on 74 actual replies to the questionnaire and a 50 per cent response rate to date. Also on the Cumbria emergency, during the response to those devastating floods, local agencies provided daily updates on what was happening and on the impact on the local area. As soon as the immediate emergency ceased, the Government Office for the North West provided recovery reports on the agreed basis of three times a week. That frequency was subsequently reduced and updates are now provided on a weekly basis. The chief executive of Cumbria County Council is also invited to join the ministerial flood recovery meetings chaired by my right honourable friend Rosie Winterton MP to raise any issues or difficulties which require support. That group met as recently as last week.

The Government are committed to public reporting of progress in the recovery phase and could choose to do so on the basis of some arbitrary period, such as a month. However, we would not wish that undertaking then to require reporting on the same basis from the local authorities and other bodies involved in recovery from a local emergency if that were not an appropriate requirement in the light of the local circumstances.

More frequent reporting of certain facts will often be necessary to manage the recovery effectively, but in other circumstances, or later on in the recovery phase, such frequency will merely be a burden and a distraction. In the latest Pitt implementation progress report, in December, we reported concerns from local authorities that the reporting procedures should not be too bureaucratic. I can assure the noble Baroness that this is not a matter of it being too costly; it is a matter of what works best and what is the most effective way to provide the information and to ensure that we act on it.

I should also remind the Committee that Parliament has many others ways of ascertaining facts, reviewing progress and challenging Ministers accordingly. In the light of that, and while I share the desire to ensure that appropriate information on recovery from flood events is reported publicly, I do not think that the amendment is necessary. The Government are concerned that it could be bureaucratic and burdensome and might lead to reporting arrangements that were not suited to the specific circumstances of particular events. I hope, with that explanation, that the noble Lord will feel able to withdraw the amendment.

Baroness Byford: I hope I am right in thinking that the Minister said that my noble friend's amendment required the information to be reported to Parliament. Nothing at all in his amendment requires it to be reported to Parliament. I am sure that my noble friend will follow my intervention. I do not know whether the Minister made a slip of the tongue, but if he reads the amendment he will see that there is no reference in it to Parliament.

Lord Faulkner of Worcester: I made the point, however, that Ministers are accountable to Parliament, and if Parliament feels that they are not providing the information properly, it has the opportunity to call them to account. I quite accept that the amendment tabled by the noble Lord, Lord Taylor, does not mention reporting to Parliament, but, with great respect to the noble Baroness, that is a detail. The important point is whether a rigid monthly timetable will be appropriate in all circumstances, particularly when it may be necessary to produce reports much more frequently than that.

Lord Taylor of Holbeach: I thank the Minister for that response. In some ways it is encouraging, and in other ways it is a little disappointing. Sometimes having a bit of discipline in these matters and being obliged to do something regularly introduces a structure, a method and a comparative measurement that is useful. On the other hand, it is quite clear that the Minister is committed to ensuring that the Government work on the post-flood strategy, and I have no doubt that the Government have learnt a great deal, particularly from the most recent Cumbrian floods that occurred in a somewhat different atmosphere from the great floods of the summer of 2007 and the Pitt report that followed them.

I am grateful for the Minister's explanation of what the Government are doing. I still think that there is a huge amount to be done and a lot to learn about ways of doing things better. I hope that the Government will take that on board. Meanwhile, I beg leave to withdraw the amendment.

Amendment 52 withdrawn.

Clauses 19 to 21 agreed.

5.30 pm

Clause 22 : Establishment

Amendment 53

Moved by ***Lord Cameron of Dillington***

53: Clause 22, page 15, line 1, after "a" insert "catchment based"

Lord Cameron of Dillington: My Lords, I apologise for harping on like a bad gramophone record that is stuck in the groove about catchment-based management, but I believe very strongly that this is a pearl that we have in this country and that we must not throw it away lightly.

It might not be strictly necessary to specify in the Bill the criteria, the boundaries and the membership of the new regional flood and coastal committees, but the trouble with producing guidelines later is that it is often difficult for Parliament to have a say or to find the time to focus on what is happening and on how the guidelines are being implemented. As what the Minister has to say on the Floor of the House—in other words, here—during the passage of the Bill becomes important, I will look for a few well judged words from him.

The Minister indicated in his reply to me at Second Reading that catchment-based committees were more than likely, but the Minister in the other place had

[Lord Cameron of Dillington]
indicated earlier that catchments would be only one of many criteria used for establishing the boundaries of these committees. It is to be hoped that the Minister's later reply to me represents the department's current, not to mention future, thinking.

On my Amendment 56, which is also in this grouping, I will re-rehearse the arguments about having an overall local authority majority on these committees.

The reason for paragraph (a) in Amendment 56 is that I sympathise with the concern of various noble Lords to achieve democratic accountability on a local basis and, wherever possible, to give local authorities power over their affairs. However, there is a question of subsidiarity here. As I understand it, the principle of subsidiarity is that decisions should be taken at the lowest level that is practically possible. Here, although in an ideal world I would want local authorities to take decisions, it is only practical that they should do so within the cohesive unity of the catchment. Thus, if the RFCCs are established on catchment boundaries, it is only right and proper that the local authorities as a grouping should have an overall majority on those committees—as they have at present on the equivalent committees. That will give local authorities as a catchment grouping overall control over the local flood and coastal strategy, without allowing them to act individually and independently from each other. Again, I look for some favourable words from the Minister on the matter.

I will not speak to paragraph (b) in my Amendment 56, which refers to IDBs, farmers and landowners, because we covered all those arguments last week, albeit in a slightly different context. Again, I would be grateful if the Minister could give me some encouraging words concerning the likely membership of the committees.

While on my feet, I should just refer to the new Amendment 56A tabled by my noble friend Lady Knight. I have grave worries about any possibility of delays in the planning system. I think that it will be impossible for the committees to consider individual planning applications—especially if they are dealing with a whole catchment and several local authorities—unless they will be sitting virtually all day and every day. In any case, the Environment Agency already has a duty to consider the possible flood implications of all planning applications and does so in most cases. Giving those powers to the committees would not be suitable. I beg to move.

Lord Greaves: I have tabled Amendment 54 in this group. Before I speak to my amendment, I have very great sympathy with and support for the points made by the noble Lord, Lord Cameron of Dillington, on the question both of catchment areas, which we discussed in our previous sitting, and of local authority majorities on the regional flood and coastal committees. One problem in the latter case is that local authorities do not always have boundaries based on catchment areas. Some of the boundaries between West Yorkshire and Lancashire, or Greater Manchester, are based on them now more than they used to be before local government reorganisation in 1974, but there are still parts of the existing county of Lancashire which are east of the Pennine watershed and substantial parts of north Yorkshire and the Yorkshire Dales which are west of the watershed, in the Ribble catchment area. So there are difficulties, but they are not insuperable. I will be very interested to hear the Minister's reply to the noble Lord's first amendment about whether the Government see the regional committees being based on catchment areas and, if not, the extent to which they think that they will have to vary.

My amendment is tabled in case the Minister says that they will not all be based on catchment areas and that there will have to be departures from that principle. It states:

> "Where a catchment area boundary does not coincide with the boundary of a Regional Flood and Coastal Committee, the Regional Flood and Coastal Committees that include any part of that catchment area shall establish arrangements to ensure that flood risk management within that catchment area takes place on a co-ordinated basis".

The Minister may tell me that that is a common-sense approach, that of course it will have to happen and that it is not even in the legislation. This amendment is put down to probe his thinking on this matter and to get assurances that, if some of the regional committees are not based on catchment areas, this kind of co-ordination will be built into the system.

Lord Dixon-Smith: My Lords, my question as to whether Clause 22 should stand part of the Bill is in this group. It was put down with somewhat similar motives, but with a slightly different background. When one reads this, one is surprised that the Environment Agency will have the power to create regions. When you stop to think about it, we have all sorts of regions already all over the country. I found myself wondering whether what I was looking at was a prime example of what I call the silo mentality of government departments in which one government department does not consider what another one has done. Perhaps it just disapproves or thinks that it is unsuitable for the purpose for which it is intended, which I suspect is what the Minister's reply would be.

In this country, we have a very expensive regional structure for other purposes, which causes a great deal of vexation to some of us and some of us might like to see it go. I find myself wondering whether perhaps the Government are being pessimistic about their chances of surviving and wish to keep a form of regional structure for this purpose anyway. There are a host of motivations why I put this down. If we come to the amendment in the name of the noble Lord, Lord Cameron of Dillington, and it is accepted that the regions are based on regional river catchment areas, I would accept a combination of river catchment areas. Some areas do not have massive river basins and you would want a combination of river basins to make a region.

That said, I can see that if you are dealing with the Trent, the Severn or the Thames and major river basins, there is a great deal of merit in having a single committee to deal with that. If that is called a regional committee, so be it. But I would rather call it a river basin committee and we would know precisely what we are talking about. Because of the way in which this is worded, there could be confusion between one type of region and another. If these are regions with a

single, specific purpose, it would be better that they remain that way, rather than in the polite way in the Bill, which states:

"The Environment Agency … must divide England and Wales into regions".

If it says river basins or regions, that is fair enough. But it does not.

I put this down to enhance—if that is the right word—this debate or to attempt to make the Bill more clear. Again, I have to accept that in the end we are in a position where we can do nothing about it. What comes out of the washing machine or the spin dryer at the end of the system remains to be seen.

Baroness Knight of Collingtree: I think that I am allowed to come in next to move my Amendment 56A.

The Deputy Speaker (Lord Geddes): The noble Baroness, Lady Knight, may speak to it, but as to moving it, it will be taken in sequential order.

Baroness Knight of Collingtree: This amendment is intended to deal with projects to build on land which is a flood plain. The motive and belief behind it is similar to the amendment I moved earlier; namely, that the public have a right to know what official action is planned in connection with a threat and a danger to the things which profoundly affect the lives, finances, capabilities and future of hundreds of thousands of people.

Until now, it has been almost impossible, as I hinted earlier, to get answers from the Environment Agency. Even when those answers are given they have often been wrong. Money, for instance, is alleged to have been allocated in my area, but no one can say if, when or how that money has been spent. I have to say that there has been a terrific row and the matter may well end up in court.

It is important that noble Lords understand the grave concern felt by many local people when an area that they well know, or at least believe, is a flood plain is marked down for house building. I do not quite buy the excuse that everywhere is a flood plain and that people should not worry because action is going to be taken to counter the inherent dangers. When a cloak of secrecy covers what that action might be, when it might be taken and how effective it might turn out to be, the answer is not known. In the past, people who have bought houses built on flood plains find that they cannot get insurance, so the houses are unsaleable because of mortgage difficulties. If subsequently those houses are flooded, their predicament is dire.

Frankly, I am shocked that the noble Lord, Lord Cameron of Dillington, feels that it is so important to get houses built that it does not matter whether they are constructed properly. Perhaps I am not reflecting what he really thinks, but it seems that when the dangers are known, it is only right and fair that people should know that something has been done about those difficulties. Without my amendment, so far as I can see, there is no compulsion whatever to inform the public about any investigations that have been made into the extent of the danger of flooding, what steps have been taken to deal with known hazards, what plans are in place for the future, and what assurances can be given to potential house purchasers. It is not unfair or unreasonable to ask that potential house purchasers should know about these things. If it leads to a delay in the plans for building, that may be unfortunate, but I know that I would not build a house if I was told nothing other than that the land was a flood plain and that, so far as I could see, nothing had been done to deal with the problems.

If there is a more important or reasonable or fair duty that this Bill should ensure, I do not know what it is. In the Queen's Speech debate on this measure, I said that a Minister had announced in 2007 that houses could be built on flood plains so long as the electricity supply is connected into the first floor instead of the ground floor. I could hardly believe that that was thought to be sufficient to make a house safe, but apparently that is the information people were given—that it would be perfectly all right because the electricity would go in upstairs instead of downstairs. The lower level might be badly flooded, but never mind that, the electricity supply would go in on the higher level. I think people should know if that is all that is being done. The information will not cheer them very much, but at least they should know.

That is my view, and it is appropriate to remind the Committee that in 2007, out of 209 local authorities which replied to a survey on this matter, 56 said that they could not even find out through an official channel whether or not new houses, numbered and planned, were or were not to be built on flood plains. Fifty-six out of 209 not only did not know, but could not find out. I cannot believe that anyone in the Committee thinks that that is reasonable, because it is an impossible position to be in if you buy a house and are not told, but then find out later, that it stands on a flood plain.

5.45 pm

We really cannot keep these vital details secret from the public. I refer again to the words of the noble Lord, Lord Smith of Finsbury, at Second Reading. He said that there was an absolute need—those were his exact words—to consult, work with and co-operate with local communities, which is different from local councils, in everything that is done on flood management. Those are the words from the man who currently heads the Environment Agency. I found them perfectly reasonable and I am sorry that there is not complete agreement in the Committee that they are such reasonable words. That duty cannot be enacted if those local communities—and, indeed, everyone—are not given full information to work with. I cannot see why that commitment should not already be in the Bill. I hope that the Government will accept, or at least think about, its inclusion.

Lord Taylor of Holbeach: My Lords, the noble Lord, Lord Cameron, has properly tabled amendments to allow us to debate regional flood and coastal committees. The Environment Agency is obliged to set up these committees, which will each cover a segment of England, yet the details of how it is to do so are rather left to the imagination. The noble Lord is therefore quite right to try to get some detail into the Bill and I support his amendments.

[Lord Taylor of Holbeach]

The regional committees must be concerned only with flood and water management and coastal erosion. That is what this Bill is about. It is not a local government Bill, so the committees must be based on regions, which makes sense from a water management point of view. My noble friend Lord Dixon-Smith should be happy that the vision that I gathered from the noble Lord, Lord Cameron, was a basin catchment arrangement and it was meant to represent a river system. The Government have tried and failed in the past to divide England into artificial regions for political purposes. The Minister knows as well as I do the unpopularity of that idea. It would be quite wrong for the Government to try to bring back any such attempt under a different guise.

That said, however, there is a very sensible case for organising regional groups on the basis set out by the noble Lord, Lord Cameron, if they are catchment-based and basin-based. It is the catchment areas that will determine what decisions need to be taken, which will have knock-on effects downstream and which therefore need to be co-ordinated. Amendment 53 is therefore a very practical suggestion, which is really refreshing. The noble Lord, Lord Greaves, with his Amendment 54, builds on that. If we have communities based on catchment areas, there is some possibility for some overlap as higher areas, for example, may have run-off in more than one direction. It therefore makes sense to have a mechanism in place to ensure co-operation. Co-operation is the name of the game in this Bill, be it in the hills and dales of Yorkshire or around the table of this Grand Committee. We are therefore sympathetic to what the noble Lord is proposing.

The noble Lord, Lord Cameron, has a second amendment in this group. Amendment 56 is very important and would make sure that membership of the flood committees set up by the Environment Agency is controlled by members of the local authorities that are affected and that there must be representation from the IDBs and farming and landowning organisations. As I have said before, the Bill has an admirable synchronicity to it, which balances the duties of the Environment Agency with those of local authorities. However, the Bill is silent on local authorities' roles in the regional committees, except that, under Clause 24, the Minister may at some point make regulations about membership. That is not good enough. There ought to be democratic accountability to these committees, and it would be best if this was in the Bill. I hope the Minister will respond positively to the noble Lord's amendment.

With her Amendment 56A, my noble friend Lady Knight of Collingtree has raised an important point that is of concern to many—namely, the construction of buildings on flood plains. I know that the Government have considered these matters, and I look forward to reassurance from the Minister. I live in an area in which building on the flood plain is the only alternative available, because 15 miles in any direction that is not sea is a flood plain. I am aware of the amount of liaison between planning authorities, local drainage boards and the Environment Agency to ensure that any development is properly flood-proofed from the beginning. I hope the Minister will reassure my noble friend on that point, and I am glad to add my support to the amendments proposed by the noble Lord, Lord Cameron.

Lord Davies of Oldham: My Lords, I am grateful to noble Lords who have participated in this debate on an important issue. The noble Lord, Lord Cameron, has shown commitment to the concept of the catchment-based committees. Indeed, he expressed that commitment the previous time we met in Committee, and I reassure him, as I did on that occasion, that we see a great deal of merit in that argument. The existing committees are, indeed, broadly based on catchment boundaries. However, it is important to take account of other factors such as coastal processes, as the committees are also charged with the responsibility of dealing with costal erosion.

There is also an obvious point to make about the practicalities on the ground. The existing administrative boundaries between England and Wales are bound to give rise to interesting questions about the concept of catchment areas. That is why we reject the concept as the basis of the Bill and the definition of the boundaries for the Bill while accepting entirely the noble Lord's suggestion that they should be coterminous with catchment areas as far as possible, because that makes obvious sense in water management. The Environment Agency is well placed to take account of the various factors involved, but the danger of stating in the Bill that the catchment basis should be the fundamental concept behind all the committees is that it would be placed above all other considerations.

There is provision in the Bill for the Minister to make regulations on the procedure to be followed by the Environment Agency in determining regional boundaries, including determining the need for consultation. The good sense that the noble Lord, Lord Cameron, expresses will be reflected in many parts of the country, and the committees will follow that pattern, but I hope he will accept that that will not happen in all cases. The problem with putting the concept in such a prominent position in the Bill is that it would introduce an element of rigidity which the Government feel obliged to resist.

The noble Lord also introduced Amendment 56 on representatives on the regional flood and coastal committees. I reassure him that that is exactly in line with government thinking. We made it clear in Committee in the other place on 19 January that we intend to use the regulation-making powers in Clause 24 to ensure appropriate representation. I hear what he says about the interests of the drainage boards and of farmers needing to be represented on the committees, but we also made it clear in the other place, as he has done here, that we expect a local authority majority on the committees to meet the democratic principle which he emphasised in advocating his amendment.

The clause is drafted to allow a degree of flexibility to adapt to changing circumstances in the longer term and the precise numbers, composition and means of selection are yet to be decided. We will consider this further and we shall consult before coming to a conclusion. We agree with the aims of the noble Lord, Lord Cameron, who has expressed, in both amendments, positions to which the Government broadly subscribe

and on which the Bill is based. However, I hope he will withdraw the amendments because we are concerned about the rigidity that they would bring to the Bill if they were incorporated.

As for Amendment 54, to which the noble Lord, Lord Greaves, spoke, we discussed those issues, to a certain extent, earlier in a preceding group. I emphasise, as I stated on that occasion, that significant levers are already in place to ensure good, robust co-ordination on the ground between the relevant bodies engaged in flood risk management. That is based largely on the duty to incorporate Clause 31, which we discussed at the previous Committee sitting, and of course the issue of the national strategy and guidance. The national overview from the Environment Agency, together with the regular meetings held between committee chairs, should provide exactly the opportunities emphasised by the noble Lord, Lord Greaves, for co-ordination between committee areas and resolving the cross-boundary issues. There is no doubt, as he has emphasised on several occasions, that water knows no bounds; however skilfully and accurately drawn the boundaries may be, there will still be the necessity for co-ordination and discussion across such boundaries.

I have much more difficulty with the proposal of the noble Baroness, Lady Knight, for a new clause which has a radical dimension. She was supported by the noble Lord, Lord Taylor, in broad terms, who then went on to describe a significant part of England as being on a flood plain. The brutal fact is that, in many areas, England is built on a large flood plain. One in six of our buildings is on an area which is defined as a flood plain and that is why we need this Bill. It is also why we have to address ourselves to the changing climate and to the threat posed to all those dwellings, and all those livelihoods, that are on flood plains. We cannot wish that situation away, and even if we accepted the clause proposed by the noble Baroness, it would be of little significance to the vast areas of the country—or to the beloved Lincolnshire of the noble Lord, Lord Taylor—that have to cope with these issues. That is why we have this Bill and these provisions are essential.

I entirely accept her concerns, as they are the concerns that underpin the necessity for the Bill. Of course we are concerned to respond to these challenges. I hope that she will appreciate that the Government's *Planning Policy Statement 25: Development and Flood Risk in England*, and the equivalent technical advice note in Wales, will ensure that flood risk is properly assessed at all stages of the planning process, taking account of expert advice from the Environment Agency.

We could not begin to say that we are tackling the challenge presented by floods unless we have a clear concept of what needs to be done in planning for these issues. Both these planning statements promote a partnership approach, which is supported on all sides of the Committee, between the planning authorities, the Environment Agency and other relevant bodies to ensure that expertise is brought to bear on the crucial issue of planning applications. The noble Baroness's points are reflected in greater anxiety about certain building developments. The Environment Agency expects to be consulted about all significant relevant planning applications. It is obliged to take into account flood risk. However, we cannot accept the new clause proposed by the noble Baroness.

6 pm

Baroness Knight of Collingtree: Will the relevant information be made available to those who are considering purchasing houses? Of course I fully accept that the problem has to be dealt with; all I am asking is that people should not have to buy property when they do not know what the risks are, or what has been done about them.

Lord Davies of Oldham: My Lords, I emphasise in this respect the significant responsibility of the Environment Agency, which has access to the necessary information and produces an annual report. As the noble Baroness will know, the Committee has been at pains to make sure that that report is available. This is all part of the process of consultation. As regards the Environment Agency, I have briefing on the importance of publishing maps of flood risk areas. The floods directive, as transposed by the flood risk regulations, is due to be implemented over the next few years. It requires significant flood risk areas to be identified, as the noble Baroness has requested. It also requires maps to be drawn up and published showing those areas. I appreciate that the noble Baroness has emphasised very graphically the necessity of providing information in the public domain. I assure her that that is exactly the case. Therefore, I hope that she will feel able to withdraw her amendment.

The noble Lord, Lord Dixon-Smith, indicated that he did not think much of the clause. I hope that I have reassured him by my response to the noble Lords, Lord Cameron and Lord Taylor, and to the noble Baroness, Lady Knight, and that he will feel that the clause is critical to the overall strategy. The Government have thought through these issues and, given the contributions to this debate, we recognise how significant they are.

Lord Cameron of Dillington: I thank noble Lords for the support I have received from all quarters for my amendments. I also thank the Minister for his acceptance of what I am trying to achieve. I accept that these bodies are slightly different from existing committees because they involve coastal defence, but I do not think that that should necessarily confuse where the boundaries should be, because they should come inland around catchments. Obviously, each river can involve more than one catchment, as the noble Lord, Lord Dixon-Smith, said. With a really big river such as the Thames or the Severn, it could involve the upper Severn or upper Thames and the lower Severn or lower Thames, and so on. It need not necessarily be a full catchment either. I was encouraged by the Minister's comments that as far as possible the committee boundaries will be coterminous with catchment boundaries. I thank him for that. I was also encouraged on the question of the local authority majority, when he said that this was exactly in line with government thinking and the principle had already been established or accepted in the other place.

[Lord Cameron of Dillington]

As the noble Baroness, Lady Knight, mentioned it when speaking to her amendment, I should perhaps just say from the point of view of a planning applicant that, in my part of the world, every application that is put in has to be put before the Environment Agency. If it is any size at all and even if it is not on a flood plain—all waters end up on a flood plain at some point—you have to put in a flood relief scheme automatically and assess what is going on and the drainage. The Environment Agency goes into it in great detail. There is no question of any modern planning application going in without going through that process. I hope she will feel encouraged by that. I beg leave to withdraw the amendment.

Amendment 53 withdrawn.

Amendment 54 not moved.

Clause 22 agreed.

Clause 23 : Consultation and consent

Amendment 55 had been withdrawn from the Marshalled List.

Clause 23 agreed.

Clause 24 : Membership

Amendment 56 not moved.

Clause 24 agreed.

Clauses 25 and 26 agreed.

Amendment 56A

Tabled by ***Baroness Knight of Collingtree***

56A: After Clause 26, insert the following new Clause—

"Regional Flood and Coastal Committees: planning

(1) It shall be a function of each Regional Flood and Coastal Committee to assess the flooding risks and hazards associated with building within its region and to report annually to the Environment Agency on the risks and hazards it has identified.

(2) The Secretary of State shall, by regulations, establish a scheme to require each local planning authority to consult, and seek the agreement of, the Regional Flood and Coastal Committee for its area before granting consent to any applications for planning permission.

(3) If a Regional Flood and Coastal Committee is consulted by a local planning authority under subsection (2) about a planning application, the Regional Flood and Coastal Committee—

(a) must assess the flooding risks and hazards that may be associated with the building work described in the planning application to—

(i) the building in question, and

(ii) the region as a whole;

(b) may, if it thinks necessary, make recommendations stipulating how the building work should be carried out to minimise the risks of flooding;

(c) must, on the basis of the assessment made under paragraph (a), decide whether to grant consent for the planning application or not, stipulating any recommendations if necessary;

(d) must send a copy of the assessment, decision and any recommendations to the local planning authority and the applicant.

(4) In this section, "local planning authority" has the same meaning as in section 1 of the Town and Country Planning Act 1990.

(5) Regulations made under this section shall be made by statutory instrument and such an instrument may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

Baroness Knight of Collingtree: I thank the Minister for his comments. I do not think there is a million miles of opinion between us.

Amendment 56A not moved.

Clause 27 : Sustainable development

Amendment 57

Moved by ***Earl Cathcart***

57: Clause 27, page 16, line 16, after "must" insert ", within one month of the day on which this section comes into force,"

Earl Cathcart: My Lords, this amendment is an attempt to push the Minister into offering an interpretation of sustainable development. It is a notoriously nebulous concept, but if authorities are expected to comply with a duty to contribute towards sustainable development, it is only reasonable that we ask the Minister to spell out what it means.

The term can seem to mean whatever the user wants it to mean. It is therefore useful that the Minister is under an obligation to issue guidance on what it will mean in the context of this Bill. Given that there will likely be quite significant consequences on how authorities manage their obligations to comply with the requirement in this Bill, it is important for the Minister to explain to the Committee what he intends.

The Government were pressed on this point in another place, but we were not enlightened very much. On Second Reading, I challenged the Minister to say what he meant by sustainable development, as it would be good to get this definition in the Bill. It will not surprise the Minister that I am bringing forward this amendment. I beg to move.

Lord Davies of Oldham: My Lords, I am not surprised that the noble Lord has brought the issue up and nor will he be surprised that I have thought seriously about the points that he has made, because I have a great deal of sympathy with the intent behind this amendment.

The best that I can do for him—and I hope that he will appreciate it—is to make this important commitment. We will not bring this provision into force until guidance can be issued alongside the commencement of the sustainable development duty. I hope that that commitment meets the noble Earl's objectives.

Earl Cathcart: My Lords, I am not surprised that the Minister has not risen to my challenge to give a quotable definition of what the Government mean in this instance by sustainable development. The concept is not easy and still less understood. Sustainable development is a policy approach that has gained a lot

of international popularity in recent years. What on earth does it mean? The concept of sustainable development has several critics. Some criticise the term by saying that it is too vague. The philosopher Luc Ferry said:

"I know that this term is obligatory but I find it also absurd, or rather so vague that it says nothing".

There is no doubt that the word "sustainable" has been used in too many situations, and that "sustainability" is one of those terms that confuse a lot of people. One hears about sustainable development, sustainable growth, sustainable economics, sustainable societies, sustainable agriculture and so on. Everything must be sustainable, but what on earth does that mean? It is certainly interpreted differently in different circumstances.

When I was born nearly 60 years ago, the world's population was just under 2.5 billion. It is now just over 7 billion. That is an increase in my lifetime of nearly 5 billion people. They all need somewhere to live. They need water, food and jobs. In my lifetime, cities, towns and villages all over the world have had to expand into the natural environment to accommodate this growth. In Britain, we need to build an extra 3 million homes in order to accommodate our population, which is set to increase by a third over the next 40 years.

When I was vice-chairman of our planning committee in Norfolk, we were told that all future development had to be sustainable. This was a nice concept, but is it achievable as more and more houses are being built on greenfield sites? These fields can never be replenished or returned to their natural state. Are the materials used in the building industry sustainable? Probably not. We import 90 per cent of our timber, and we all know that some of the forests cut down will never be replaced. One has only to look at the Amazon and Africa to see this. I appreciate that many forests are replanted, but by no means all are. As for sustainable development in planning, it is a nice idea but almost impossible to achieve.

We all know that an unsustainable situation occurs when natural resources are used up faster than they can be replenished. Presumably a sustainable situation occurs when human activity uses nature's resources only at a rate at which they can be replenished. That is not a bad definition, but I prefer the one given by the UN Brundtland report of 1987, which said that sustainable development is,

"development which meets the needs of the present without compromising the ability of future generations to meet their own needs".

That is my chosen definition of sustainable development. However, I look forward with interest to the Government's definition, and to seeing how it will apply in this instance. I have no doubt that the Government's definition will be completely different from mine. I beg leave to withdraw the amendment.

Amendment 57 withdrawn.

Amendment 58 not moved.

Clause 27 agreed.

Clause 28 agreed.

6.15 pm

Clause 29 : Restructuring

Amendment 59

Moved by ***Lord Taylor of Holbeach***

59: Clause 29, page 17, line 40, leave out "or another enactment"

Lord Taylor of Holbeach: My Lords, I accept that Clause 29 provides Ministers with the powers necessary to make orders to reassign the flood and coastal erosion risk management responsibilities of lead local flood authorities, district councils and internal drainage boards. The level of flexibility allowed under the clause for meeting future eventualities is not something with which I have a great deal of trouble. In the event that the Minister makes such an order, it will have to be laid before Parliament in order to allow this place and another to examine whether any restructuring really needs to take place. That is one of the few instances in the Bill where such a parliamentary precaution has been observed, although the Minister has been diligently moving amendments to that effect since the pointed report of your Lordships' Delegated Powers and Regulatory Reform Committee was published.

However, the choice of drafting in the clause, specifically subsection (3), is worrying. The Minister may make an order to amend not just this Bill but any Act. There are no qualifications that the Act be dependent, linked or in any way related to this Bill. While I very much hope that this is an example of loose drafting, I would find it decidedly odd if the noble Lord was content to have the power to amend, for example, the Criminal Justice and Immigration Act or the Education and Skills Act, for example. I am sure that the noble Lord will reassure us on this point, but it would be irresponsible of me not to flag up this apparent error. I beg to move.

Lord Greaves: My Lords, when I put down the question as to whether Clause 29 should stand part of the Bill, I had a vision that it would take a lot of debate and that I would wax lyrical and at length. In view of the time and the limited amount of time we have in which to get through the rest of the amendments, I do not now intend to speak on this proposal. I hope that that will help us to discuss some of the not necessarily more important but clearer and more practical things later.

Lord Davies of Oldham: I am grateful to the noble Lord, Lord Greaves, for that comment. I hope that I can repay him with the accuracy of my response to the amendment tabled by the noble Lord, Lord Taylor. I appreciate the fact that the noble Lords based their point on an observation noted in the report from the Delegated Powers and Regulatory Reform Committee. As we explained in our letter of 11 March, in response to that report, we consider that the application of this power to future legislation is justified by the need, as recommended by Sir Michael Pitt's review into the summer 2007 floods, to consolidate the present Bill with existing flood and coastal erosion legislation and

[Lord Davies of Oldham]
any further legislation not included in this Bill but identified in the draft Bill which we published last year.

The power in Clause 29 would also need to apply to any subsequent floods and/or consolidation legislation. It is important to note that the power could be used only within the context of restructuring as set out in Clause 29. I want to give the obvious assurance to the noble Lord, Lord Taylor, who is making my hair stand on end with his concept of how far these powers might go, that it could not be used to amend Acts for a purpose that has nothing at all to do with flood or coastal erosion risk management or flood or coastal erosion risk management authorities.

It is also necessary to have this power since future legislation may create bodies that should be integrated into the flood or coastal erosion risk management institutional framework. This need may not be foreseeable at the time the legislation is passed, so the power to do so at a later time without having to wait for primary legislation again would ensure the crucial future flexibility which we consider to be necessary to allow the Government of the day to be adaptive and responsive in ensuring all the relevant bodies the best place to tackle flood or coastal erosion risk.

The provision, of course, makes any use of the power to transfer robust responsibilities subject to a duty to consult the bodies affected, as will be readily appreciated by all Members of the Committee, and to the affirmative procedure in Parliament. I hope I have assured the noble Lord that we are concerned about the Delegated Powers and Regulatory Reform Committee report. Our letters make clear the framework within which we are operating. It is related purely to the objectives of the Bill and is an attempt at future-proofing so that even quite minor changes for the authorities involved would not force the Government of the day to have to go back to primary legislation to continue the objectives of this legislation.

Lord Taylor of Holbeach: I thank the Minister for that explanation. I had no wish to alarm him. On coming to this place, I learnt of Henry VIII powers; I had thought it was beyond even the power of that extremely powerful king to amend any other enactments. It might have been easier if it had said "related to the Bill" and then it would have been quite clear that this power applies to the family of flood and water legislation. That might have simplified matters. I accept the Minister's reassurance on the matter and I understand the facility that it brings to the Government. I beg leave to withdraw the amendment.

Amendment 59 withdrawn.

Clause 29 agreed.

Clause 30 agreed.

Schedule 1 : Risk Management: Designation of Features

Amendment 60

Moved by ***Lord Taylor of Holbeach***

60: Schedule 1, page 36, line 7, leave out "affects" and insert "is likely to have a material effect on"

Lord Taylor of Holbeach: Clause 30, which gives effect to Schedule 1, allows a designating authority to designate a feature integral to the management of flood risk or coastal erosion, which means that the owner would not be able to change it without obtaining consent from the designating authority. The first of our amendments, Amendment 60, is perhaps a more general probing amendment than Amendment 61, which was inspired by representations from Network Rail. Amendment 60 would mean that, rather than simply having an effect on risk management, it would need to have a material effect.

I have tabled this amendment because, in theory, almost anything could have an effect on flood risk and therefore make the power extremely, if not unimaginably, wide. For example, almost every pipe, nut and bolt owned by a water company might affect flood risk in some way, as might a paved-over driveway at a private house. I am sure that the effect of encompassing almost everything one can think of is not what those who drafted the Bill had in mind. Clarification from the Government would be welcome.

Amendment 61 came from Network Rail, which has a specific concern about the power of designation on its assets, which by and large tend to form large landscape-changing features. This amendment would ensure that infrastructure such as railway assets which are not designed to act as flood defences are designated as such only if that does not undermine their primary purpose, such as the safe, efficient and reliable running of the railway. I am thinking, for example, about embankments. Network Rail has made representations to us regarding its considerable concerns about Clause 30 and Schedule 1 on designation. I am sure that the organisation would appreciate a reassurance from the Minister that railway infrastructure is designed, constructed and maintained solely for operating a railway, thereby fulfilling Network Rail's statutory licence obligations as the owner and operator of the network.

The assets concerned have not necessarily been constructed using the appropriate material for flood defence or coastal erosion prevention purposes and therefore are unlikely to be robust enough to act as permanent flood defences or erosion control features. Similarly, coastal and estuarine railways often run on hard or soft structures designed purely to carry rail traffic and protect the railway itself from water damage. It would therefore be inappropriate to designate railway infrastructure as flood defences.

In common with the issues I raised under Amendment 60, we would also be concerned if owners of private property were to find themselves at a disadvantage because of these powers, which would require them to get permission from the designating authority when altering, removing or replacing assets. Designating authorities will be given a broad range of responsibilities and powers over assets that they designate, including emergency powers and powers of entry. We therefore seek assurances from the Government that the powers given to responsible authorities over any railway assets that they designate will not supersede Network Rail's statutory powers and duties as owner and operator of the rail network, or compromise the efficacy of the

primary purpose of the asset, whatever it may be. The powers of responsible authorities under the Bill should be exercised only with the consent of Network Rail and should be consistent with the safe, efficient and reliable running of the railway. I beg to move.

Lord Greaves: My Lords, I have two amendments in this group, which overlap to some extent with the amendments in the name of the noble Lord, Lord Taylor, and certainly overlap with those tabled by the noble Lord, Lord Cameron of Dillington. Indeed, my second amendment is intended to be complementary to the second amendment tabled by the noble Lord, Lord Cameron.

I am not sure that the basic issue is quite as radical as the noble Lord, Lord Taylor, suggests. Some features to be designated will have been provided for a quite different purpose—what the noble Lord described as the primary purpose. For example, there are railway embankments—or road and highway embankments, which exist to a much larger extent than railway embankments in many parts of the country—buildings, which are there for their purpose; walls which have been provided for the purpose of enclosing a garden, a factory, or whatever. The fact that they may also have an important effect on drainage if there is a flood cannot be denied. Therefore, they must be designated.

The fundamental question is to what extent this designation will affect the ordinary day-to-day, week-by-week, year-by-year management of those features for what the noble Lord, Lord Taylor, calls their primary purpose. To what extent will people be inhibited from doing the normal things they would do on their land or in their buildings—repairing a wall if it falls down, or ploughing agricultural land if the farmer needs to; and, for railway embankments, normal maintenance or repair if there is a slip.

6.30 pm

That kind of activity clearly has to continue. The concern of all sorts of different interests, from the NFU to Network Rail, as well as lots of other bodies, is that they have to ask the permission of the Environment Agency, the local authority or whoever the designating authority is before they can do any normal work, maintenance or repair on these features. They are concerned that the process of seeking permission will be obstructive, bureaucratic or will cause delays. That will clearly create a problem for the owners and operators of these features. That is the fundamental point.

What is required, and which I think the second amendment in the name of the noble Lord, Lord Cameron of Dillington, also suggests, is a statement, agreement or understanding of what normal activities can take place without having to ask permission. That statement or agreement should be made when the feature or the asset is designated. Owners and users will then know what they can do without having to go back to the designating authority. Will the Minister give that commitment in his response to this short debate? It is an important issue that has caused a lot of concern, and the Minister needs to set it out very clearly indeed so that the way forward is clearly understood.

I hope that that makes sense. This has to be done at the stage of designation. Clearly, if unforeseen things happen, further permission may be required. The owner of an asset might propose a radical change that affects potential flooding in the drainage system. That is perfectly reasonable, but it is not perfectly reasonable for people to have to ask for permission time and again for normal operational purposes. I hope the Minister will be able to reassure us on these matters.

Lord Cameron of Dillington: I agree with all the amendments in this grouping. They are similar to a degree and the Government are clearly spoilt for choice as to what combination of them to accept.

My Amendment 63 is slightly different from the others. It refers back to a point I made at Second Reading and which the noble Lord, Lord Taylor, has already touched on: the question of balancing risk. There is always a tendency for experts to see risk in their field wherever they look, and, if they can insure against that risk at no cost to themselves, they will take the route of least resistance and the least risk. I, as a farmer, sometimes find myself in that situation. You go through the risks of your business with an insurance broker and say, "Wouldn't it be nice to be covered in case of fire, disease and any other accident?". You can even insure yourself against the weather. Would it not be nice to say yes to them all and to be covered for every eventuality? Yes, until you realise that unless you are prepared to take on some of the risk yourself, even if only in the form of a first loss or an excess, the cost to your business is so great that it would probably be in danger of failing. You have to exercise restraint. Let us imagine someone else being permitted to stipulate that no risk at all was allowed, and that furthermore your business would have to pay for the cost of mitigating the wish to avoid all risk. Without some sort of balance, the situation is unfair.

In real life, the situation is even worse. It is exacerbated by the fact that you get single focus organisations and single focus people working for them. As I indicated at Second Reading, anyone whose life is based on protecting badgers, bats, newts, late Victorian apertures or whatever it might be, presumes that their specialty is more important than any other consideration. Indeed—this is where I come to the point of my amendment—they do not even allow any other consideration to enter their minds or interfere with their risk averse, single focus mission. Thus, my simple amendment seeks to ensure that they must at least consider other factors. Of course, if any real flood risk is involved, they should refuse consent for the alteration or whatever else is applied for to the designated object, but it is important that they weigh up the cost of their refusal when the flood risk is negligible or de minimis.

I was interested to note that the Government have recognised my point in Clause 38(3) on page 24 when it comes to work being carried out by the Environment Agency. Indeed, if I had noticed that clause before, I would have used the same wording in my amendment, which I tabled two weeks ago. Clause 38(3) states:

"Condition 2 is that the Agency considers the benefits of the work will outweigh the harmful consequences for matters listed in section 2(4)(a) to (d)".

[Lord Cameron of Dillington]

Clause 2(4)(a) to (d) states:

"In each case the potential harmful consequences to be considered in assessing risk include, in particular, consequences for—

(a) human health,

(b) the social and economic welfare of individuals and communities,

(c) infrastructure, and

(d) the environment (including cultural heritage)".

So it is all there. I would hope that these conditions could apply equally to consent for work being carried out by others as to work being carried out by the Environment Agency.

On Amendment 64, I repeat what the noble Lord, Lord Greaves, has said: it is intended to be helpful. This part of the Bill seems to be all about what cannot be done in a catchment. I feel that it omits consideration of what can be done. Is the owner allowed to continue to mow the grass—obviously, I look at this from an agricultural perspective—on the island in the river? Is he allowed to harvest or thin the trees planted on the bank, or are the grass and the trees vital for slowing down flood waters? Is it possible to repair or point up walls or other manmade constructions? To what extent is it possible to carry out constructions to prevent bank erosion when property is at stake, and can these constructions be in concrete or do you have to spile with woven withies? It is important that ongoing management by riparian owners can continue to be carried out with confidence. I look forward to the Minister's reflections on these matters.

The Earl of Selborne: My Lords, before the Minister responds to that very powerful contribution, I would like to add my pennyworth to Amendment 63 in the name of the noble Lord, Lord Cameron. He has drawn very careful and important attention to the potentially draconian powers that the responsible authority holds. The Bill is worded such that it suggests that the authority may refuse to give consent "only on the ground" that the proposal,

"would affect a flood risk or a coastal erosion risk".

But if you think about it, just about anything will have an impact on coastal erosion or on flood risk. Therefore, to get an element of scale into this, it is of fundamental importance to demonstrate that overriding considerations might also be taken into account. I hope that the Minister will respond favourably to Amendment 63 in the name of the noble Lord, Lord Cameron.

Lord Faulkner of Worcester: My Lords, I thank all noble Lords who have spoken to this important group of amendments. I can reassure each of them. As regards Amendment 60 to paragraph 4 in the name of the noble Lord, Lord Taylor, this paragraph prescribes the conditions which must be satisfied before a structure or feature may be designated. The noble Lord has proposed replacing "affects" with the phrase,

"is likely to have a material effect on".

The meaning of "affects" is that there is a material effect on flood risk or coastal erosion risk. If there is no tangible effect, a designation would be inappropriate. Amendment 61 would ensure that a designation cannot interfere with a normal operation of infrastructure. He spoke at length about the representations that Network Rail has made in respect of this part of the Bill. I am happy to provide the same clarification and reassurance that has been given to Network Rail, to British Waterways and to Ofwat. A designation will not interfere with the operation of infrastructure; nor will it prevent maintenance works to keep the feature in the state that it was in at the time of designation. A designation will not impose a maintenance duty, nor require a higher standard of maintenance than already exists. The infrastructure provider will not become responsible for managing the risk: that responsibility will rest with risk management authorities.

In the past month, officials from the department have met representatives from Network Rail, who raised these issues. We reassured them about the intent and effect of the Bill. When this was explained to them, they said that they were content with what officials had said, and that they accepted that the operation of the network would not be adversely affected by the provision.

Amendment 63, tabled by the noble Lord, Lord Cameron, is intended to protect an individual's interests. This amendment is unnecessary. Paragraph 6(5) states that the authority may refuse consent only if a flood risk or coastal erosion risk is affected. This is not the same as stating that it must refuse consent if a risk is affected. When the provision was discussed in the other place on 29 January, the Minister made it clear that consent cannot be unreasonably withheld. The only circumstance in which the authority's discretion is limited is where the proposal has no effect on flood risk or coastal erosion risk. Where this is the case, the authority must give consent. The authority will still have complete freedom to consent to a change, or even to cancel a designation, if it recognises that there is a wider gain to be made, or a different approach that is just as good. Risk management authorities are expert at appraising and evaluating options and wider considerations. All relevant factors may be taken into account, be they social, economic or environmental. Authorities will be alert to what should be considered on a case-by-case basis.

The noble Lord, Lord Cameron, also tabled Amendment 64, which would include in a provisional designation notice the things that an owner of the designated feature may do without needing consent. I have answered that point, and my answer also applies to the amendments tabled by the noble Lord, Lord Greaves. Those amendments are also unnecessary. I assure the Committee that a designation will not prevent routine operation or maintenance of a structure or feature. There is scope for regulation under paragraph 16 of Schedule 1, which can require that additional information is provided as part of a designation. We will consider the extent to which this can address the routine maintenance that might be carried out without requiring consent. Only measures that change the state of a feature from what it was when it was designated will require a consent. That consent must be given unless flood or coastal erosion risk is affected. Even if it is affected, the authority still has to act reasonably and can grant consent if it thinks that other considerations outweigh the flood or coastal erosion risk.

Government Amendment 65A is also in this group. This simply refers to the new name for the Lands Tribunal. It is now part of the Upper Tribunal. No other changes are brought about by the amendment, which I shall move formally at the appropriate time. I commend that amendment to the Committee, and I hope that the noble Lord will withdraw his.

Lord Greaves: Before he does, perhaps I may refer to the proposals that the noble Lord, Lord Cameron, and I are suggesting, which concern making it clear to the owner and operator of an asset at the time of designation what they can and cannot do. Will the Government consider making appropriate regulations on that?

6.45 pm

Lord Faulkner of Worcester: That is exactly the position.

Lord Greaves: That is a slightly disappointing response in that it is a bit weak that the Government will "consider" doing that. I hope that they will think hard about the necessity of that. The problem is that if it is not made absolutely clear for people, it will result in a lot of hassle. I am sure that the Government do not want that. However, I am grateful for the provision as far as it goes.

Lord Taylor of Holbeach: I hope that the Government will take on board the advice of the noble Lord, Lord Greaves, because I am sure that they do not want any hassle. I thank all noble Lords who have participated in this debate, in which they raised a lot of interesting elements of this clause. I am grateful for the Minister's response. It is good to have a reassurance that Network Rail is happy that its interests have been taken care of, but I emphasise that the noble Lords, Lord Cameron and Lord Greaves, have raised some valid points. In day-to-day living with a designated feature, owners need to know that they are not in danger of inadvertently finding themselves creating an infraction of the designation. I hope that the Minister will ensure that that is made clear at the time of the designation. I beg leave to withdraw the amendment.

Amendment 60 withdrawn.

Amendments 61 and 62 not moved.

Amendment 63

Tabled by ***Lord Cameron of Dillington***

63: Schedule 1, page 36, line 37, at end insert ", and that risk outweighs the social, economic or environmental gain implicit in the granting of consent"

Lord Cameron of Dillington: I thank the Minister for his reply, but I have to say that under normal circumstances I would not be satisfied with it and I think I would wish to return to the issue at a later stage. The Bill provides that the authority may consider aspects other than those connected to any flood risk, but I want there to be a duty to do so. The Minister's words did not fully satisfy me, but since there is not going to be another stage of the Bill, I shall not press the matter.

Lord Faulkner of Worcester: I can help the noble Lord. As the amendment was in a group—

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall): I believe that the noble Lord, Lord Cameron, should move his amendment if he subsequently wishes to withdraw it. Perhaps he would first like to move his amendment, then we can consider the response.

Lord Cameron of Dillington: I repeat the words I used when I spoke to the amendment as a way of speaking to it.

The Deputy Chairman of Committees: I think it would assist the Committee if the noble Lord moved the amendment.

Lord Faulkner of Worcester: I am happy to write to the noble Lord on the points that he has made.

Lord Cameron of Dillington: I am happy to withdraw the amendment, if that is appropriate.

Amendment 63 not moved.

Amendments 64 and 65 not moved.

Amendment 65A

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

65A: Schedule 1, page 39, line 36, leave out "Lands Tribunal" and insert "Upper Tribunal"

Amendment 65A agreed.

Amendment 66 not moved.

Amendment 67

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

67: Schedule 1, page 40, line 15, at end insert—

"( ) The first sets of regulations may not be made unless a draft has been laid before and approved by resolution of—

(a) each House of Parliament, in the case of the first regulations made by the Secretary of State, and

(b) the National Assembly for Wales, in the case of the first regulations made by the Welsh Ministers."

Amendment 67 agreed.

Schedule 1, as amended, agreed.

Clause 31 agreed.

Schedule 2 agreed.

Clause 32 agreed.

Amendment 68

Moved by ***Lord Taylor of Holbeach***

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

"Ownership and maintenance of sustainable urban drainage systems

The Secretary of State shall by regulations specify which body has to be responsible for—

(a) the ownership, and

(b) maintenance,

of sustainable urban drainage systems."

Lord Taylor of Holbeach: We move into somewhat different territory here. This group of amendments concerns sustainable urban drainage. We are happy enough with the principle of agreed standards for sustainable drainage systems. However, I have tabled several amendments that seek clarification of how they will operate in practice. The Local Government Association in particular has made its concerns known that local authorities will end up bearing too much of the cost. I understand that the Government's plan is that local authorities' adoption and maintenance of sustainable urban drainage systems—the Minister has difficulty in defining this, but I have a little difficulty saying it; I think I will talk about SUDS—will be funded in part through the transfer of private sewers to water and sewerage companies, alleviating local authorities from the responsibility for investigating and dealing with problems.

The LGA rejects Defra's assumptions about the costs of private sewers. It explains that they are based on seven year-old data garnered from only 12 per cent of local authorities, and that they therefore create fundamental weaknesses in the impact assessments and need urgently to be reassessed. Although the transfer of private sewers to water companies may result in some savings for councils, those savings may amount to only a fraction of the savings suggested by Defra. Private sewers are the responsibility of private owners, and most of the smaller local authorities do not have large budgets or a significant number of staff to deal with them. We have therefore suggested in Amendment 68 that the Minister should not only set out clearly who will have responsibility for maintaining what systems but consult stakeholders to determine more accurately the costs that are likely to accrue.

Amendment 78, which is also in this group, would put in place a sustainable funding system for SUDS before the Bill commences in full. Defra has thus far not confirmed how many people will be charged for SUDS in the long term. Some may view this as unfair and something that could even threaten the success of the SUDS system, as local authorities cannot be expected to take them if they do not know how they will be funded in future. The LGA has proposed a model for funding SUDS that will ensure that councils can be confident, when taking on the maintenance of SUDS, that their work will be sufficiently funded in the long term.

The LGA's concern with the Government's preferred model is that local authorities are paid to deliver this function from grants, taxation or private sewer transfer savings. That is not sustainable; savings from private sewers will run out after eight years. It sees that as unfair. Taxpayers draining surface water to sewers would subsidise customers who drain surface water into SUDS. In addition, it is not a secure and expanding funding stream, so it does not provide incentives to authorities to expand the number of SUDS and might encourage the cheapest rather than the most appropriate, innovative or highest quality solution.

Should SUDS maintenance be the responsibility of water and sewerage companies? Would that undermine the core agenda for flood risk management? The point of that agenda is surely to ensure that lead local authorities develop the local strategy, are responsible for this function and can be fully held to account through the scrutiny process. As a key part of the local management of surface water, giving water and sewerage companies responsibility over SUDS could undermine local authorities' ability to deliver on a range of agendas.

The Bill allows for local authorities to delegate the maintenance of SUDS to other operating authorities, including water and sewerage companies where appropriate. This offers choice without taking away the maintenance responsibility and allows authorities to delegate this function as a short or long-term measure. As the Minister realises, all our amendments in Grand Committee have to be probing, and we have tabled these amendments to elicit from him a clear guide as to how SUDS will work in practice. It would most helpful to have that on the record, and I beg to move.

Baroness Knight of Collingtree: I have a quick probing question of my own following on from my earlier comment. In my area, there is a stated intention to build some thousands of houses. The local environment agency has said that it cannot be certain to provide the water, drainage and sewerage for those houses. Would the houses still go ahead or not?

Lord Greaves: My Lords, I have five amendments in this group. I very much welcome the amendments that the Conservatives have tabled as, as the noble Lord, Lord Taylor said, probing amendments to establish how the SUDS will work.

Of my amendments, Amendment 77 is consequential on Amendment 70. The other three are perhaps of lesser consequence, so I will deal with them first.

Amendment 74 would change the definition of construction work with drainage implications. That is fundamental to the subsystem, because Paragraph 7(1) states:

"Construction work which has drainage implications may not be commenced unless a drainage system for the work has been approved by the approving body".

That is the definition of which work requires a SUDS. Paragraph 7(2)(b) states:

"the construction work has drainage implications if the building or structure will affect the ability of land to absorb rainwater".

I have spent quite a lot of time thinking about that. The ability to absorb rainwater is one thing, but the practical consequences of the development are slightly different. I therefore want to add at the end the words,

"or increase, decrease or divert the surface water leaving the site",

which are clearly the practical changes to the drainage system.

My second amendment is to probe the exceptions to those types of development or project that will require a drainage approval—in other words, a SUDS. Paragraph 7(4) states:

"The Minister may by order",

provide exceptions to subsection (1), which,

"provide that a specified class of work is to be or is not to be treated as construction work".

I want to add to the end of that the words,

"including provisions for the application of de minimis rules".

That is a means of probing the Minister on just how big developments will have to be before they require a SUDS. Will there be a gradation where larger developments need a SUDS but smaller developments do not? In particular, during the transitional period, is it intended to start with the big ones and gradually move down? If so, where is the floor as to how low it will move? Will there be a permanent system under which small developments that require planning permission—perhaps the building of one house or of a garden shed—do not require a SUDS, or is it intended that, eventually, all development will require a SUDS?

Finally, under Amendment 76 I want to change Paragraph 8(3). At the moment, it states:

"If the construction work requires planning permission, the application for approval under paragraph 7 may be … made in accordance with paragraph 9"—

which is a free-standing application to the SUDS authority. Clearly, here I am especially concerned with two-tier authorities, where the SUDS authority will be the county council and the planning authority will be the district council. Or, under Paragraph 8(3), it may be,

"combined with the application for planning permission in accordance with paragraph 10".

In other words, it may be made along with the planning application to the district council, the planning authority.

7 pm

If there are two applications, one for a SUDS application and one for a planning application, referring to the same development, they should always be made together to the planning authority, which will pass the SUDS part to the county council. That would be sensible. The documentation we have had from the Government as to how the process will work in practice suggests that that is exactly what should happen. Freestanding applications will come if they are made separately from a planning application and the process does not require planning permission. If it already has planning permission but needs a SUDS in the future, that would go straight to the county council. But where it is being made at the same time as a planning application in relation to the same development as the planning application, they should be made together. That is what the Government are saying about how the system will work. Therefore, I do not understand why the legislation says something different. I hope that that is clear.

The substantive, important amendment in this group is Amendment 70, which is linked to Amendment 77. This provision would make the SUDS approval body, which will determine the SUDS application, the local planning authority, as defined in Section 11B of the Town and Country Planning Act 1990 and not the county council for the area. Clearly, a choice has to be made.

The lead authority for flooding and flood risk management is the county council in a two-tier area. The planning authority is the district council. Whatever system there is, the county council and the district council will have to work together, just they do at the moment, for example, on planning applications that have highways implications, where the county council is the highways authority but the district council is the planning authority.

The Local Government Association does not have a vested interest in this. Sometimes when some of us put forward Local Government Association amendments, it is because it is saying that the cost will be too great or that it wants more resources or more powers for local government. This is not a vested interest argument in favour of local government by the LGA. It is the LGA, knowing how local government works and representing all kinds of local government—unitaries, counties and districts—saying that in two-tier areas the Government have got it wrong. I agree with that.

My amendment would mean that the approval process for SUDS sits at the district level in two-tier areas ensuring that no unnecessary bureaucratic burdens are added to the planning system. By placing the approvals process for SUDS at the county level in two-tier areas the Government will create an unnecessary level of bureaucracy, complexity, higher costs, because two separate applications will have to be dealt with and processed, and delays. As far as I can see there is no doubt about that.

In many areas it will work because local authorities are very good at coping with the systems foisted on them by central government, quangos and all sorts of people. You have to get around them and you have to make them work as best you can. But that is not a sensible argument for doing this. The SUDS approval system should work in the same way as issues related to highways.

In Committee in the House of Commons, the Minister said that placing the SUDS approval and adoption responsibilities on the county local authorities level fits well alongside their existing responsibilities for highways maintenance. But that is not how the system works at the moment. In two-tier areas, the district planning authority makes the planning decisions, including highways, but consults with the county to ensure that highways issues are properly addressed. The same system should be used for the approval of SUDS. Local knowledge and a detailed understanding of the planning process are vital if the system is to be successful in practice.

When I look at SUDS, and the regulations that will be produced to tell local authorities how to deal with them, I see that many regulations will not be a matter of policy, but will be like building regulations, so the question will be whether the application fits the rules and regulations. There will be some scope for flexibility, but nothing like the scope in ordinary planning regulations. The application that comes in will either fit the criteria that the Government are putting forward or will not. When I met some of the Bill team on Monday, it was

[Lord Greaves]
clear to me from what they said that the SUDS regulations will come in a pretty thick document. The question in each case will be whether or not they apply. That is the reason for making the bureaucracy involved with the application as simple as possible.

The Government's proposal will complicate the system. In some areas, it will cause real problems. People do not understand how much complexity there will be. Certainly many people who will have to apply for SUDS do not understand the complexity that this will introduce to the regulatory system dealing with development. The simpler this can be kept, the better. The obvious thing to do is to make the planning authorities also the approval authorities for sustainable drainage systems; and to make absolutely certain that the rules and regulations that they apply are the right ones, laid down by central government, and that the proper consultations take place with the lead flood and risk management authority.

I hope that the Government will look at this again. It is an issue that we would have wanted to come back to on Report. We will not be able to, and unfortunately I am certain that the Government will not accept my amendment. However, when the legislation comes in, this matter will have to be looked at closely, and may require amendment and change.

Baroness Young of Old Scone: My Lords, I will speak to Amendment 70. I commend the Government for bringing forward the SUDS legislation. We have waited for it for a very long time, and it is crucial to water and flood risk management. Alas, I disagree with the amendment of the noble Lord, Lord Greaves. The importance of SUDS to flood risk management and to drainage management generally requires that the body charged with local flood risk management should make approvals for SUDS. The thinking about local flood risk management and strategy must embrace SUDS as an integral component, and that would not be possible if the approval authority were the local planning authority.

I understand that many of the ways in which SUDS will be dealt with are similar to other planning issues. However, if we are going to get an integrated approach to flood risk management and drainage, the integration must happen at the level of the county and the unitary local authority, which will take a strategic view. We also run the risk of defeating one of the objects of the Bill, which is to bring clarity of responsibility and co-ordination. Having all the decision-making vested in one authority for all the factors that come together in planning for local flood risk management is incredibly important.

I turn to Amendment 78. I know that there has been detailed arm-wrestling between the Government and the LGA, and the interests that the LGA represents, on the issue of funding. However, we have now got to a stage where we have seminal legislation on SUDS that is long overdue. I have been talking about the need for SUDS legislation for 15 years, if not 20, and I am getting old. I urge everyone to have the confidence that the range of options available for funding SUDS is sufficiently robust, whichever option is eventually chosen, and that we should simply move on. Day on day, we are losing time and developments are coming forward that do not have sustainable drainage associated with them and they are simply causing more and more flooding and drainage problems which we will have to remedy very rapidly in the face of climate change.

Baroness Byford: I was not going to speak, but as this is likely to be our last day in Committee on the Bill, I would like to support the amendments of my noble friends, particularly on costs. The noble Baroness, Lady Young of Old Scone, encourages us to push ahead regardless, and thinks that there is sufficient money around. We find ourselves in a slightly open-ended position. Defra has suggested that it will be time-limited and that the whole issue will need to be revisited in eight years' time. Surely, we should not just address the short term. We all agree that the sooner SUDS is in place the better—but it would be irresponsible of this Committee not to consider what my noble friends have moved, and question how this will be funded, both in the first instance and in the longer term. That is what made me rise to my feet.

The local government briefing to us all stated that authorities are concerned about funding. With ever-increasing costs and many different demands on local government provisions, it is important that this vital new scheme, which places great responsibilities and costs on local authorities, should be clarified, and not just in the short term. I hope that the Minister will be able to take us further down that path, rather than saying that it will be five or eight years, because it would be very unsatisfactory to leave it in its current position.

Lord Davies of Oldham: I am grateful to all noble Lords who have spoken in this significant debate. I am grateful to the noble Lord, Lord Taylor, for indicating that we should all use the abbreviation SUDS. I, too, was wrestling with the problem of coping with that important concept. I will go through each amendment in turn because of their importance and, at the same time, I hope to answer the questions addressed to me.

Amendment 68 would require the Minister to specify, by regulations, which body should take responsibility for the ownership and maintenance of SUDS. Adoption does not need to confer ownership, as the amendment seems to imply, but simply a responsibility for maintenance, which is different. Many SUDS features will be dual-function spaces; for example, ponds in parks, or permeable paving in the courtyards and car parks of blocks of flats. Therefore, conferring ownership is neither necessary nor appropriate. We are concerned about responsibility for maintenance of the system.

I turn to the question of who should maintain SUDS. Subject to certain exemptions set out clearly in the Bill, primarily concerning roads, the responsibility will be that of the SUDS approving bodies, where the SUDS serve more than one property. The Bill is clear on this point. Schedule 3, paragraph 6 of the Bill already specifically places the responsibilities and duties of the SUDS approving body, the SAB, on unitary authorities and county councils. I shall come to the reservations that the noble Lord, Lord Greaves, has on that in a moment. Those responsibilities include both the approval of surface water drainage systems in

new developments and redevelopments, and the duty to maintain them where they serve more than one property.

We believe that a fragmented approach to the approval, adoption and maintenance of SUDS should be avoided—that is an important principle of the Bill—and we strongly believe that the ultimate responsibility for both approving SUDS and for adopting and maintaining them should reside with one body. This will ensure that the SUDS are well designed and constructed in the first place, and therefore will function effectively and can be maintained efficiently. The noble Lord, Lord Greaves, can see where the Government's thinking is going.

7.15 pm

As we said in the other place, there is nothing to prevent the SUDS approving body transferring its functions to another body by agreement, although the SUDS approving body will retain responsibility and liability. We already know that some two-tier local authorities are considering placing some SAB functions with districts where that is the best local arrangement for the area. Schedule 3(6) also allows a Minister by order to appoint a different body as an improvement body for a specified area. So there is a degree of flexibility, which I hope that noble Lords will appreciate.

Amendment 68 brought to light for the Government an interesting technical point which we seek to address in the government amendments included in this group, to which I shall speak now and which I will move in due course. Schedule 3(6) appears to be somewhat less flexible than is desirable. The provision was intended to allow for both the national transfer of the approving body functions and the transfer of functions on an area-by-area basis. On review, we felt that that needed to be clarified. That is why we tabled Amendment 71, which allows a Minister to appoint a new approving body,

"in all areas or in one or more specified areas".

That introduces an element of flexibility which accords with some of the arguments presented this evening.

In addition, we want to ensure that the power to transfer specific approving body functions is as flexible as similar powers in the Bill, such as the power to reallocate flood risk responsibility, which is covered under Clause 29. Taking that clause as an example, although flood risk responsibilities are clearly set out in the Bill, it nevertheless includes a power, subject to affirmative resolution, to reallocate them either singly or en bloc. We want to adopt an approach consistent with that in the case of SUDS. Paragraph (6)(3) of Schedule 3 allows both the approval and adoption functions of the SUDS approving body to be transferred to another organisation together in their entirety, but it does not allow the Minister to split their functions, for the reason that I identified earlier: we regard the integrated approach as essential.

Amendments 72 and 73 would enable the splitting of those functions, but only if approved by both Houses of Parliament, because we consider that to be a significant change in policy. Our policy position is clearly set out in the Bill. Throughout, we have endeavoured to include the flexibility to ensure that the best arrangements can be put in place, should circumstances change over time. Noble Lords pressed me on one or two earlier amendments, on which the Government's defence is, quite properly, that we have regard to the future-proofing of legislation so that it is fit for purpose and that changes can be incorporated.

That is why the noble Lord, Lord Greaves, will understand that we do not believe that Amendments 70, 76 and 77 are necessary. They provide for the planning authority to have a duty to approve drainage systems. During the Bill's progress, we have made it clear that we believe that giving the SUDS approving body role to county local authorities fits well with their highways responsibilities. We expect many SUDS to be located in or alongside roads, especially in urban areas, where the issue of surface water often becomes most acute.

More importantly, county councils will have wider responsibilities under the lead local flood authority role in Part 1 of the Bill, and already have the responsibility for surface water management planning. These are issues that we covered earlier. Placing the SUDS approving body—the SAB—at county level will ensure that drainage systems are approved in the context of the wider management of local flood risk, and over a wider geographic area. To ensure this operates well, the Bill makes the SAB a statutory consultee to the planning process. It also sets out procedural arrangements, including provision for regulations to be made to ensure that timetables and processes for planning and SAB approval work effectively together.

As I have said, the county already has the flexibility to transfer its functions to the local planning authority by agreement, if it decides that that is the best arrangement. I hope that the noble Lord, Lord Greaves, will recognise the flexibility here. We are giving responsibility primarily to the county authority, but if the case is established that it is more appropriate that it should go to the district, that can happen in the interests of local people. Furthermore, the Bill already enables the Minister to make an order transferring the SAB functions to the planning authority, and the Government amendments in this group would make that power even more flexible. I hope that it is appreciated that the Government have recognised that the original drafting of the Bill had an element of rigidity to it, which prompted these amendments, and that our amendments seek to improve flexibility.

Amendment 69, tabled by the noble Lord, Lord Taylor, would insert into the Bill a reference to water efficiency. I agree that we should do more to reduce water use generally, especially in areas of water shortage. Clause 36 of the Bill addresses the issue of water shortages. However, when raised in the context of SUDS, it is the use of rainwater harvesting that comes to mind. That is one of many potential techniques for managing surface water run-off—an important issue—although in periods of heavy or prolonged rainfall, tanks can fill up quickly and thus have a limited capacity to reduce the volume of water going into sewers, or the risk of flooding.

It is also important to understand the costs, benefits, practicalities and carbon impacts of harvesting systems. This issue will be addressed in the development of

[Lord Davies of Oldham]
national standards for SUDS against which all proposed sustainable drainage systems must be judged. The Bill requires that Ministers consult on national standards before publishing them, and we will consult widely with all those who have an interest in the issue.

Amendment 78 requires the Minister to consult those likely to be affected by the arrangements for sustainable drainage set out in paragraph 17 of Schedule 3, and to publish a report detailing how the adoption and maintenance of drainage systems is to be funded, before the schedule is commenced. The funding of SUDS maintenance has been fully debated. Noble Lords will have appreciated the keen interest taken in this issue in the other place. I will reiterate to the noble Lord, Lord Taylor, that we have undertaken to ensure that the duty to adopt and maintain SUDS will be funded in full, one way or another, and that we will publish the way forward in time for implementation of the legislation. That will ensure that measures are in place to enable local authorities to implement SUDS in full certainty that there will be no gap in funding. I accept entirely the noble Lord's anxiety on that point. I would like to be more precise about funding, but the commitment is there. The Government appreciate that local authorities have the right to expect that this important duty will be adequately funded. We make that commitment.

Having made a clear commitment to ensure that SUDS maintenance is funded, we will carefully consider the costs and benefits of the various funding options, and the impact on affected parties. If legislation is required to deliver a funding mechanism, we will consult appropriately. We have made it clear that we will keep under close review the costs and assumptions implied by the Bill and by the transfer of private sewers.

A review panel is already established and has already met. It brings together the Local Government Association, Defra, the DCLG and the Environment Agency. The review panel is enormously important. At this stage I am bound to talk in fairly general terms, but the panel has been established to address itself to this matter. We understand and agree with the concerns underpinning the amendment, but I hope that it will be appreciated that without legislation we are moving ahead with the concept that the amendment seeks to press on the Government.

Amendment 74, proposed by the noble Lord, Lord Greaves, seeks to broaden the definition of construction work with drainage implications. The noble Lord is right in wishing to ensure that a SUDS approval body will consider not just the drainage of the property or structure, but also its impact on neighbouring properties and others further downstream. I would accept this amendment if I did not think that the Bill already encompassed this very important concept.

Any construction work that will increase, decrease or divert the water leaving a site will alter the way in which the water infiltrates the land. This will include structures on and in the land. Therefore, the effect of the noble Lord's amendment is already covered. Should there be any need to clarify further the definition of construction work with drainage implications, there is an order-making power under paragraph 7(4) to do so. Finally, the order-making power in paragraph 7(4) enables the Minister to set exemptions from the requirement for approval, which will be used to deliver the effect of Amendment 75.

Noble Lords raised an important point about the need to be proportionate and realistic about the types and sizes of development which will need to have their drainage plans approved by the SAB. I understand that point entirely. The noble Lord, Lord Greaves, was particularly emphatic in moving his amendment on this matter. We agree that de minimis thresholds are a sensible idea and we intend to introduce them. At the lowest level we will weigh up exemptions.

In the other place, we have said that we expect to phase the implementation of the SIDS proposals in the Bill, starting with larger developments, and we should achieve that through using this power to concentrate on the larger developments. I think that the noble Lord, Lord Greaves, was indicating in his amendment and in his speech that we should not concern ourselves with smaller issues when there are very big ones that we need to address. I want to give him assurances on that.

The noble Lord, Lord Taylor, asked about savings from private sewers and the need for update assessments of local authority costs. Any review of the costs of local authorities will reflect the fact that authorities are aware of transfer, and that their repairs will reflect this. Our estimates are somewhat conservative here. But, in the light of the data that we have, we excluded outlying high-cost returns in arriving at the figure. I appreciate that some vagueness is attached to these issues. There are bound to be aspects concerning estimates with regard to this, but I hope that the noble Lord will appreciate that the Government have addressed themselves to the issue of local authority costs. We recognise the importance of that. I think that I have mentioned also the former issue.

I do not know of any reason why the savings for local authorities arising from the transfer of private sewers should run out after a limited period of time. I do not see why that obtains. Therefore, I do not have much comment to make on that.

On the point made about transitional arrangements by the noble Baroness, Lady Knight, the schedule requires all construction work that affects drains to have its drainage system approved. The provision will be commenced by order, and such an order can make all the necessary transitional arrangements to ensure an orderly implementation. I take entirely the point made by the noble Baroness: we need to be reassured about all aspects of that issue.

I want to end on a slightly more positive note. I thank my noble friend Lady Young for reflecting exactly what the Government think about the point raised by the noble Lord, Lord Greaves, on the appropriate authority. However, he did ask a specific question about whether it would be possible for combined applications to be made together. I am able to say "yes" to that. If there is a planning application and a SUDS application, the applicant can lodge a combined application to the planning authority. I refer to paragraph 8(3) of Schedule 3. The approving body is

the statutory consultee to the planning process, which is a further safeguard to ensure that the process works satisfactorily.

I apologise for the length of my reply, but noble Lords have raised some important issues on a significant part of the Bill.

7.30 pm

Lord Greaves: I thank the Minister for his careful and detailed response to all the amendments. On the general issue, all I can say is that those of us who are members of district planning authorities—I think I declared that interest last week, but if I did not, I do so now—will be watching this very carefully indeed.

Lord Taylor of Holbeach: I, too, thank the Minister for his detailed response to the amendments, and indeed it does reflect the importance of Schedule 3. This is something of a leap in the dark, and indeed I think that the Minister admitted that there is not as much financial information available as perhaps he would have liked, but at least local authorities know that the Government have made a clear commitment to ensure that they are fully funded for this project. That, I would imagine, is a reassurance for them.

It is also a matter of some reassurance to us that the Bill is going to provide for a review process of this part, including future proofing and so on. It would be fortuitous if the Government had got this part absolutely right in every respect first time, so there needs to be a way of learning from experience. However, as the noble Baroness, Lady Young of Old Scone, said, bringing this in through the Bill marks a significant step forward. I am happy that the Government have done so and, again, I thank the Minister for his thorough reply to the points made by many noble Lords. I beg leave to withdraw the amendment.

Amendment 68 withdrawn.

Schedule 3 : Sustainable Drainage

Amendments 69 and 70 not moved.

Amendments 71 to 73

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

71: Schedule 3, page 53, line 21, leave out "a specified area" and insert "all areas or in one or more specified areas"

72: Schedule 3, page 53, line 22, at end insert—

"(3A) An order under sub-paragraph (3) may—

(a) appoint a body as approving body for specified purposes only;

(b) appoint different bodies as approving body for different purposes."

73: Schedule 3, page 53, line 27, after "sub-paragraph" insert "(3A) or"

Amendments 71 to 73 agreed.

Amendments 74 to 78 not moved.

Amendment 79

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

79: Schedule 3, page 61, line 15, at end insert—

"( ) The first sets of regulations may not be made unless a draft has been laid before and approved by resolution of—

(a) each House of Parliament, in the case of the first regulations made by the Secretary of State, and

(b) the National Assembly for Wales, in the case of the first regulations made by the Welsh Ministers."

Amendment 80 (to Amendment 79) not moved.

Amendment 79 agreed.

Amendment 81 not moved.

Schedule 3, as amended, agreed.

Lord Campbell-Savours: My Lords, when can I move my amendments? Amendments 84A and 84B stand in my name and I should like to speak to them.

Clause 33 agreed.

Schedule 4 : Reservoirs

Amendment 82

Moved by ***The Duke of Montrose***

82: Schedule 4, page 63, line 7, leave out "10,000" and insert "25,000"

The Duke of Montrose: On behalf of my noble friend Lord Taylor of Holbeach, I beg to move Amendment 82 and speak to the other amendments in this group standing in our names. I hope that the Committee will bear with me. We have tried to hold all the amendments on reservoirs together in one group, so I have landed up with rather a shopping list of questions. We hope that this will help to speed things up.

Amendments 82 and 83 centre around what the whole scope of the legislation surrounding reservoirs should be and whether the Bill's proposal to reduce the qualifying criterion to 10,000 cubic metres will result in gigantic overkill. Admittedly, in the first instance, the involvement will require only an inspection and then a classification into those that are considered of high risk. It would take some fairly exceptional circumstances for a 10,000 cubic metre reservoir to constitute a risk to human life. Can the Minister tell the Committee what estimate the Government have made of how many reservoirs will have to be inspected? There are two concerns. One is that the powers in the Bill are such that the concept and regulations could be gradually extended until any of these sites would require constant recording and monitoring. The other is that this will bring a whole new world of regulations into play for those wishing to construct relatively small reservoirs, some of whom may be market gardeners, farmers or managers of parks or golf courses. I think that I have expressed my interest in this area.

[The Duke of Montrose]

The UK has had legislation in regard to reservoirs for some 80 years triggered by the failure of a couple of dams in 1925. Since then there has been no loss of life caused by the breach of reservoir embankments. The current legislation, the Reservoirs Act, has been in place since 1975. It seems to me of some significance that the Pitt review—at ES95—states quite categorically that the UK now has an excellent record of dam and reservoir safety. It asked only that the Reservoirs Act be amended to provide better risk-based criteria. Can the noble Lord tell the Committee whether at any point the Pitt report recommended the reduction in capacity that is proposed?

My honourable friend in another place, Anne McIntosh, put an amendment before the relevant committee suggesting that a threshold of 15,000 cubic metres could be considered as a compromise. The Minister said in reply—at col. 380—that his discussion had coalesced around 12,000 cubic metres, so how have the Government come up with 10,000 cubic metres?

Amendment 83 relates to the Minister's ability to amend by order the volume of reservoirs to which the Act should apply, as we have discussed. I am quite prepared to see that there are a host of measures for which it is only sensible that a Minister may introduce new criteria by order. We have discussed this at length this afternoon. However, I wonder whether I can persuade the Minister that in this case it would be a step too far. Of course, at this stage we cannot tell whether a Minister might in the future want to increase or decrease the volume, as is proposed in the Bill. However, this issue has had the full scrutiny of both Houses of Parliament and in the end we will make a decision on which the Act will be based. I am sorry to see that the noble Lord, Lord Greaves, is not in his place because I think—

Lord Tope: He will be back in a minute.

The Duke of Montrose: As I say, I am sorry that he is not in his place because this is where the question of what powers this House has comes into play.

I maintain that an order which might be introduced under this provision changes the whole nature of the application of the Bill. As we discussed earlier, when such a change is introduced by order, we have the opportunity to comment and to ask the Government of the day to think again but, by the conventions of this House, we do not countermand or reject it. If my amendment is accepted, a revision of this scale will, once again, be subject to full parliamentary scrutiny, as it should be. That is where the power of this House lies.

I must apologise to the Committee as my next amendment, Amendment 84AA, contains a misprint. By rights, it should insert the word "property" after "human life" and so follow the amendment of the noble Lord, Lord Campbell-Savours. I shall be very interested to see what he has to say on the subject. My concern, which I expressed at an earlier sitting of the Committee, is that the provisions of the 1975 Act will be found to be extremely effective. The reason is that, although no criteria appear in that Act, the Institution of Civil Engineers produced its own categorisation of risk factors which were based on the danger perceived to life and property downstream of a dam. That was divided, according to the risk of both of those factors, into four categories and the engineers requirements were graded according to the risks. That is critical if our present record is to be maintained, and there is a danger that, if the second category is not included, it might lead to a watering down of the supervision that there has been up to now.

We now have a Bill that is intended to be risk based. At present, it merely wishes to categorise dams into large raised reservoirs and high-risk reservoirs, whereas experience has shown that risk can, and must be, defined with greater exactitude. I ask the Minister to tell the Committee, now or if we ever get to another stage of the Bill, whether the Government will explain to us whether they intend to produce some further categorisation of high-risk dams which will enable suitable measures to be applied to the various categories that have so far applied. I hope that the noble Lord, Lord Campbell-Savours, will try to persuade the Minister on similar issues when he speaks to his amendment.

Amendment 88AA applies to Section 22 of the 1975 Act, where it deals with the criminal liability of undertakers and their employees. That is obviously a serious issue and the present wording in the Act says that a crime is committed unless there is unreasonable excuse for the default. Obviously, the more serious the importance of the default, the higher is the criteria of what is reasonable. Throughout the Bill, we are toughening the penalties on the operators of reservoirs and it seems to me that this is one area where the provisions of the present Act should be perfectly adequate. I beg to move.

Lord Campbell-Savours: I am sorry to detain the Committee at this late hour, but these are very important issues in the area where I live in the north of England. If my noble friend finds it difficult to reply to some of my rather complicated questions because he has not been briefed on them, perhaps he could drop me a note.

I have two questions on high-risk reservoirs. First, what are uncontrolled releases? Does an uncontrolled release arise where a dam overflows—there might be a sill—but where there is no control over the amount of water that goes over the sill? I would argue that that is an uncontrolled release. Secondly, what is meant by human life being endangered? In Keswick, where I live, 200 properties were flooded and a lot of families were put under immense stress. In one case, I understand that a gentleman died following a stroke, which may well have arisen because of the stress he was under. Many other incidents in the area were reported to local GPs, but they have not been made public. I would argue that human life being endangered might cover some of those incidents.

One of my amendments deals with whether a residential property is inhabited—the amendment inserts the word "property". If a property is flooded on a regular basis, and a particular reservoir is involved on each occasion, surely that reservoir should be designated as high-risk. Many people in the Keswick area believe that the

Thirlmere reservoir should be designated as high-risk. The town lives under constant threat from that reservoir during the winter months.

7.45 pm

The group that I run in Keswick, which reports to the Keswick Flood Action Group, has managed to negotiate a number of agreements with United Utilities on the level of the dam during the critical months of the year when the dam is full. However, United Utilities has a statutory obligation to provide water, and it has to weigh up to what extent it fills the dam in the winter months against any responsibility that it might feel it has towards local residents whose property might be flooded. That is why I believe very strongly that this should be designated as a high-risk reservoir.

Under paragraph 9 in Schedule 4, a panel of engineers could be appointed that would have substantial powers, including the power to provide for a regime for inspections of the dam, power over maintenance levels, the ability to influence measures in the interests of safety, and powers to require undertakers to carry out works. I always thought that under existing environmental legislation those powers were in the hands of the Environment Agency but that it has always been reluctant to exercise them. My noble friend, who was a former chief executive of the Environment Agency, will know about the discussions that I have had over the years with the Environment Agency on how there is a need for it to enforce and to ensure that water companies take into account the possibility of flooding in particular areas. I see this as a way of giving a body greater responsibility and powers over undertakers to make them act in circumstances in which they might be reluctant to do so.

The panel of engineers would also have the power to prevent uncontrolled escapes of water, which is why I want there to be a fuller definition of uncontrolled escapes. I am not sure whether paragraph 25 of Schedule 4, on discontinuance, applies to higher risk dams, but it refers to reducing water levels. All I am arguing is that if a community ever feels at risk, high-risk dam designation should apply to the reservoir that places that community in difficulty. That would do a lot to reassure local populations. That is all I need to say at this stage.

Lord Cameron of Dillington: My Lords, my three amendments in this group relate to arbitrary costs being imposed on those who try to conserve winter rainfall for sensible use in the summer. Such sustainable practices by farmers, golf courses and others must be encouraged rather than discouraged.

I agree with my noble kinsman, the Duke of Montrose, that the 10,000 cubic metres cut-off line was fairly arbitrary. I know that at Second Reading much was made of that being equivalent to three-quarters of the Royal Gallery, so it sounds quite a frightening amount, but that is because of the height of the Royal Gallery. In fact, such an amount in a reservoir is likely to amount to only 2 metres deep by 70 metres by 70 metres. That is not a particularly big reservoir, really. It is very unlikely that such a structure will go "whoosh", with all the water escaping all at once, especially an off-stream reservoir in which the spillway is designed to cater for only small amounts of rainfall that fall in the reservoir. An on-stream reservoir is different because it caters to floods, and the stream—it is usually a stream—increases and can cause problems. An off-stream reservoir presents very little danger. A bank would break down over time, and there would be a certain amount of seepage. The trickle would become a flow that would accelerate over an hour or so, and you would probably be left in the end with, say, a quarter of the water or less in the bottom of the reservoir.

If you change the cut-off from 10,000 cubic metres to, say, 15,000 cubic metres, instead of being 2 metres by 70 by 70 metres, it would be 2 metres by 86 by 86 metres. That is not very different, and the risk scenario does not change all that much. However, I am not going to oppose a 10,000 cubic metre cut-off. I would just say that it seems slightly controversial. If we accept it, the one thing we do not want is for it to be changed again through an arbitrary decision made by an unreasonable, risk-averse Minister without parliamentary input being an essential part of that decision. I hope that the Minister can reassure us on that.

Lord Dixon-Smith: I want to add only a little to what has been said. There is a world of difference between the circumstances described by the noble Lord, Lord Campbell-Savours, and the sort of reservoir mentioned by the noble Lord, Lord Cameron of Dillington. The problem we are facing here is that we are trying to deal with both sets of circumstances in one schedule. I am rather surprised that the reservoir described by the noble Lord, Lord Campbell-Savours, is not already caught by the large reservoir construction regulations which require a far higher standard of safety than the sort of reservoir described by the noble Lord, Lord Cameron; indeed, I happen to possess one. I have to say that it is a remarkably small puddle of water, but it is to be included in this provision.

There is of course yet another classification of reservoir which might be added here. A lot of reservoirs such as mine that are used to collect winter rainwater have no streams running into or out of them at all because the water is simply pumped. When the reservoir begins to look slightly full, you switch on the pump so that no more water can get in and, frankly, there is no risk. Even if there is an unearthly downpour, as we had on one occasion in our part of the world a few years ago—I know that a neighbour saw the level of his swimming pool rise by six inches—it will not reach anywhere near the top of ring reservoirs that are pumped. Trying to classify all these different types of reservoir in one simple schedule is very difficult.

We have perforce to accept what is before us today, but in other circumstances there is no doubt that the case would be argued most forcefully that a lot more detail has to be put into this schedule in order to make sense of the vastly differing circumstances that the present classification seeks to gather together as if they were identical. I agree entirely with the noble Lord, Lord Campbell-Savours, that the circumstances of the people of Keswick are intolerable. Indeed, I am very surprised that the situation is not already covered by other reservoir construction regulations. If it is not, it jolly well should be. However, the sort of position

[LORD DIXON-SMITH]
described by the noble Lord, Lord Cameron, is very different. The only person or body that is likely to be damaged if a small irrigation reservoir goes is normally the owner himself. Occasionally it might pose a risk to a neighbouring household, but these constructions are out in the open countryside, and therefore the level of risk is very low indeed.

If one looks at the need for increased productivity from agriculture in the future, the use of irrigation is going to have to become more widespread. Certainly, anything that imposes unreasonable costs would draw to it wide objections from many different bodies. I can do no more than say that I hope the Minister will accept that there is a problem here. The schedule seeks to encompass many different circumstances into what is apparently one system. The Government will have to exercise great care in how they define and administer these provisions. At the moment we cannot change the schedule, but I have no doubt that if this Bill had been going through in anything like normal circumstances, there would be some considerable amendment here in order to take account of the very different situations that can and do exist.

Baroness Young of Old Scone: My Lords, I hesitate to stand between noble Lords and their dinners but I want to give a brief history lesson on reservoirs. In the middle of the previous decade the Environment Agency acquired additional responsibilities under the Reservoirs Act. It was pretty shaken to discover what a poor condition many of our reservoirs were in and how rickety the legislation was. Therefore, I very much welcome this legislation which will bring into being the very thing that many noble Lords have demonstrated is necessary; that is, a reservoir-by-reservoir risk assessment. Starting from a threshold of 10,000 cubic metres, each reservoir could be given a quick assessment to find out whether it poses a risk to property and human life. Then the appropriate framework could be put in place. All the examples given of what might or might not be included demonstrate that you can do this only on a reservoir-by-reservoir risk assessment—which is what this schedule attempts to do.

The noble Duke, the Duke of Montrose, referred to the threshold and said that the Pitt report had not said very much about reservoirs. However, when the Pitt report was being prepared staff at the Environment Agency were running around like demented ferrets rapidly bringing into order the reservoirs that were their responsibility as they were so taken aback by just how poor the standards were in some cases. Noble Lords may recall that during the 2007 floods, had a certain reservoir burst its banks we were faced with the awful prospect of shutting a major motorway for a very long period.

I suppose that it is a cheap joke to say that size does not matter but that is absolutely true as regards reservoirs. What matters is their location, what they lie adjacent to, how they are constructed, whether they are above ground and above habitation, and their maintenance standards and levels. Therefore, I hope that noble Lords will accept that this is a rather good way of constructing reservoir safety legislation for the future.

Lord Davies of Oldham: I am grateful to all noble Lords who have contributed to this important debate. I am conscious of the time and the volley of questions that I have been asked. Therefore, I shall try to respond without repeating all the arguments that have already been voiced in defending the position that the Bill adopts. I am grateful to the noble Baroness, Lady Young, for identifying that Sir Michael Pitt's review recommended a more risk-based approach to reservoir safety. He thought that this issue needed to be addressed and applied to reservoirs of more than 25,000 cubic metres. However, the problem is that we cannot afford to ignore the risk posed by reservoirs below that capacity. The problem lies in identifying the correct figure. The noble Duke, the Duke of Montrose, was right to indicate that there are difficulties in this area. However, I emphasise to the Committee that the 10,000 cubic metres threshold figure has not just been plucked out of the air. The view of the dam engineering profession based on its extensive knowledge and experience of dams and reservoirs is that the figure of 5,000 cubic metres originally proposed by the Environment Agency is too low but that 10,000 cubic metres is the right figure.

8 pm

So we have expert advice on this, but I accept the obvious point that there are difficulties in identifying reservoirs at risk that do not all relate to size. We cannot be certain about the minimum figure: that is why the Bill enables it to be adjusted, if appropriate, in the light of further evidence that may emerge in future. We have to do the risk assessment at some point, and if expert advice indicates that we should look at reservoirs of 10,000 cubic metres and above, that is what the Bill will provide for. Therefore, I hope that the noble Duke, the Duke of Montrose, will recognise why I cannot accept Amendment 82 with its figure of 25,000 cubic metres.

I will also reply briefly to the noble Lord, Lord Cameron. I do not in any way deny the validity of all the points that he made. However, the Bill already provides for the effect of his amendments. I could go into inordinate detail in justifying this position, and do so at inordinate length. However, I would not make that statement to the noble Lord if I were not absolutely certain that, in syncopating my reply, I am saying that we understand his amendments fully and that the Bill already provides for the points that he made. I also say to the noble Lord that there are farm reservoirs that are currently regulated which pose a negligible threat to life. As we said at Second Reading, the routine supervision and inspection requirements will not apply to reservoirs that pose a negligible risk to human life. This is the case with many farm reservoirs. Equally, for those reservoirs brought into the Bill by these proposals, those that pose negligible risk to human life will also be exempt from the regulations. I hope the noble Lord is satisfied with that response.

My noble friend Lord Campbell-Savours will not be satisfied with my response, because he is never entirely convinced by a position in response to an issue that he raises. He has properly identified a great anxiety that he has. He has been involved in these issues for a considerable time. I will have difficulty in responding

to him, except in these terms. He asked about uncontrolled releases. They arise either from a collapsed embankment that has been overtopped and washed away, or from within. I will write to him in more detail about uncontrolled releases.

As far as concerns the releases themselves, I understand exactly the point that he made about his anxieties. However, I emphasise that the purpose of the Reservoirs Act 1975 was to manage the risks of a potential catastrophe, not to regulate the way in which reservoirs release water as part of their operations. I understand entirely my noble friend's anxieties about how the release happens, and about its consequences. However, I emphasise that our first obligation is to deal with a potential catastrophe: that is what is addressed by the Bill. There are other aspects concerning regulation of the utilities and their reservoir operations to which my noble friend has given attention. This part of the Bill is not the place to address the problems that he has identified.

We are aware of the desirability of the operation of a reservoir taking account of the overall flood management of the area. Many reservoirs are operated by water companies. Clause 11(4) will require the water company, as a flood risk management authority, to have regard to local and national strategies and guidance in exercising functions that may affect a flood risk, including operating its reservoirs. The issue comes within the ambit of the Bill in those terms. However, the noble Lord will recognise the difference between that and the issue of catastrophe. I will give way to my noble friend.

Lord Campbell-Savours: They may have regard to what my noble friend just referred to, but equally they must have regard to the fact that they have a statutory duty to supply water. There is a conflict between the two. I am simply trying to move the balance a little more in favour of the protection of the environment and away from the duty to provide water. This may well have been the ideal place in the Bill to move that balance slightly.

Lord Davies of Oldham: In that respect, the Bill does something. It extends the powers to enable releases from water company reservoirs to be controlled to help to manage local flood risk. I described the obligations on them to respond to that, so the Bill is helpful in those terms. I know that it falls short of my noble friend's amendments and his concerns on the matter. In assessing whether a reservoir should be designated as high risk, the Environment Agency will be largely reliant on the reservoirs inundation map, which will identify all the areas in which people may be at risk, either at home or at work: the inundation zones of reservoirs. That is the issue: the risk to human life at home or at work. That is the main concern of the Bill.

The noble Duke, the Duke of Montrose, spoke to Amendment 84AA on taking steps to ensure only that any flood flows could be retained on his lands. He can indeed negotiate with other landowners to take steps to do so if he so wishes. How far that is practicable and effective in minimising the risk to human life that might affect a reservoir's high risk designation would have to be judged by the Environment Agency. I emphasise to him that we are here concerned with high risk—not with the size of the reservoir but the nature of the risk. I therefore hope that he will appreciate that we have considered those matters in drafting the Bill.

Finally, the government amendments bring all but one of the existing delegated powers in the Reservoirs Act 1975 into line with our approach in paragraph 38 for the powers inserted into that Act by Schedule 4. There is one exception, which specifies how engineers who want to apply to become panel engineers must apply to the relevant Minister. That is a very minor part of the Reservoirs Act, and we did not think that that was appropriate in the Bill. All other matters have been transferred in that way. Essentially, that is what the government amendments do, and I shall move them in due course.

I hope that noble Lords will forgive me for having rushed my reply to this important debate.

The Duke of Montrose: I thank the Minister for covering as much as he could, although a great many other points came up. I am grateful to all those who have participated in the debate. My noble friend Lord Dixon-Smith and my noble kinsman Lord Cameron mentioned that we hope that, in trying to mitigate climate change, many more small run-off reservoirs are provided. Quite a few complications will arise for them out of this legislation.

I do not think that there should never be any change to the criteria on size. The point that I made earlier was that this sufficiently large change should be subject to full parliamentary scrutiny, rather as we are doing at the moment in modifying the 1975 Act by this legislation. I was trying to make that point to the noble Lord, Lord Greaves, who worries that we do not try to alter some bits of secondary legislation. If we really feel strongly about it, we do not put into place the power of secondary legislation. It is left as a matter for primary legislation.

If we had further stages, we would probably want to return to quite a few of these issues, but in the mean time I beg leave to withdraw the amendment.

Amendment 82 withdrawn.

Amendments 83 to 88A not moved.

Amendments 89 to 97

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

89: Schedule 4, page 75, line 6, after "regulations" insert ", rules"

90: Schedule 4, page 75, line 9, leave out "regulations or an order" and insert "an instrument"

91: Schedule 4, page 75, line 12, leave out "regulations or an order" and insert "an instrument"

92: Schedule 4, page 75, line 16, leave out "2(2C)," and insert "2(2) or (2C),"

93: Schedule 4, page 75, line 18, at end insert—

"( ) section 3(1) or (3),

( ) section 4(9),

( ) section 11(1),"

94: Schedule 4, page 75, line 19, at end insert—

"( ) section 19(5),"

95: Schedule 4, page 75, line 20, at end insert—

"( ) section 20(1),"

96: Schedule 4, page 75, line 21, at end insert—

"( ) section 21(1),"

97: Schedule 4, page 75, line 36, at end insert—

"( ) The first sets of regulations under section 2E or 19A may not be made unless a draft has been laid before and approved by resolution of—

(a) each House of Parliament, in the case of the first regulations made by the Secretary of State under either section, and

(b) the National Assembly for Wales, in the case of the first regulations made by the Welsh Ministers under either section."

Amendments 89 to 97 agreed.

Schedule 4, as amended, agreed.

Clause 34 agreed.

Schedule 5 agreed.

Lord Faulkner of Worcester: My Lords, I think that this would be an appropriate moment for the Committee to adjourn to a date to be agreed shortly.

The Deputy Chairman of Committees: The Committee stands adjourned to a date to be agreed.

Committee adjourned at 8.11 pm.

Written Statements

Wednesday 24 March 2010

Correction to Commons Written Answer

Statement

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): My honourable friend the Parliamentary Under-Secretary of State for Schools (Diana Johnson) has made the following Written Ministerial Statement.

An error has been identified in the answer to PQ 280449 from 19 June 2009, (*Official Report*, col. 527W). The Answer should have been:

The Health and Safety Executive (HSE) has provided the information in the following tables. The tables record figures for Great Britain.

Injuries to pupils/students[1] aged 1 to 18 years, reported to all enforcing authorities[2], 2003-04 to 2007-08[3]

Fatal injuries

Month	*Year*					*Total*
	2003-04	*2004-05*	*2005-06*	*2006-07*	*2007-08*	
April	-	-	-	-	-	-
May	-	-	-	-	-	-
June	1	-	-	-	-	1
July	-	1	-	-	-	1
August	-	-	-	-	-	-
September	-	-	-	1	-	1
October	-	-	-	-	-	-
November	-	-	1	-	-	1
December	1	-	2	-	-	3
January	-	-	-	-	-	-
February	-	1	-	-	-	1
March	-	-	-	1	-	1
Total	2	2	3	2	-	9

Non-fatal injuries

Month	*Year*					*Total*
	2003-04	*2004-05*	*2005-06*	*2006-07*	*2007-08*	
April	134	150	203	294	353	1,134
May	171	257	297	544	554	1,823
June	297	225	295	605	522	1,944
July	179	168	185	345	333	1,210
August	25	37	29	40	50	181
September	226	290	301	758	714	2,289
October	247	245	304	722	828	2,346
November	259	327	671	848	1,005	3,110
December	167	158	406	453	504	1,688
January	236	264	626	719	800	2,645
February	220	211	521	549	664	2,165
March	372	242	827	829	708	2,978
Total	2,533	2,574	4,665	6,706	7,035	23,513

1 Identified by Standard Occupational Classification (SOC2000) code 0002 'Student'.

2 Injuries are reported and defined under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 1995. These include injuries to employees, self-employed people and members of the public (including students). The information available under RIDDOR 95 includes two categories of severity for members of the public: fatal injuries and non-fatal injuries that cause a person to be taken from the site of the accident to hospital.

3 The annual basis is the planning year 1 April to 31 March.

The original answer was incorrect because of an administrative error. Instead of information on children aged from one to 18 being reported, information on children aged one or 18 was supplied, thereby omitting information on those aged between two and 17.

Courts Service and Tribunals Service

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.

The Chancellor of the Exchequer announced in the Budget today that the Ministry of Justice will be moving to bring together Her Majesty's Courts Service and the Tribunals Service into a new single organisation.

Her Majesty's Courts Service and the Tribunals Service between them provide the administration for the courts in England and Wales and most of the non-devolved tribunals in the United Kingdom. They share the common purpose of providing access to justice, whether in the criminal, civil or administrative justice fields. We aim to bring these broadly similar functions together into a new single organisation for the efficient delivery of access to justice.

Creating a unified service holds out the prospect of significant benefits to the users of courts and tribunals, to the taxpayer and to the administration of justice generally. There is the potential for improved service provision for users through joint administration and shared hearing venues. The new arrangements will also facilitate the building of a unified judicial family in England and Wales.

The new structure will preserve the unique and distinctive features of both systems while taking advantage of the benefits to users, judges and staff from closer working. We will ensure that the statutory responsibilities of both the Lord Chief Justice for the courts and the Senior President of Tribunals for the tribunals are respected and preserved. There are also a number of important differences between the two organisations which will need to be given careful consideration in planning for the new organisation. These include the different territorial coverage of HMCS and the Tribunals Service, their different governance arrangements and judicial structures and the different regional and jurisdictional structures currently in place.

In addition, and following a recent public consultation on the future of the Parole Board, we will consider the opportunities that this new organisation offers to secure the board's position in the justice system, so that it is best placed to deliver timely, rigorous and fair decisions.

A considerable amount of detailed planning will need to take place before the new organisation can be formed and we will be working together closely in the coming months to design arrangements that will work

effectively and deliver the desired results. There will be full consultation on the developed proposals with those representing users of the courts and tribunals, the judiciary, trades unions and all of those affected in the Scottish and Northern Irish legal systems and wider public before implementation.

Debt and Reserves Management Report

Statement

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

The *Debt and Reserves Management Report 2010-11* is being published today. Copies have been deposited in the Libraries of the House.

HMS "Victory"

Statement

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

The wreck of "Balchin's Victory", lost in 1744, was discovered in the English Channel in 2009. In view of the unique importance of this find for naval heritage and the intrinsic value of the wreck as a cultural artefact, the Ministry of Defence and the Department for Culture, Media and Sport are issuing a public consultation paper on the future management approach for the wreck site. The consultation paper will be available through the websites of both departments, and can be found at http://www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/ConsultationsandCommunications/PublicConsultations/.

Hard copies of the paper are also available on request.

Local Government

Statement

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): On Monday 22 March, the House approved by 169 to 110 an amendment, moved by Baroness Butler-Sloss, to the motion to approve the draft Norwich and Norfolk (Structural Changes) Order 2010 (the Norwich Order) which inserted at the end of the motion,

"but this House regrets that Her Majesty's Government have laid before Parliament the draft Order, which does not comply with the Government's published criteria with respect to affordability of the future structure, without providing more evidence on whether the course proposed is likely to achieve its declared policy objective; and calls on Her Majesty's Government not to proceed with the draft Order before conducting further consultation with the residents of Norwich and Norfolk".

The amended motion approving the draft order was agreed by the House. A similarly amended Motion approving the draft Exeter and Devon (Structural Changes) Order 2010 (the Exeter order) was also agreed by the House.

The Government welcome the approval by the House of the draft orders, and note that the House disagreed by 54 to 118 in the case of the Norwich order, and by 53 to 110 in the case of the Exeter order, with amendments, moved by Lord Tope, that would have resulted in the orders not being approved. However, the Government are disappointed that the House regrets the draft orders were laid before Parliament and, in light of the very full debate on Monday, have carefully considered the request of the House not to proceed with the draft orders before conducting further consultation with the residents of the areas involved.

The Government take very seriously the concerns and requests of the House but, for the reasons set out below, have decided that it is right now to proceed and to make the orders that the House has approved.

We remain of the view, as I set out in Monday's debate, that stakeholders and the public in the areas concerned have been consulted more than adequately. Any case for further consultation can be justified only if some who might have expected to have been consulted have not been, or those consulted have not been given sufficient information to comment on the proposals. The Government are clear that neither of these circumstances arises.

50,000 responses were received by the Government in response to our consultation period March to July 2007 on 16 unitary proposals. The Boundary Committee received a further 20,000 responses during its consideration of the issue in Devon, Norfolk and Suffolk. The Government subsequently received 2,800 representations during the six weeks ending 19 January 2010, all from a mix of local people, the councils elected to represent them, other public sector organisations, businesses and third sectors. This was in addition to numerous meetings with councils in the affected areas. Moreover, during Monday's debate we heard noble Lords relay the views of various organisations and, of course, of local people.

It is not the case, as Baroness Shephard of Northwold suggested, that the Government have legislated to ensure the public could not be consulted. The legislation provides for consultation with the councils affected and with such other persons as the Secretary of State considers appropriate. Whilst the Secretary of State specifically sought views from the councils and those organisations well placed to comment on the proposals, we made clear that responses were welcome from anyone, and as I told the House, specifically asked the local councils to bring these matters to the attention of their communities.

The range of comments received demonstrates that consultees had more than sufficient information to comment fully on the proposals. Many focused their comments on the merits of the two-tier status quo arrangements, without necessarily referring to the criteria or to how particular unitary proposals matched up against those criteria. Others commented, again without necessarily referring to all or any of the criteria, about how any change to unitary structures was unnecessary

as the two-tier system as modernised was delivering the same benefits as could be expected from unitary local government. Many referred to the impact of the current economic climate, some seeing this as reasons for not implementing unitary proposals, others seeing this as a reason for so doing.

Moreover, the longer-term outcomes specified by the strategic leadership and value for money services criteria are closely interconnected with questions about how the unitary structures would impact on the local economy and how the new Total Place approach could affect the delivery of local public services. Some when commenting referred to economic questions and collaborative partnership working characterised by the Total Place approach.

In short, the Government are clear that the case is not made out for further consultation, whether it is further consultation with residents or consultation with particular bodies.

As I put to noble Lords during Monday's debate, it is important to remember that the essential issue is whether the cities of Exeter and Norwich should have unitary councils with all the benefits that brings. Evidence of such benefits was outlined by noble Lords during the debate.

My noble friend, the Baroness Hollis of Heigham, highlighted how, as a unitary borough council prior to 1974, Norwich was able to attract business investment, built an airport and the city college and established what is now the University of East Anglia. But since it became a city council, its ability to act decisively in the interests of its residents has been fettered. My noble friend, Baroness Dean of Thornton-le-Fylde, gave examples of how the needs of Exeter as a city are not being met. For example, Exeter City Council wanted to set up a trust foundation for education that was supported by the university, Exeter college and everyone in Exeter; it was stopped by the education department in the county council. She likewise referred to a new waste-to-energy building being developed in Exeter without any consultation with councillors in Exeter. My noble friend Lord Whitty referred to an article written by the chair of the Exeter Chamber of Commerce indicating all the frustrations which businesses in Exeter have with the two-tier system.

My noble friend Lord Howarth of Newport cited the European Institute for Urban Affairs which had concluded that "where cities have been given more freedom and resources, there is evidence they have responded by being more proactive, entrepreneurial and successful." He reminded the House that you cannot produce evidence for something that has not yet happened. But as he said evidence from the past is that Norwich has been poorly served by Norfolk as Lady Hollis described; evidence from the present is that Norwich has been shortlisted for selection as the UK City of Culture in 2013. Baroness Murphy explained that what is good for the regional development of East Anglia and Norfolk as a whole, is what is crucial for Norwich—a centre of power to drive the local economy. Lord Elystan-Morgan concluded that the communities in Exeter and Norwich "are giants with immense potential, but are shackled by the present system. It is right and proper that they should be given the opportunity to develop that potential".

In short, whilst as I recognised in Monday's debate the question whether to have unitary councils is one that is hotly debated, there is clear evidence of the benefits that unitary city councils can bring, evidence which the Government believe is sufficient for there to be confidence that the course we are proposing will achieve its declared policy objective, namely to promote the economic, social, and environmental success of the cities and surrounding county areas.

The affordability criterion provides that a change to unitary structures should have a payback period of no more than five years and that all costs incurred as a result of reorganisation are met locally without increasing council tax. The Government accept that the proposals for a unitary Exeter and a unitary Norwich do not meet this criterion to a limited degree, having payback periods a little longer than five years. There is no evidence to support the suggestion of Lord Burnett that a unitary Exeter will cost the average Band D council tax payer in Devon approximately £200 a year extra. The Government also accept that the Norwich proposal, before the new Total Place approach to service delivery is taken into account, does not meet the value for money on services criterion. But, considered on their merits, the Government are clear that the risks of a slightly longer payback period are outweighed by the benefits for the local economy that unitary councils would bring, benefits the likelihood of which is supported not least by the evidence heard in Monday's debate, and that with the new Total Place approach, Norwich will be able to shape and jointly deliver high-quality services across the whole area, with the economies that brings, but which also meet the diverse needs of urban and rural communities.

Moreover, as I explained to the House, if we proceed now the new unitary councils can be implemented in April 2011, already over four years after the original unitary proposals were made by the elected city councils for Exeter and Norwich. Any further delay now would make that date impossible, with implementation at its earliest being in April 2012.

Accordingly, for all the reasons above, the Government have concluded that it is now right to proceed. The other pace has now approved the draft orders, by 251 to 163 in the case of Exeter, and by 249 to 171 in the case of Norwich. In all the circumstances, therefore, the Government now intend to make the Exeter and Norwich orders as soon as practicable.

Nuclear Decommissioning Agency: Springfield Site

Statement

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): I would like to inform the House that the Nuclear Decommissioning Agency (NDA) has successfully reached agreement with Westinghouse Electric Company LLC (WEC) on new commercial arrangements for the Springfields site and fuel manufacturing. The agreement will see the commercial operations and staff fully transfer to WEC, which is the current site management contractor, and the NDA land leased to WEC on a

long-term basis. In addition to providing an income stream for the NDA, the new arrangements and plans for the site are expected to significantly reduce the NDA's decommissioning liabilities, representing excellent value for the UK taxpayer.

We welcome and fully support the agreement, which is expected to protect and enhance the site's long-term commercial sustainability through investment and expansion of existing fuel operations. The agreement further demonstrates that major energy companies are gearing up for significant investment in the low carbon energy sector in the UK.

In this context, a direction modifying the Energy Act designating directions for the Springfields site has been laid before Parliament. Specifically, the designating directions have been amended to add additional functions, allowing the site to undertake new fuel manufacturing activities.

Any new developments on the site will be subject to regulatory and other consenting processes.

Questions for Written Answer: Correction

Statement

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): In reply to a Question from my noble friend Lord Woolmer, my noble friend Lord Faulkner said that Ofgem was against removing the co-firing cap. As my noble friend is aware, this is not the case. In its response to the renewables obligation consultation in October last year, it said:

"No we don't agree with the proposal to retain the cap on co-firing. We would like to see the cap removed going forward. The cap potentially disadvantages independent co-firing generators if vertically integrated suppliers self-supply a considerable proportion of their demand for co-firing ROCs. This would mean that the market for independent generators may be smaller than that implied by the cap. We also are concerned that the cap constrains the contribution to our renewable energy targets from a relatively low-cost renewable technology. This might be the case if independent generators constrain output below the level at which they perceive there is a risk that a supplier with demand for ROCs could negotiate ROC price discounts. We also think the concerns about the potential volatility of co-firing volumes could have on ROC prices are overstated. This is because of the reduction in the number of ROC given to co-firing (down to 0.5 ROC/MWh) and the headroom will effectively set the size of the obligation from 2010-11".

I would also like to clarify that Ofgem's response is available on its website at http://www.ofgem.gov.uk/Sustainability/Environment/Policy/Documents1/RFI%20response.pdf, and summaries of the 733 responses received to the RFI consultation are available on our website at http://decc.gov.uk/en/content/cms/consultations/elec_financial/elec_financial.aspx. The actual responses—less some confidential material—are available at http://www.decc.gov.uk/en/content/cms/consultations/elec_financial/elec_financial.aspx.

Review Body on Senior Salaries

Statement

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): My right honourable friend the Prime Minister has made the following Statement.

The Review Body on Senior Salaries' *Initial Report on Public Sector Senior Remuneration 2010* (Cm 7848) is being published today. I commissioned this report in December alongside the publication of *Putting the Frontline First: Smarter Government* (Cm 7753). The report includes a set of principles for senior pay embedded in a code of practice on top-level reward. It is recommended that this code is adopted across the public sector after a period of consultation.

Copies of the report have been laid in the Vote Office and the Library of the House. I am grateful to the chairman and those involved in the review for their work.

The Government welcome the initial report, which builds on the other measures which I have announced to ensure value for money from senior pay in the public sector, including:

the decision not to increase base pay for the Senior Civil Service, the judiciary, the senior military, very senior NHS managers, hospital consultants, independent contractor general medical and dental practitioners and government Ministers in 2010-11 (q.v. *Official Report*, 10 Mar 2010 cols 16WS ff);

the new arrangements for scrutiny, transparency and accountability set out in the 2009 Pre-Budget Report (Cm 7747), in particular the requirement for approval by the Chief Secretary to the Treasury or public justification of salaries in excess of £150,000 and bonuses greater than £50,000, and publication of the names of those earning more than £150,000 and the numbers of those earning more than £50,000; and

tough decisions to deliver savings of £100 million annually within three years from reducing unnecessary civil service bureaucracy and the cost of the Senior Civil Service, and to seek a 1 per cent cap on basic pay uplifts across the public sector for 2011-12 and 2012-13, generating savings of £3.4 billion a year by 2012-13.

The Government agree with the report's findings that a clearer framework is needed for those that make decisions on senior pay. Pay decisions in all public sector organisations should wherever possible be determined by independent remuneration committees and there should be clear escalation mechanism in each sector for any proposals to pay above agreed norms.

In line with the terms of reference of the review, I will now commission the review body to develop sector-specific benchmark ranges for senior pay. I will ask the review body to begin with local authority chief executives and senior managers in the health sector, reporting by the end of 2010. It will then consider the position in further and higher education by March 2011.

The Government will work with the review body to determine how the code should be implemented in each sector, and to determine what legislative and non-statutory means are most appropriate to enforce compliance. The Government believe that the key organisations and representative bodies in each sector should be involved in the process of implementation, and that all public sector organisations should set out publicly how they intend to comply with the code by the end of year.

Written Answers

Wednesday 24 March 2010

Agriculture: BSE

Question

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

To ask Her Majesty's Government how much of the £17 million to be saved on transmissible spongiform encephalopathy surveillance will be due to a more risk-based approach to monitoring, as reported in the Department for Environment, Food and Rural Affairs' Autumn Performance Report 2009. [HL2918]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): Savings that relate to a more risk-based approach to monitoring are as follows:

the transfer to industry of responsibility for, and cost of, collection and disposal of fallen cattle that require BSE testing from January 2009 has enabled us further to reduce Rural Payment Agency (RPA) TSE budgets by £4.6 million in 2010-11;

as a result of the Meat Hygiene Service (MHS) Optimisation Project, which seeks to identify best practice and opportunities for optimising the use of MHS resources, we have identified savings of over £2 million in 2010-11; and

the increase in the age threshold for BSE testing and revision of risk basis for feed sampling has enabled us to reduce Veterinary Laboratory Agency (VLA) TSE contracts by over £1 million in 2010-11.

Agriculture: Genetically Modified Crops

Questions

Asked by ***The Countess of Mar***

To ask Her Majesty's Government on what basis they conclude that Roundup residues are not present in genetically modified products derived from Roundup Ready varieties and that they are harmless to animals and humans. [HL2867]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): Residues of Roundup (active substance glyphosate) may be present in products derived from some Roundup Ready crop varieties as a result of treatment with this herbicide. The potential effects of these residues arising from the use of the herbicide in the European Union (EU) are considered under legislation concerning the placing on the market of plant protection products. Provided Roundup is applied in accordance with conditions of authorisation any residues present will be below levels that may cause harm to animals and humans.

Other EU legislation sets maximum residue levels (MRLs) in food and feed based on the conditions of authorisation of all pesticides used in the EU. MRLs are also set to the same standards for residues of pesticides in imported food and feed. MRLs for glyphosate have been agreed for a range of products including dry pulses, oilseeds and cereals. This legislation also establishes an EU programme for monitoring compliance with these MRLs.

Asked by ***The Countess of Mar***

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 10 March (*WA 61*), what contact they or their advisers have had with the authors of the 2009 American Academy of Environmental Medicine paper on genetically modified food safety; and what steps they have taken to test the view of European Food Standards Authority and the Advisory Committee on Novel Foods and Processes that the six cited papers "do not provide evidence of harm." [HL2868]

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): The American Academy of Environmental Medicine published its position paper on genetically modified foods in May 2009 and the Government have had no contact with the authors of this paper. Member of the Food Standards Agency's advisory committees and members of the panels established by the European Food Standards Agency are appointed by open competition and on the basis of their expertise in the topics they are advising on. I have no reason to doubt their conclusions on these papers.

Asked by ***The Countess of Mar***

To ask Her Majesty's Government which repeat feeding experiments they have commissioned for assessing the findings of Pusztai and Ewen relating to genetically modified potatoes, Emarkova relating to genetically modified soy, and Velemirov relating to genetically modified maize. [HL2898]

Baroness Thornton: The Government have not commissioned any repeat feeding experiments to assess the findings of these three studies.

Agriculture: High Lysine Maize

Question

Asked by ***The Countess of Mar***

To ask Her Majesty's Government why the Food Standards Agency did not examine the experiments reported in the scientific dossiers in support of the Remessen genetically modified high-lysine maize following defects being identified by other European Union member states. [HL2864]

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): I refer the noble Countess to the Answer I gave on 8 March 2010 (*Official Report*, col. *WA 1*).

The Food Standards Agency does not routinely duplicate the detailed assessments carried out by the European Food Safety Authority, which is the body with statutory responsibility for conducting risk assessments in various areas of European Union food legislation, including applications for authorisation of genetically modified food and feed.

Embryology

Questions

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

To ask Her Majesty's Government further to the Written Statement by Baroness Thornton on 4 March (*WS 184*), what were the services provided to the Human Fertilisation and Embryology Authority (HFEA) by Media Strategy or Hanover Communications from April 2002 to March 2009; why the services were provided; and whether the HFEA's head of inspection received similar financial support for the authority's regulatory role during that time. [HL2844]

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): The Human Fertilisation and Embryology Authority (HFEA) has advised that over the period April 2002 to March 2009 the service provided by the company Media Strategy, later named Hanover Communications, supplemented the work of the authority's communications team. This included advice about crisis management, preparation for giving oral evidence to a Select Committee and a stakeholder audit.

The HFEA's head of inspection did not receive similar financial support for the authority's regulatory role during that time.

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

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 15 March (*WA 123*), what reference the Human Fertilisation and Embryology Authority's records of its annual conference on 15 March 2005 made to Trish Davies' comments about "category A incidents" and the solution proposed by Dr Stephen Troup. [HL2922]

To ask Her Majesty's Government further to the Written Answer by Baroness Thornton on 15 March (*WA 123*), whether the solution proposed by Dr Stephen Troup at the Human Fertilisation and Embryology Authority's annual conference on 15 March 2005 involved "information entered into electronic system and allocation of barcode/RFID tag", as described in the seventh edition of the authority's code of practice. [HL2923]

Baroness Thornton: The Human Fertilisation and Embryology Authority (HFEA) has advised that it has no record of comments made at its annual conference on 15 March 2005.

The HFEA has also advised that Dr Stephen Troup was a member of an expert group set up by the authority to consider the safety of new technologies (SANT). In 2005 SANT made recommendations to a committee of the HFEA regarding the safety and use of barcoding and radio frequency identification in electronic witnessing. These recommendations subsequently formed part a review of witnessing in 2006, the outcomes of which were included in the seventh edition of the HFEA's Code of Practice. The HFEA continues to monitor the use of electronic witnessing in licensed centres, with a view to informing any future policy review of this area.

Energy: Efficiency

Questions

Asked by ***Lord Teverson***

To ask Her Majesty's Government how many households have had works funded by the Carbon Emissions Reduction Target scheme. [HL2998]

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): Almost five million insulation measures (ie cavity wall, loft and solid wall insulation) were installed with subsidy under the Carbon Emissions Reduction Target by December 2009. We expect these measures to be benefiting some four million households. A number of other households have also benefited from wider low carbon measures such as heatpumps, solar water heating and fuel switching (eg a new gas central heating system typically replacing oil or coal).

Asked by ***Lord Teverson***

To ask Her Majesty's Government whether they will make proposals regarding financial transparency in the Carbon Emissions Reduction Target scheme, particularly in relation to energy suppliers and scheme participants; and, if so when. [HL2999]

Lord Hunt of Kings Heath: The Government believe that improving the transparency of the costs falling to suppliers from meeting their supplier obligation and how they pass these costs onto consumers is critical. The Government's *Warm Homes, Greener Homes* strategy published in early March set out the importance of greater transparency in any post 2013 energy company obligation, including around cost information. We continue to develop the detail of this arrangement, and will pursue new powers as necessary.

Asked by ***Lord Teverson***

To ask Her Majesty's Government what steps they are taking to ensure consumers are informed of how much they are paying towards the Carbon Emissions Reduction Target as a part of their tariff. [HL3000]

Lord Hunt of Kings Heath: The Government support environmental information being made available to customers. Improved transparency could help generate additional demand for energy efficiency measures and so help contribute to our energy and climate ambitions as well as reduce the costs associated with finding customers under schemes like CERT. Suppliers are

already required to provide a range of information on bills and Ofgem produces a factsheet explaining the costs that make up household energy bills which includes an estimate of the per household cost of environmental programmes.

Asked by ***Lord Teverson***

To ask Her Majesty's Government whether they have undertaken research of consumers' awareness of the Carbon Emissions Reduction Target; and, if so, where such research is published. [HL3001]

Lord Hunt of Kings Heath: The Government are taking a number of steps to ensure consumers are assisted in understanding the support available to them. The Government support a one stop shop through the Energy Saving Trust which provides free advice to consumers on energy saving as well as providing easy access to the full range of Carbon Emission Reduction Target offers. This is supported by the Government's overarching Act On CO_2 marketing campaign which demonstrates the benefits of the energy saving measures offered under the Carbon Emission Reduction Target as part of coverage in national television, press, radio and online. We have recently conducted qualitative research among consumers to help deepen our understanding of attitudes, behaviours, motivations and barriers for home insulation. Longer term, we have set out our intention as part of the *Warm Homes, Greener Homes* strategy to continue to improve and simplify consumer access to, and use of, energy saving information. This will combine with effective branding and marketing to build awareness and trust in the available products and services.

Fishing: Stock

Question

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

To ask Her Majesty's Government which of Europe's fish stocks have quotas above the safe biological level determined by scientists; and for which stocks they lack the scientific evidence to make such an assessment. [HL2766]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): Of the 145 fish stocks in the European waters of the Atlantic and neighbouring seas for which the European Commission proposed total allowable catches (TACs) for 2010, there were 111 for which either no new scientific advice was available or the scientific evidence was considered insufficient to determine the true state of the stock. A table listing these has been deposited in the House Library. The stocks that fall into these categories will vary from year to year and the Scientific, Technical and Economic Committee for Fisheries (STECF), which reviews the scientific assessments of them, can still provide advice to the European Commission on a precautionary basis, using historic data.

TAC areas do not always correspond to the areas covered by the biological stocks, and vice versa. It is not therefore straightforward to compare the scientific advice with the subsequent TACs. In addition, complete information on TACs for some stocks shared with Norway is not yet fully available. With those caveats these represent the stocks where the agreed TAC for 2010 exceeds the level advised by scientists. A table listing them has been deposited in the House Library.

Food: Labelling

Question

Asked by ***Lord Hunt of Wirral***

To ask Her Majesty's Government whether Mr Stephen Byers has spoken to the Secretary of State for Business, Innovation and Skills, Lord Mandelson, about food labelling regulations; and, if so, what was (a) the date on which the contact took place, and (b) the nature of the contact. [HL3055]

The First Secretary of State, Secretary of State for Business, Innovation and Skills and Lord President of the Council (Lord Mandelson): I have had no discussion with Mr Stephen Byers about food labelling.

Health: Bispenol Exposure

Question

Asked by ***Lord Harrison***

To ask Her Majesty's Government further to the Written Answer by Lord Darzi of Denham on 15 June 2009 (*WA 178–9*), what assessment they have made of the United States Food and Drug Administration's recent assessment of the potential effects of bisphenol A (BPA) on the brain, behaviour and prostate gland in foetuses, infants and young children; and whether they will re-examine their position on the use of BPA. [HL2879]

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): The Food Standards Agency (FSA) continues to work closely with the European Food Safety Authority (EFSA) and the European Commission to ensure the safety of food contact products containing bisphenol A (BPA), and that this is kept under review.

The EFSA is currently assessing recent studies on BPA, including those on neuro-developmental effects and the FSA will be participating in a meeting arranged by EFSA later this month.

It is expected that the EFSA opinion will be published in May. The FSA will study this opinion in detail and revise its position if it is considered necessary in the interests of consumer safety.

Health: Dentistry

Question

Asked by ***Baroness Masham of Ilton***

To ask Her Majesty's Government what plans they have to encourage other primary care trusts to adopt the model used by the Residential Oral Care Sheffield scheme. [HL2806]

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): The Sheffield scheme is an excellent example of good practice developed to meet the oral health needs of people who may not have ready access to high street National Health Service dental practices. It was commended as a "case scenario" in *Meeting the Challenges of Oral Health for Older People: A Strategic Review* which we funded the Gerodontology Association to produce in 2005. We will look for further opportunities to draw the attention of commissioners of primary care dental services to the scheme.

Health: Diabetes

Questions

Asked by ***Lord Morris of Aberavon***

To ask Her Majesty's Government how much funding they have given to medical research into type 1 diabetes in each of the past 10 years. [HL2888]

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): The information requested is not available.

Both the department and the Medical Research Council invest in diabetes research. The department's National Institute for Health Research, for example, is currently providing infrastructure support for 88 studies specifically concerned with type 1 diabetes via the diabetes clinical research network formed in 2005.

Asked by ***Lord Morris of Aberavon***

To ask Her Majesty's Government what is the ratio of specialist diabetes nurses to the number of people with type 1 diabetes in the United Kingdom. [HL2932]

Baroness Thornton: The annual National Health Service workforce census does not separately identify diabetes specialist nurses. It is therefore not possible to provide the ratio of diabetes specialist nurses to patients with type 1 diabetes. The Government have supported the development of a range of specialist roles within nursing.

Health: Drug Tariff Part IX

Question

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

To ask Her Majesty's Government what discussions they have had with the British Healthcare Trades Association about variations in the provision of stoma and incontinence appliances by Primary Care Trusts under Part IX of the Drug Tariff; and what action they are taking on the matter. [HL2919]

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): The department is in ongoing dialogue with industry, industry trade federations (including the British Healthcare Trades Association), collaborative procurement hubs and primary care trusts (PCTs) over the use of local tenders and product formularies for products and services covered by Part IX of the Drug Tariff. The aim of this dialogue is to agree clear guidance for PCTs on this matter.

Health: Isle of Man

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government what will be the arrangements for healthcare for United Kingdom residents on holiday on the Isle of Man from 1 April. [HL2827]

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): The United Kingdom and Isle of Man Governments have agreed to defer the termination of the current reciprocal healthcare agreement by six months. During this period, the arrangements will remain unchanged with immediately necessary healthcare, while on a temporary visit, being provided free of charge.

Homelessness

Questions

Asked by ***Baroness Miller of Chilthorne Domer***

To ask Her Majesty's Government how many hostel beds are available for those under 18 who have run away from home or care. [HL2968]

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): Provision of emergency accommodation for young people who have run away from home or care is the responsibility of local authorities, and my department does not hold information about the type and capacity of provision available locally.

Asked by ***Baroness Miller of Chilthorne Domer***

To ask Her Majesty's Government what recommendations the cross-Government Working Group For Young People who run away from home has made in the past two years; and how many of them have been acted upon. [HL2971]

Baroness Morgan of Drefelin: The cross-Government Young Runaways Working Group was not constituted to make recommendations to the Government but was closely involved in the development of the Young Runaways Action Plan which was published in June 2008. Since then, the working group has continued to meet every three to four months to steer the implementation of the plan.

House of Lords: Members' Children

Question

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

To ask the Chairman of Committees why there are different provisions for a Member's eldest child and a Member's eldest son (where the right has previously been exercised) to watch the proceedings of the House of Lords from the steps of the throne, as set out on page 19 of the January 2010 edition of the Handbook on facilities and services for Members. [HL3025]

The Chairman of Committees (Lord Brabazon of Tara): Until 2000, the eldest sons of Peers of Parliament were traditionally permitted to sit on the steps of the Throne. The practice was changed as a result of the following recommendation made in the 4th Report from the House of Lords Offices Committee, Session 1999-2000:

1. Steps of the Throne

The Committee has considered the four categories of heirs to peerages currently allowed to sit on the Steps of the Throne:

eldest sons of Peers of Parliament;

eldest daughters or grand-daughters of such Peers when heiresses presumptive;

grandsons of such Peers when heirs apparent;

eldest sons of those who have disclaimed their peerage.

In the case of hereditary peerages, these categories all assumed that those exercising the right would eventually become Members of the House. That is no longer true, except as the result of a by-election to become one of the 90 hereditary Peers who remain Members of the House. The chances of the eldest son, daughter or grandchild of a hereditary Peer who had been a Member of the House being elected would be uncertain, though not impossible.

As the original rationale for the four categories no longer applies, the Committee considers that in future the privilege should be granted to the eldest child of a Peer of Parliament, without regard to gender. The Committee was, however, mindful of the need to avoid any unfairness to eldest sons who had previously exercised their right to sit on the Steps of the Throne but who have older sisters, and therefore recommends that the privilege be granted to:

"the eldest child of a Peer of Parliament (or the eldest son where the right has been previously exercised)".

The House agreed the committee's report on 27 March 2000 without a vote.

Immigration

Question

Asked by ***Lord Bates***

To ask Her Majesty's Government what was the average annual net immigration in each year since 1997, according to household projections. [HL2628]

Baroness Crawley: The information requested falls within the responsibility of the UK Statistics Authority. I have asked the authority to reply.

Media: Women's Magazines

Question

Asked by ***Baroness Gibson of Market Rasen***

To ask Her Majesty's Government what steps they have taken to work with women's magazines to inform women about healthy eating and keeping to a healthy weight. [HL2789]

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): The department's Change4Life campaign began last year with a focus on families with children aged 5-11. In February this year, the campaign was extended to cover adults in the 45-64 age group.

The Change4Life marketing strategy is to use the most effective and relevant communication channels to target our audiences. While the marketing strategy for the adults campaign does not include advertisements in women's magazines, we do target them via public relations to gain editorial content and media partnerships.

The Food Standards Agency (FSA) has also taken a number of steps to work with women's magazines. These magazines have been a key media channel in all the agency's healthier eating related advertising campaigns. The FSA has placed both advertisements and advertorials covering a wide range of healthier eating topics such as salt, saturated fat, labelling, cooking/recipes and teen healthy eating. Women's magazines are also a key target for the agency's public relations activity on a wide range of diet and health issues.

Medical Research Council: PACE Trials

Question

Asked by ***The Countess of Mar***

To ask Her Majesty's Government how much funding was provided by the Department for Work and Pensions for the Medical Research Council's PACE Trials; from whom they received a request for funding; who authorised the release of funds; and whether the department has funded any other MRC research projects. [HL2623]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government & Department for Work and Pensions (Lord McKenzie of Luton): A sum of £90,000, authorised by the then chief medical adviser to the Department for Work and Pensions, was made available as a contribution from the department to the PACE study. It has not been possible to confirm from records the source of the original request. The department's records dating back to 2004 do not show that we have used the Medical Research Council as a supplier of research in that time. Information from before 2004 could only be obtained at disproportionate cost.

NHS: Litigation

Question

Asked by ***Lord McColl of Dulwich***

To ask Her Majesty's Government how many cases of clinical negligence against the National Health Service funded by conditional fee agreements in each of the past five years were closed; in how many such cases damages were paid, whether by a settlement or award by a court; and, in cases where damages were paid, what were (a) the costs of defending the cases, (b) the legal costs paid to the claimants (including (1) base costs, and (2) success fees), and (c) the amounts paid in after the event insurance premiums. [HL2754]

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): The information requested was provided by the NHS Litigation Authority (NHSLA) and is in the following table. With regard to claimants' costs, the NHSLA negotiates with claimant legal teams in order to bring costs down, and a final global figure is agreed on claimant costs on each claim. The NHSLA is therefore unable to provide a breakdown of this figure.

Number of claims closed where claim was funded by Conditional Fee Agreement (CFA)

	CFA claims closed with damages				
Year of Closure	*Number of CFA Claims Closed*	*Number of Claims*	*Damages Paid (£)*	*Defence Costs Paid (£)*	*Claimant Costs Paid (£)*
2004-05	233	151	4,551,050	886,720	2,084,936
2005-06	861	625	31,892,845	5,177,915	14,448,748
2006-07	1,142	799	46,973,706	7,579,297	22,640,640
2007-08	1,559	1,127	62,559,320	10,596,148	37,934,943
2008-09	1,579	1,120	68,841,494	9,828,907	38,888,773
Total	5,374	3,822	214,818,415	34,068,986	115,998,040

NHS: Staff

Questions

Asked by ***Lord Burnett***

To ask Her Majesty's Government how many NHS staff have been (a) dismissed, and (b) made compulsorily redundant, in each year since 1997. [HL2769]

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): Information on the number of staff dismissals is not collected centrally.

Since 2006-07, a collection outlining redundancies within the National Health Service has been carried out by the department. The following table outlines the results of this collection. Data prior to 2006-07 are not collected.

Financial Year	*Total number of compulsory redundancies in the NHS in England*
2006-07	2,330
2007-08	2,223
2008-09	927

Asked by ***Lord Burnett***

To ask Her Majesty's Government how many chief executives of (a) strategic health authorities, (b) foundation trusts, (c) primary care trusts, and (d) other NHS trusts, have been recruited from (1) outside the NHS, and (2) the private sector. [HL2770]

Baroness Thornton: Information on the number of chief executives recruited from either outside the National Health Service or the private sector is not collated centrally.

Asked by ***Lord Burnett***

To ask Her Majesty's Government what is the total continuous NHS service of each chief executive of (a) strategic health authorities, (b) foundation trusts, (c) primary care trusts, and (d) other NHS trusts. [HL2771]

Baroness Thornton: This information is not collated. Information on continuous service of chief executives will be held by individual organisations.

Asked by ***Lord Burnett***

To ask Her Majesty's Government what are the existing and proposed procedures for (a) dismissing NHS staff, and (b) making compulsory redundancies of NHS staff; and what compensation (including pensions) is payable as a result. [HL2772]

Baroness Thornton: National Health Service staff work for independent and autonomous employer organisations. They are responsible for making decisions on the dismissal of staff but are expected to do so in line with current employment law and human resource good practice. The compensation they receive will normally be dictated by the contractual arrangements in place between employee and employer. Any extra contractual payments are subject to Treasury approval.

Redundancy payments to NHS staff are made in line with the arrangements set out in Section 16 of the Agenda for Change Terms and Conditions of Service Handbook. These came into force from 1 October 2006. At the same time changes were made to the National Health Service (Compensation for Premature Retirement) Regulations 2002 and the National Health Service Pension Scheme Regulations 1995. These were also negotiated in partnership with the NHS trade unions. Under these arrangements, the standard redundancy terms are one month's pay per year of reckonable service up to a maximum of 24 months pay. Members aged over the minimum pension age may choose to use their redundancy payment to pay for their retirement pension to be paid on redundancy without reduction. The previous redundancy arrangements

involving enhancements of service of up to 10 years are being phased out and will cease to apply completely from October 2011.

A further form of early retirement available is retirement in the interests of the service where the employer pays for the cost of the members retiring without a reduction for early payment of pension.

Section 16 of the Agenda for Change Terms and Conditions of Service Handbook makes clear that before making staff redundant employers should seek suitable alternative employment either in their own organisation or with another NHS employer.

NHS: Stress

Question

Asked by ***Lord Burnett***

To ask Her Majesty's Government what procedures are in place to monitor overwork and stress amongst clinicians and senior managers in the National Health Service; and what action is taken to safeguard against such overwork and treat such stress. [HL2787]

The Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton): The National Health Service has been working for many years to improve the work/life balance and well-being of their staff, using tools such as the Improving Working Lives accreditation scheme (2000), and NHS Employers' *The healthy workplaces handbook* (2007). The recommendations of Dr Steve Boorman's independent review (November 2009) into NHS staff Health and Well-being are currently being implemented and the NHS Constitution includes a pledge to provide support and opportunities for staff to maintain their health, well-being and safety. The annual staff survey, which goes to all NHS organisations, now also includes questions specifically on health and well-being.

Northern Ireland: Bill of Rights

Questions

Asked by ***Lord Maginnis of Drumglass***

To ask Her Majesty's Government which organisations, bodies, agencies or others have requested an extension to the period for consultation on a Bill of Rights for Northern Ireland; and what were the reasons given for such requests. [HL2343]

Baroness Royall of Blaisdon: Specific requests for an extension to the consultation period were sought from the following organisations:

Children's Law Centre/Save the Children (acting jointly),

Committee on the Administration of Justice,

Community Relations Council,

Human Rights Consortium,

Participation and the Practice of Rights Project, and

UNISON.

Some organisations sought extensions to allow time to agree responses internally while others claimed that the initial consultation period did not give sufficient consideration to the Christmas break. Criticism of the length of the consultation period was also expressed by the Northern Ireland Human Rights Commission, the Northern Ireland Council for Ethnic Minorities and Women's Centres Regional Partnership.

On 24 February the Secretary of State announced an extension of the consultation period until 31 March 2010.

Asked by ***Lord Laird***

To ask Her Majesty's Government whether the chair of the Bill of Rights Forum, Mr Chris Sidoti, has been engaged by the Northern Ireland Human Rights Commission; if, so, in what capacity; at what cost; and whether the Northern Ireland Office was consulted on the matter. [HL2366]

Baroness Royall of Blaisdon: The Northern Ireland Human Rights Commission (NIHRC) met travel, subsistence and accommodation costs for Mr Sidoti in his capacity as former chair of the Bill of Rights Forum to attend various roundtable discussions and workshops in relation to work on a Bill of Rights for Northern Ireland. The commission met the costs using external funding.

The Northern Ireland Office (NIO) was consulted on the proposals to access external funding. This was approved by the Secretary of State, which included £17,000 for "roundtable discussions, including venue hire, flights and accommodation for participants from outside Northern Ireland". Full details of the proposals are available in the Library of the House.

Northern Ireland: Human Rights Commission

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government whether they will place in the Library of the House all correspondence they had with the Northern Ireland Human Rights Commission in February 2010. [HL2493]

Baroness Royall of Blaisdon: All ministerial and official letters between the Northern Ireland Office (NIO) and the Northern Ireland Human Rights Commission (NIHRC) in February 2010 will be placed in the Library of the House.

These are:

letter dated 1 February 2010 from the Deputy Director, Rights, Elections and Legacy Division to the chief executive of the NIHRC in relation to the Commission's 2010-11 budget allocation. (officials' names redacted);

letter dated 3 February 2010 from the Chief Executive of the NIHRC to the head of Human Rights and Equality Unit (NIO) regarding proposals to regrade staff posts in the NIHRC following a job evaluation. (official's name redacted);

letter of thanks dated 15 February 2010 from the Chief Commissioner of the NIHRC to Paul Goggins;

letter dated 15 February 2010 from the Chief Commissioner of the NIHRC to Paul Goggins regarding the accommodation of under 18 year-old boys in Hydebank Wood young offender centre;

letter dated 19 February 2010 from Paul Goggins' private office acknowledging receipt of correspondence from the Chief Commissioner of the NIHRC. (official's name redacted);

letter dated 23 February 2010 from the Permanent Secretary of the NIO to the Chief Commissioner of the NIHRC regarding the commission's budget and request for ministerial meeting; and

letter dated 24 February 2010 from the Chief Commissioner of the NIHRC to the Permanent Secretary of the NIO regarding the commission's 2010-11 budget allocation.

People Trafficking

Question

Asked by ***Lord Hylton***

To ask Her Majesty's Government whether they are consulting ECPAT UK on methods for preventing children suspected of being trafficked from disappearing from care. [HL2849]

The Parliamentary Under-Secretary of State, Department for Children, Schools and Families (Baroness Morgan of Drefelin): We are not currently consulting with ECPAT UK.

On July 1st 2009, we published new statutory guidance on children who run away and go missing from home or care. This sets out the measures local authorities must take whenever a child that they look after goes missing from their care placement and includes specific information about managing support for especially vulnerable groups of looked after children—such as those asylum seeking children who may have been trafficked into the UK.

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 the Wales Office and of public or private bodies answerable to the Secretary of State for Wales or otherwise exercising powers of entry can enter and search the homes or business premises of United Kingdom citizens. [HL2634]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): No officials, public or private bodies answerable to the Secretary of State have powers of entry.

Renewables Obligation Order 2009 (SI 2009/785)

Question

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

To ask Her Majesty's Government whether the outcomes of calculations under regulation 30A(5) of the Renewables Obligation Order 2009 (SI 2009/785) (as inserted by regulation 9 of the draft Renewables Obligation (Amendment) Order 2010) will be required to be published for each relevant generating station; and whether the operation of the formula will be reviewed. [HL3049]

The Minister of State, Department of Energy and Climate Change (Lord Hunt of Kings Heath): Ofgem publishes details of the number of ROCs issued to accredited generating stations each month on the ROC Register at https://www.renewablesandchp.ofgem.gov.uk/.

The formula for calculating how many ROCs will be issued for additional capacity has been extensively consulted on with industry. We will consider any evidence that it is not working effectively.

Roads: Litter Collection

Question

Asked by ***Lord Marlesford***

To ask Her Majesty's Government which companies have contracts with the Highways Agency for litter collection from roads in England; what are the start and end dates of each such contract; and what geographical areas they cover. [HL2961]

The Secretary of State for Transport (Lord Adonis): The Highways Agency is responsible for litter clearance on motorways. Local authorities have responsibility for litter clearance on all other roads, including most all-purpose trunk roads.

The companies contracted by the Highways Agency to collect litter on the strategic road network, the geographical areas covered by those contracts and the contract start and end dates are listed in the table below:

Type of Contract	*Name of the Service Provider (as appears on the contract)*	*Geographical Area covered by Contract (either in counties or specific stretch of road)*	*Start Date of Contract*	*End Date of Contract*
MAC	Enterprise Mouchel (formerly Accord MP)	Cornwall and Devon	22/3/2006	03/07/10
MAC	EnterpriseMouchel	Cornwall and Devon	04/7/2010	03/7/2015

Type of Contract	*Name of the Service Provider (as appears on the contract)*	*Geographical Area covered by Contract (either in counties or specific stretch of road)*	*Start Date of Contract*	*End Date of Contract*
EMAC	Interroute (Raynesway/Serco/Mott MacDonald)	Somerset, Gloucestershire, Wiltshire and Avon	24/12/2004	31/06/2011
MAC	Enterprisemouchel	Hampshire, Surrey, Berks, Oxfordshire, Dorset (part), Wiltshire, Buckinghamshire (part)	03/2008	08/2013
MAC	Balfour Beatty/Mott MacDonald	Kent, Surrey, West & East Sussex	03/2009	09/2014
MAC	Atkins Ltd	Essex, Norfolk, Suffolk and Peterborough	01/06/2008	31/05/2013
MAC	Carillion WSP	Cambridgeshire, Bedfordshire, Hertfordshire, Suffolk (part)	01/09/2008	31/08/2013
MAC	A-One+ (Colas/Halcrow/Costain JV)	Derbyshire, Leics, Lincs, Northants, Notts, Rutland, Warwicks (part), Oxfordshire (part)	01/07/2009	30/06/2014
MAC	Amey LG Ltd	Herefordshire, Shropshire, Staffs, Warwicks (part), West Midlands, Worcestershire	01/07/2009	30/06/2014
MAC	Aone+ (Halcrow/Colas/Costain)	Greater Manchester, Cheshire, Merseyside and parts of Lancashire	05/11/2007	04/11/2012
MAC	Aone+ (Halcrow/Colas/Costain)	Yorkshire and Humberside Ports Motorways	01/10/2009	30/09/2014
MAC	Amey Mouchel	Cumbria, Lancashire (part)	01/07/2003	30/06/2010
MAC	Enterprise Mouchel	Cumbria, Lancashire (part)	01/07/2010	30/06/2015
MAC	A-one Integrated Highway Services	Durham, Northumberland, North Yorkshire, Tyne & Wear	01/07/2003	30/06/2010
MAC	A-one + (Halcrow/Colas/Costain)	Durham, Northumberland, North Yorkshire, Tyne & Wear	01/07/2010	30/06/2015
DBFO	Connect A30/A35 Ltd	A30 from Exeter to Bere Regis	01/101996	30/03/2026
DBFO	Road Management Services (Gloucester) Ltd	A419/A417 Swindon to Gloucester	01/04/1996	31/3/2026
DBFO	Connect+	M25 (incl associated link roads, Dartford Tunnel, + stubs and tails from M25 to GLA boundary)	13/09/2009	19/05/2039
DBFO	Sheppey Route Limited	A249 Stockbury to Sheerness	04/2004	19/02/2034
DBFO	Road Management Systems	A1(M) Alconbury to Peterborough	01/04/1996	31/03/2026
DBFO	UK Highways M40 Ltd	M40 Junctions 1-15 (Denham to Warwick)	06/01/1997	05/01/2027
DBFO	Roadlink Ltd	A69 Newcastle to Carlisle	01/04/1996	01/04/2026
DBFO	Connect A1 - M1 Ltd	M1-A1 Link (Lofthouse to Bramham)	01/04/1996	01/04/2026
DBFO	Autolink	A19/A168 Dishforth to Tyne Tunnel	24/02/1997	24/02/2027
DBFO	Road Management Services (Darrington) Ltd	A1 Darrington to Dishforth	13/02/2003	13/02/2036
DBFO	Connect A50 Ltd	A50/A564 Stoke to Derby	1/07/1996	30/06/2026
PFI	Midland Expressway Ltd (MEL)	M6 Toll	28/02/1992	2054
PFI	Severn River Crossing PLC	M4/M49 Severn Crossings	10/1990	2017

Key:
MAC—Managing Agent Contract
DBFO—Design Build Finance and Operate
EMAC—Enhanced Managing Agent Contract
PFI—Private Finance Initiative

Rural Payments Agency

Questions

Asked by ***Baroness Byford***

To ask Her Majesty's Government in cases where the Rural Payments Agency computer system calculates an acreage of a farm and Rural Payments Agency staff agree a different figure submitted by the former, why the Agency does not make an interim payment. [HL2825]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Davies of Oldham): EC Regulation 73/2009, which governs the single payment scheme, prevents any interim payment being made unless the claim has been fully validated, including checks against the Rural Land Register (RLR).

If the farmer has provided updated mapping information, the RLR must be amended before that validation can then take place and before payment can be made.

With the EC requirement for full validation of a claim before payment, RPA is unable to make interim payments other than in exceptional circumstances, for example, hardship cases.

Asked by ***Baroness Byford***

To ask Her Majesty's Government what assessment they have made of the cost of compensating for cases in which Rural Payments Agency systems have failed. [HL2826]

Lord Davies of Oldham: RPA does not record separate information on consolatory or compensatory payments relating to system failure. The information requested could be obtained only at disproportionate cost.

However, the total amount paid out by RPA for compensation and consolatory ex-gratia payments between January 2006 and March 2010 is £133,202.06.

Trade Unions: Unite

Question

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

To ask Her Majesty's Government whether any full-time Unite representatives are employed in government departments or agencies. [HL2987]

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): The matter of granting facilities time to trade union representatives is delegated to departments. The information requested is not collected centrally.

Departments grant trades union facilities time in line with the ACAS Code of Practice "Time off for Trades Union Duties and Activities". Available at http://www.acas.org.uk/index.aspx?articleid=2391

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

To ask Her Majesty's Government whether any government department has procured training from Unite; and, if so, at what cost. [HL2988]

Baroness Royall of Blaisdon: This procurement of training services is a matter for individual departments. The information requested is not collected centrally.

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

To ask Her Majesty's Government which Unite national office holders have passes to government offices. [HL2989]

Baroness Royall of Blaisdon: Passes may be issued to those who are required to make frequent visits to specific government sites, subject to the usual security checks. To provide further information on the details of departmental pass systems—for example, who holds such passes, applicability and validity—would reduce the effectiveness of access controls and put departments at risk.

Transport Scotland

Question

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

To ask Her Majesty's Government what assessment the Head of the Civil Service has made of the evidence given by the Permanent Secretary to the Scottish Executive to the Public Audit Committee of the Scottish Parliament regarding the departure of the Director General of Transport Scotland from his post; and whether they will consider what action might be appropriate. [HL2591]

The Chancellor of the Duchy of Lancaster (Baroness Royall of Blaisdon): Staffing decisions of the post of Chief Executive of Transport Scotland are delegated to the Permanent Secretary to the Scottish Executive, who is also responsible as Principal Accountable Officer for decisions about whether Scottish Executive spending meets the required standards of propriety, regularity and value for money. The Head of the Civil Service notes that the Auditor General of Scotland has provided his unqualified opinion of Transport Scotland's accounts.

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