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House of Lords

Tuesday, 19 June 2012.

2.30 pm

Prayers—read by the Lord Bishop of Exeter.

Tobacco: Control
Question

2.36 pm

Asked by ***Lord Naseby***

To ask Her Majesty's Government whether they will meet representatives of non-governmental organisations, the tobacco industry and retailers to discuss tobacco control issues, publishing the minutes of such meetings, in line with both the requirements of Article 5.3 of the World Health Organisation Framework Convention on Tobacco Control and the practice of the European Commission and other member states.

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): My Lords, Health Ministers consider all meeting requests carefully. Article 5.3 of the Framework Convention on Tobacco Control requires the Government to protect the development of public health policies from the vested and commercial interests of the tobacco industry. The tobacco industry is welcome to share its views on tobacco control issues with us in writing at any time.

Lord Naseby: My Lords, that is a depressing Answer. How is it possible that in a country that believes in freedom of speech, a highly regulated and legitimate industry employing thousands of people and providing millions of pounds of revenue for Her Majesty's Government can be treated quite so shabbily when the Government are developing new regulations affecting plain packaging, which affects intellectual property, and are involved in consumer safety? I ask my noble friend to think again and to receive representations. The Government may not want to agree with those representations, but surely it is the legitimate right of every elector and every employer in this country to make their representations in person to Her Majesty's Government.

Earl Howe: My Lords, we welcome the views of tobacco companies, retailers and all those with an interest in tobacco-related policy. Ministers in other departments may have legitimate reasons to meet the tobacco industry—I understand that, from time to time, they do—but Health Ministers and Department of Health officials would have a good reason to meet tobacco companies only if a specific matter, as opposed to general issues to do with tobacco control, demanded that. We would have to think carefully whether there was a good reason.

Lord Hunt of Kings Heath: My Lords, I refer the House to my health interests in the register, in particular as president of the Royal Society for Public Health. I ask the noble Earl to continue his efforts to keep those companies at some distance from him and the Department of Health. Will he confirm that it is the view of the Government, as it was of the previous Government, that the tobacco industry promotes a product that has been described by the WHO as being proven scientifically to be addictive and to cause disease and death, and that we should have very little to do with those companies?

Earl Howe: My Lords, I can only agree with the noble Lord, Lord Hunt, that tobacco is extremely damaging to public health. There is no safe level of smoking, and as a party to the Framework Convention on Tobacco Control, the UK has an obligation to take its undertakings very seriously—which means to develop public health policy free from influence from the vested commercial interests of a very powerful industry. However, that does not mean that we close our ears to what the tobacco industry may have to say: we are very happy to hear from it in writing. That promotes transparency, which I think assists everybody in a freedom of information context.

Lord Stoddart of Swindon: But is it not hypocritical of a Government—not only this one but previous Governments—to refuse to meet the tobacco industry, which is their tax-gatherer to the extent of £10.5 billion a year? If they had any honour and really believed that tobacco is such a bad commodity they would ban it. If they believe that, why do they not?

Earl Howe: My Lords, across government we recognise the need for Ministers or officials from other government departments to meet the tobacco industry within the parameters set under the framework convention. There may be legitimate operational reasons why such meetings might be necessary—for example, Her Majesty's Revenue and Customs sometimes meets the tobacco industry to discuss measures to reduce the illicit trade in tobacco. So it is not as if all government departments have closed their doors, but there is a very specific issue to do with Health Ministers and health officials.

Lord Rennard: My Lords, I declare my interest as an unpaid director of Action on Smoking and Health. Does the Minister recognise that any dealings he has with the tobacco industry will be with an industry that is responsible for the deaths of around 300 of its own consumers every day in this country alone, and that any claims that that industry makes must be treated with very great scepticism given its knowledge over many years of the connection between smoking and lung cancer and the addictive properties of nicotine—facts which it well knew but denied for many decades?

Earl Howe: My Lords, my noble friend makes some very powerful points and he is right. Smoking is the biggest preventable cause of death in England. It causes more than 80,000 premature deaths every year. Tobacco use is a significant cause of health inequalities

[Earl Howe]
in the UK. One in two long-term smokers will die as a result of smoking. That demands that we take this issue very seriously indeed.

Lord Faulkner of Worcester: My Lords, is the Minister aware that his answers this afternoon will give a great deal of satisfaction to those of us who care about public health and the pernicious effect of the tobacco industry in its attempt to subvert it? As other questioners have said, this is a unique product: it is the only legal product that kills if it is used as the manufacturers intend. Does he share the views of his Secretary of State, who told the *Times* last month that he wanted the tobacco companies to have "no business" in the United Kingdom? If he does, he can be assured that he will certainly have the support of many Members of this House.

Earl Howe: My Lords, if we are successful in our strategy to reduce smoking rates significantly, an inevitable consequence will be that, over time, less and less tobacco will be sold. It is smoking that we aim to reduce, which will have consequences for the sale of tobacco products. For the good of public health we are trying to arrive at a point where there is no smoking in this country, and that would mean no retail sales of smoking tobacco. Hence I fully support the remarks of my right honourable friend the Secretary of State.

Lord Ribeiro: My Lords, I am grateful to my noble friend for acknowledging the harm and damage that smoking does. Can he assure the House that the Government are equally determined to ensure that smoking will not have an adverse effect on children and children's health in the future?

Earl Howe: The need to reduce and, we hope, eliminate the uptake of smoking by young people is one of our top priorities. I would like to thank my noble friend for his Private Member's Bill, which will certainly enable this issue to benefit from a wide airing. We would all like to see smoking in cars with children eradicated—the health of people can be harmed by second-hand smoke. The key question for us at the moment is what is the most appropriate and workable way of protecting children from second-hand smoking. No doubt we will debate that matter when we come to my noble friend's Bill.

Lord Foster of Bishop Auckland: Does the noble Earl ever speak to one of the best Ministers of Health that his party ever had—and, indeed, probably the best leader that they were never intelligent enough to elect—namely Kenneth Clarke, who they tell me used to get £150,000 a year from British American Tobacco? Perhaps I may just add that Rothmans was one of the best employers that I ever encountered. It was good with the employees, good with the trade unions and good with the community. It was just that its product happened to kill people—like arms dealers'.

Earl Howe: I think that the noble Lord has answered his own question. Being a good employer is one thing, public health is another.

Defence: Trident Replacement Programme

Question

2.45 pm

Asked by ***Lord Lea of Crondall***

To ask Her Majesty's Government what is their assessment of the consequences for nuclear non-proliferation of proceeding with a Trident replacement programme.

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): My Lords, first, I am sure that the whole House will wish to join me in offering sincere condolences to the families and friends of Captain Stephen Healey of the 1st Battalion The Royal Welsh; Corporal Michael Thacker of the 1st Battalion The Royal Welsh; Private Gregg Stone of the 3rd Battalion The Yorkshire Regiment; Lance Corporal James Ashworth of the 1st Battalion Grenadier Guards; and Corporal Alex Guy of the 1st Battalion The Royal Anglian Regiment, who were killed on operations in Afghanistan recently. My thoughts are also with the wounded and I pay tribute to the courage and fortitude with which they face their rehabilitation.

I turn to the Question. The nuclear non-proliferation treaty, the NPT, does not require unilateral disarmament. Maintaining the UK's nuclear deterrent beyond the life of the current system is fully consistent with our obligations. There is also no evidence or likelihood that others would follow the UK down a unilateralist disarmament route. We will achieve sustainable global nuclear disarmament only through a multilateral process, and the NPT represents the best means currently available for pursuing this.

Lord Lea of Crondall: My Lords, on the very sad news from Afghanistan, I am sure that everyone on this side of the House will wish to endorse the sentiments expressed by the Minister and his condolences to the five families concerned. The premise of my Question is multilateral, not unilateral. It is the Government who are, in practice, trying to ride both horses. Recent researches for the Trident Commission show that the nuclear powers will be spending $1 trillion—$1,000 billion—over the next 10 years. How does the Minister expect the non-nuclear states who have signed the non-proliferation treaty to stick to their side of the deal—the grand bargain—unless the likes of us stick to it too? Secondly, the very well-informed defence correspondent of the *Evening Standard* reported yesterday a "decision by stealth" to go for full Trident replacement. Why are the people of this country not entitled to a national conversation about the pros and cons of where we should be heading as we approach the so-called "main gate" decision in 2016?

Lord Astor of Hever: My Lords, we are committed to retaining the minimum credible nuclear deterrent capability necessary to provide effective deterrents, and we keep that under constant review. At the same time, we are working multilaterally for nuclear disarmament and to counter nuclear proliferation. We believe that this is the right balance between our commitment to

long-term disarmament and our responsibilities to ensure our national security. I do not accept the noble Lord's point about stealth. So far as concerns a public debate, a main gate is not expected until about 2016. A decision about how best to consult will be made nearer that time.

Lord Lee of Trafford: My Lords, I join these Benches in the earlier tribute. How seriously is my noble friend's department studying an alternative to Trident? Where is that study up to? Does he not find it rather strange that the Secretary of State for Defence never seems to refer to that study? In this context, would he like to comment on the recent article in *Der* Spiegel which indicated that Israel was arming its submarine Cruise capability with nuclear capacity?

Lord Astor of Hever: My Lords, the purpose of the study is to help the Liberal Democrats to make the case for an alternative to the Trident system, as agreed in the coalition programme for government. I understand that the Cabinet Office is leading the review and it is being overseen by the Minister for the Armed Forces. It will report by the end of the year to the Prime Minister and the Deputy Prime Minister. The Secretary of State did mention it in his UQ in the other place yesterday; it was mentioned several times. On the point about Israel, we are aware of the widespread assumption that Israel possesses nuclear weapons but note that the Israeli Government have refused to confirm this.

Lord Hannay of Chiswick: My Lords, what consideration has been given to—

Lord Gilbert: My Lords, is it not the case that, in order to be credible, any deterrent has to be simultaneously invulnerable and undetectable? That is clearly not the case with any Cruise system even if it is supersonic—

Noble Lords: Order!

Lord Gilbert: I am sorry. It is also clearly not the case with any of the extraordinary arrangements that the Liberal party seems to be contemplating at the moment.

Lord Astor of Hever: My Lords, I do not want to be drawn into an argument with my colleagues but I can say that the first duty of any Government is to ensure the security of their people. The nuclear deterrent provides the ultimate guarantee of our national security, and for the past 42 years the Royal Navy has successfully operated continuous deterrent patrols to ensure that. I pay tribute to the crews and support staff who ensure the continued success of deterrent operations and to the families of all those personnel, many of whom are regularly away from home for long periods.

Lord Hannay of Chiswick: My Lords, what consideration are the Government giving, during the clearly lengthy period between now and the main gate decision on Trident, to making the nuclear dimension of our security posture less prominent than it was during the Cold War and to pursuing measures to reduce both our alert status and those of other nuclear weapon states?

Lord Astor of Hever: My Lords, this will be one of the issues that the alternative study overseen by my colleague, the Armed Forces Minister, will be looking at. As I said earlier, the study will report to the Prime Minister and Deputy Prime Minister by the end of this year.

Lord Rosser: My Lords, from the opposition Front Bench I extend sincere condolences from this side to the families and friends of the five brave members of our Armed Forces who lost their lives in Afghanistan recently in the service of our country. We support retaining our independent nuclear deterrent and are strong advocates of the nuclear non-proliferation treaty. We believe that multilateral disarmament is the route to securing the collective goal of a world free of nuclear weapons. As has been said, the Government set up a Liberal Democrat review on alternatives to the replacement of the Vanguard class strategic submarines carrying the Trident missile. The Minister has indicated when he expects the review to be published, but can he also confirm that the cost of delaying the final decision on the renewal of the Trident programme until after the next general election, purely for internal coalition government political reasons, has already cost the nation's taxpayers £1.4 billion?

Lord Astor of Hever: My Lords, I am grateful to the noble Lord for the shared consensus that the nation's security should be above party politics. So far as concerns the costs of any delayed decision, there are no costs at all, as the main gate decision will not be taken until 2016.

Businesses: Regulation

Question

2.54 pm

Asked by ***The Earl of Lytton***

To ask Her Majesty's Government what progress is being made to ensure that regulation is coherent and regulatory powers are efficiently exercised in accordance with objective assessments of need, risk, proportionality and cost benefits and with regard to the impact on businesses and individuals.

The Earl of Lytton: My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare an interest as a chartered surveyor, with a professional involvement in many aspects of regulation.

Lord Wallace of Saltaire: My Lords, the Government are meeting their aim of not increasing the cost to business from domestic regulation. Through the Red Tape Challenge we have begun to remove or simplify ineffective, unnecessary or obsolete regulation.

[LORD WALLACE OF SALTAIRE]
We recognise that how regulation is delivered is as important as the regulations themselves, which is why we have established the Better Regulation Delivery Office in Birmingham, to improve regulatory delivery and to ensure that the business voice is heard.

The Earl of Lytton: I thank the Minister for that reply, and I applaud the Government's intentions with regard to the reduction of red tape. However, does he agree that not a week goes by without some fresh example of regulatory excess occurring, of burdensome and thoughtless use of non-recourse powers by both government agencies and other bodies? Does he further agree, first, that there should be a national protocol or code that governs the way in which regulations are formulated and applied, and secondly, that some person or body should be vested with legal power to intervene in cases of excessive or inappropriate use of regulatory powers?

Lord Wallace of Saltaire: My Lords, we all understand that there is a constant tug-of-war between those who want more regulation and those who want less. For example, what I do should be entirely unregulated because I can be trusted, what you do should be carefully controlled, and what he does should be stopped.

Baroness Scott of Needham Market: Is my noble friend aware of pilot studies that have recently been carried out in Solihull and Leicester, where local regulators have sought to reduce burdens on small businesses by streamlining the amount of information they collect, co-ordinating inspection visits and sharing data? Can he say whether the evaluation has been carried out, and when we can expect to see the results?

Lord Wallace of Saltaire: I thank the noble Baroness for that question. Yes, that is exactly the sort of thing that the Better Regulation Delivery Office is concerned about. Eighty per cent of regulatory inspection and enforcement is carried out by local authorities, so that the experiment being conducted with these authorities is intended to feed very much into improving the quality of local regulation.

Lord Foulkes of Cumnock: My Lords, is the Minister aware that the lack of regulation of certain businesses in relation to cooling towers in Edinburgh has resulted in a fatal outbreak of legionella, in which two people have died and many others have been seriously injured? Surely the Health and Safety Executive should be doing more to find out the cause of this, and to make sure that it does not happen again. Will the Minister undertake to raise this with the prosecuting authorities in Scotland, to ask why there is no fatal accident inquiry or other kind of inquiry into something that has killed two people and caused so much injury, and why we do not yet know what the cause of it is?

Lord Wallace of Saltaire: My Lords, I do not know how far that aspect of health and safety is devolved or not devolved. However, I will certainly feed that back and will write to the noble Lord if necessary.

Lord Tunnicliffe: My Lords, I congratulate the noble Earl, Lord Lytton, on the brilliant wording of his Question. He asked the Government whether they are making progress against the test of coherence, efficiently exercised regulations, and objective assessments of need, risk, proportionality and cost benefits. Will the Minister affirm that these are the criteria that the Government are using in the better regulation exercise? Will he further affirm that where removing regulations from consumers, customers and the general public is being considered, the same tests, particularly the objective assessment of need, risk, proportionality and cost benefit, will be considered before any protections are removed?

Lord Wallace of Saltaire: My Lords, I can confirm that. These are close to the five principles of good regulation as set out by Christopher Haskins in 1998 under the authority of the then Cabinet Office Minister, David Clark. We are continuing very much on a course set by previous Governments. There is a constant pull and push between demands for further regulation and the constant need to make clear whether the regulations are still needed. I was very pleased to see that one of the Red Tape Challenge repeals has included the trading with the enemy regulation, which is felt not to be so relevant today as it was perhaps 60 years ago.

UK Border Agency: Visa Applications

Question

3 pm

Asked by ***Lord McConnell of Glenscorrodale***

To ask Her Majesty's Government how they will respond to the report by the chief inspector of the UK Border Agency on the handling of visa applications to the United Kingdom from Africa.

The Minister of State, Home Office (Lord Henley): My Lords, we take the chief inspector's recommendations seriously. We have accepted them all and have a team working to ensure that they are implemented so that we provide a high quality service for genuine applicants while ensuring that those who do not meet the Immigration Rules are prevented from entering the United Kingdom.

Lord McConnell of Glenscorrodale: I thank the Minister for his Answer. This is an excellent report by Mr Vine and his team, but it contains some disturbing evidence and very disappointing conclusions. It refers to the disappointing quality of decision-making, the lack of an audit trail, an inconsistent approach to the retention of documents, the manipulation of performance to meet targets, bad value judgments, the use of inappropriate language, and checks that were not performed. If this was an African country, Members of this House would be standing up asking for aid to be withdrawn. The Government need to act more quickly on these recommendations, and I would welcome an assurance from the Minister that they will act more quickly than they have in response to Mr Vine's previous reports and recommendations.

Lord Henley: My Lords, I join the noble Lord in paying tribute to John Vine for the work that he does and for his report. I think that he has slightly overegged the pudding—if I can put it in those terms—in his criticism. The chief inspector found some very good practice in three out of four sections that he visited. He found that they were good on timelines, although I accept the criticism that there was possibly an attempt to push things forward purely to meet targets. There was obviously some criticism about accuracy.

We will obviously move forward as fast as we can on producing responses to this, but, as the noble Lord will be aware, there have been quite a number of reports from the chief inspector's office and we are still processing some of the others. Some of the facts that he deals with in his report relate back to as early as February or even to last year. Things have moved on since then, but I can assure the noble Lord that we are treating this matter with urgency.

Lord Avebury: My Lords, neither entry clearance manager reviews nor complaints procedures are of sufficiently high quality and cannot be relied on. Will my noble kinsman say how family visitors who are to be denied a right of appeal in the future will be able to get redress without an appeal mechanism? Bearing in mind that the ability to apply the law correctly is poor, how will the Government ensure that the errors detected in this report will not happen when decisions are made under the new rules on family immigration?

Lord Henley: My noble kinsman is right to draw attention to the changes we are making, which we discussed at Second Reading of the Crime and Courts Bill. We will have further discussions on this in due course when we get to the appropriate stage of that Bill in Committee. However, I can say, and I think I said it at Second Reading, that someone who has been refused a visit visa can reapply and address the reasons why they were refused. A decision will be received more quickly as a result. Typically, that will take 15 days compared with going through an appeal, which can take eight months. On top of that, the application fee is cheaper when reapplying than when pursuing an appeal.

The Lord Bishop of St Edmundsbury and Ipswich: Is the Minister aware of an anxiety from the churches at the present time about African Christians responding to invitations to enter this country? It seems that a new economic test is being applied to them. Able, well qualified Africans are being invited to conferences in this country and endorsed even by bishops and the Archbishop of Canterbury, but are being turned down because their personal income is low. As most African clergy live on sacrificial stipends that are intermittently paid, we are wondering whether we can ever invite anyone again from Tanzania.

Lord Henley: My Lords, I will look very carefully at this. I cannot believe that someone who is being endorsed by the Archbishop of Canterbury or, for that matter, by any right reverend Prelate, could be turned away. I would want to look at that and at the particular circumstances to which the right reverend Prelate has referred. Certainly, we would not want that to be the case.

Baroness Smith of Basildon: My Lords, as the Minister has accepted in his responses to my noble friend Lord McConnell and the noble Lord, Lord Avebury, the findings in this report impact on the Government's proposals on family visa applications and appeals in the Crime and Courts Bill. What concerns me most about the report is when John Vine says that despite his previous recommendations to help improve the agency, he has seen little progress in a number of areas. He says:

"This is especially frustrating considering the agency has adopted the recommendations, and yet I continue to identify the same issues".

The quality of decision-making appears to be a key issue. The Minister says he wants to act as fast as he can, but have the Government identified the reason why so little action has been taken to correct problems found in the past? Is the problem a lack of will or a lack of resources?

Lord Henley: My Lords, it is neither a lack of will nor of resources, and we are still trying to push these things on as fast as we can. The noble Baroness quite rightly refers to the Crime and Courts Bill; we are in the middle of its Committee stage and we will discuss those provisions when we get to them some time in July. However, it is right to make the point that we think we will be able to provide a better service to a number of people by withdrawing those appeal procedures as a result of them then being able to apply again.

I want to make clear, as I made clear in my original response to the noble Lord, Lord McConnell, is that we take these findings very seriously indeed and we will continue to push them forward. However, the chief inspector produces four or five different reports a year and it takes time to push them forward. He is talking about issues that he looked at back in February, obviously changes have occurred since then and we hope things are better as a result of actions we took following his report. Obviously some things have moved on since then.

Lord Dholakia: My Lords, will the Minister take into account the fact that when a visa application has been refused, the individual's reapplication should not be considered by the same entry clearance officer the second time around?

Lord Henley: I cannot give any guarantee that the application will be looked at by a different officer, but in most cases it obviously will be looked at by a different officer because the situation will have moved on.

Lord Tomlinson: As the Minister referred to the noble Lord, Lord McConnell, as having perhaps "overegged the pudding", can he tell us which particular egg that the noble Lord sought to throw should be excluded from that mix?

Lord Henley: The point that I was trying to get over to the noble Lord, Lord McConnell—and I think the noble Lord, Lord Tomlinson, knows this—is that he was overemphasising all the criticisms in the report without underlining the fact that Her Majesty's inspector on these matters had pointed out that three out of the four sections he visited were performing pretty well and that he found good practice. There obviously were criticisms and, quite rightly, noble Lords opposite and the Government will focus on those criticisms. I just want to say that it was not all that bad.

Trusts (Capital and Income) Bill [HL]

Membership Motion

3.07 pm

Moved by ***The Chairman of Committees***

That, as proposed by the Committee of Selection, the following Lords be appointed to the Special Public Bill Committee on the Trusts (Capital and Income) Bill [HL];

L Beecham, L Davies of Stamford, B Drake, L Faulks, V Hanworth, L Higgins, L Hodgson of Astley Abbotts, L Lloyd of Berwick (*Chairman*), L McNally, B Northover, B Wheatcroft;

That the Committee have power to send for persons, papers and records;

That the evidence taken by the Committee shall, if the Committee so wishes, be published.

Motion agreed.

Gambling Act 2005 (Amendment of Schedule 6) Order 2012

Motion to Approve

3.07 pm

Moved by ***Baroness Verma***

That the draft order laid before the House on 30 April be approved.

Relevant Document: 1st Report from the Joint Committee on Statutory Instruments, considered in Grand Committee on 13 June.

Motion agreed.

Justice and Security Bill [HL]

Second Reading

3.08 pm

Moved by ***Lord Wallace of Tankerness***

That the Bill be read a second time.

The Advocate-General for Scotland (Lord Wallace of Tankerness): My Lords, the United Kingdom's security and intelligence services do superb work in keeping us safe. But if we are to be true to the democratic values that they fight to defend, it is right that their actions should be subject to proper judicial and parliamentary scrutiny.

Every Government must find a way to resolve the competing demands of liberty and security. It is one of the most important challenges to government, and one of its key responsibilities. We need to consider with great care how we strike that balance. I can assure your Lordships that in bringing forward the Bill, Ministers have sought to exercise the care required to strike that balance.

It is because the Government are not satisfied that our system is delivering this scrutiny as well as it should be that we are bringing forward the Justice and Security Bill. The Bill seeks to address three widely recognised problems. First, a number of civil cases cannot be heard by a judge because they hinge on national security sensitive evidence that cannot be disclosed openly. At present the Government's only options are to ask the courts to strike out such cases as untriable or to try to settle them, often for large sums of money, even where they believe that a case has no merit. Secondly, a remedy in intellectual property law has recently been extended to allow someone bringing a claim outside the United Kingdom to apply to a court in London to force disclosure of intelligence information held by the British, including information provided by our allies. This is already seriously undermining confidence among our most important partners, including the United States. Thirdly, oversight of the intelligence community lacks independence from the Executive and has too limited a remit to ensure full and effective accountability.

The response to these problems that I am outlining today has its origin in the *Justice and Security* Green Paper published last year and noble Lords will be aware that the proposals it contained were the subject of extensive debate by the public, stakeholders and the media. The Government listened carefully to the views received during that consultation. While many respondents acknowledged the underlying problems that our proposals were trying to sort out, there was also considerable concern that our plans for closed material procedures—so-called CMPs—were excessively broad in scope and risked undermining this country's proud tradition of civil liberties.

The Government's position has always been that protecting the public should not come at the expense of our freedoms. We have therefore extensively revised our proposals by narrowing their scope and strengthening safeguards. The case I want to make today is that the plans in the Bill are sensible, proportionate and targeted at a genuine and serious problem.

Lord Clinton-Davis: I take it that the noble and learned Lord is aware of the severe criticisms launched by Mr Andrew Tyrie, the Member of Parliament for Chichester. He has come to the conclusion that the proposals in the Bill,

"offend the principle of open justice".

When the noble and learned Lord says that these issues have been ventilated, has he taken into account the views that have been expressed?

Lord Wallace of Tankerness: My Lords, I can assure the House that we are aware of the concerns expressed not just by Mr Tyrie but by a range of people during the consultation and subsequently. We have sought to wrestle with those concerns. I indicated that it is the age-old challenge between trying to balance the interests of security and liberty. I can assure the House that in presenting the Bill we have sought to wrestle with these issues and to come forward with a set of proposals that are sensible, proportionate and targeted at a genuine and serious problem.

I begin with the important matter of improved parliamentary and independent oversight of the security and intelligence agencies. The Intelligence and Security Committee does an excellent job of overseeing the administration, expenditure and policies of the agencies. I know that members of the committee are present here today and have put down their names to speak in the debate. However, the ISC operates within arrangements that were established by Parliament in 1994. In the past 18 years, and particularly since 9/11, the public profile and budgets of, and indeed operational demands on, the agencies have significantly increased, but there has been no change to the statutory arrangements in place for oversight.

Although in the past the ISC has overseen operational matters, it has done so relatively infrequently. The ISC has no explicit statutory locus to oversee such matters. Its statutory remit is also limited to oversight of the security and intelligence agencies, although it has long heard evidence from the wider intelligence community. The ISC currently reports only to the Prime Minister, who appoints its membership, and there are some limitations to the way it works. The heads of the security and intelligence agencies can, in certain circumstances, withhold information from it. The ISC is wrongly perceived by some to be a creature of the Executive, not least as it is funded and staffed by the Cabinet Office. We believe it is time to put the ISC on a much stronger footing and enhance its independence to strengthen the very valuable work it has done so far and give Parliament more effective oversight of the intelligence and security agencies.

Part 1 of the Bill extends the ISC's statutory remit, clarifying that it will in future be able to oversee the agencies' operations. It will also in future report to Parliament as well as to the Prime Minister. Its members will be appointed by Parliament, after nomination by the Prime Minister. In parallel, the Government intend to press ahead with the Green Paper proposals that the ISC is funded by Parliament, accommodated on the Parliamentary Estate and that its staff will have the status of parliamentary staff. Finally, the power to withhold information from the ISC moves to the Secretary of State responsible for that agency; in other words, to a democratically accountable representative. These may sound like technical changes but together they will help to ensure that we have effective, credible and genuinely independent oversight of the activities of the security and intelligence agencies, renewing public confidence that someone is watching the watchers on their behalf.

The provisions of the Bill that have to date probably prompted the most comment are in Part 2, including the use of closed material procedures. The Government are strongly committed to open and transparent justice. However, the courts have long accepted that sensitive intelligence material—for example, the names of security agents or information about techniques used by intelligence agencies—cannot be disclosed in open court. In the famous case in the last century of Scott v Scott, Viscount Haldane in the House of Lords acknowledged that exceptions to that principle of open and transparent justice,

"are themselves the outcome of a yet more fundamental principle that the chief object of courts of justice must be to secure that justice is done ... As the paramount object must always be to do justice, the general rule as to publicity, after all only the means to an end, must accordingly yield".

Under current rules, the only available way of protecting sensitive intelligence material which would otherwise be disclosed, and which would damage the public interest if disclosed in open court, is to apply for public interest immunity. If such an application is successful, the result is the exclusion of that material from the court room. An example of the difficulties which may arise is where a case is so saturated in this type of sensitive material that the PII procedure removes the evidence that one side, either defendant or claimant, requires in order to make its case. The options, then, are not attractive. In judicial reviews, the Government may find themselves unable to defend an executive action taken to protect the public—for example, the exclusion from the United Kingdom of a suspected terrorist or gang lord—simply because they cannot explain their decision when defending it. Equally, claimants may find themselves unable to contest a decision taken against them. This is what Mr Justice Ouseley observed in the recent case of AHK and others where claimants were challenging decisions to refuse naturalisation. His Lordship noted, that if the alternative to a CMP is,

"that the claimant is bound to lose, no matter how weak the grounds against him, there is obvious scope for unfairness towards the claimant".

In claims for civil damages, typically against the Government, the defendant is either forced to seek to settle the case by paying out compensation, assuming the other side is willing to agree to settle, or it has to ask the court to strike out the case as untriable. The result is that these cases are not heard before a court at all. There is no independent judgment on very serious allegations about government actions. The recent settlement of the civil damages claims brought by the former Guantanamo Bay detainees underlines this point. The evidence on which the Government needed to rely in order to defend themselves was highly secret intelligence material, which could not be released in open court.

Lord Morris of Aberavon: I am grateful to the noble and learned Lord. The use of public interest applications is familiar to many of us, even in quite ordinary run-of-the-mill cases brought before a recorder. What is the best estimate the noble and learned Lord can give of the volume of applications where something more is required such as the closed material procedures now proposed?

Lord Wallace of Tankerness: My Lords, I am cautious about hazarding the estimate that the noble and learned Lord asks of me. In the Green Paper, we indicated that

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the kind of cases that we were looking at were 27 current claims. The most recent figures that I have, as of yesterday, show that the numbers have fluctuated somewhat since October 2011 at the publication of the Green Paper. Currently, there are estimated to be 29 live cases, which were of the type cited in the Green Paper. To give an estimate of the number of cases where sensitive information was central to the case, based on current cases handled by the Treasury Solicitor, there are 29 live cases but they exclude a number of appeals against executive actions that are currently stayed. There are 15 civil damages claims; three asset-freeze judicial reviews; seven exclusion judicial reviews; four lead naturalisation judicial reviews; and around 60 further naturalisation judicial reviews stayed behind these cases. I hope that gives the noble and learned Lord and the House an idea of the kind of figures that we are dealing with where we believe that sensitive information is central to the case, based on the estimate of the Treasury Solicitor at this time.

The recent settlement of the civil damages claims brought by the Guantanamo Bay detainees underlines the point that I was making. The evidence which the Government needed to rely on in order to defend themselves was highly secret intelligence material, which could not be released in open court. One option open to the Government would have been to claim PII over that material. If the PII claim had been successful, the Government would have succeeded in excluding a very large quantity of material, but material that they would have wanted to rely on to defend their position. The only practical option was to settle the claims for significant sums without admitting liability.

Although the numbers of these cases are small, they often contain extremely significant allegations about the actions of the Government and the security and intelligence agencies. There is a real public interest in being able to get to the truth of such allegations. Indeed, I think it is arguable to say that the rule of law is supported by courts being able to reach determinations on such matters. Although such settlements are often made without any admission of liability being made, as we all know, mud sticks. Allegations have been made in public that have never been examined or rebutted, and many people choose to believe that they are true. The damage to the reputation of this country can be immense and those unrebutted allegations can be used by individuals seeking to garner support for terrorism in retaliation for perceived wrongdoing by this country.

This is the backdrop against which our plans to allow material to be heard in court via CMPs should be seen.

Lord Thomas of Gresford: Perhaps my noble and learned friend would explain how the public would be more informed and the allegations of wrongdoing on the part of the Government would be exploded by the use of CMP procedures when, by definition, it would all remain secret.

Lord Wallace of Tankerness: My Lords, the point I was seeking to make is that if one goes down the route of PII, the issues will never be tested at all. It may be that so much material has to be withheld that it is not possible for a determination to be made and the Government may be forced to settle. I do not believe that that enhances the confidence of the public in the security services.

It is an irony somewhat overshadowed by the controversy over CMPs that, before recent developments in case law, courts were themselves successfully using this approach in civil cases where sensitive evidence was involved to ensure it could be heard but also considered and tested. For example, a peace campaigner called Maya Evans sought to challenge United Kingdom policy in relation to the transfer to the Afghan authorities of suspected insurgents detained by UK Armed Forces in the course of operations in Afghanistan.

The Marquess of Lothian: I take the noble and learned Lord's argument and I accept the need for having the closed material procedures in relation to information of sufficient sensitivity, but why would equivalent information of the same sensitivity not require the same protection in an inquest?

Lord Wallace of Tankerness: My Lords, as my noble friend knows, these issues were canvassed in the course of the consultation. A considerable number of representations were received indicating that this would not be appropriate in the context of inquests and, of course, PII would apply and would be available. The Government listened to those representations and responded to them by not having inquests covered within the ambit and scope of the Bill.

I was explaining the question on that particular case. An allegation was made that people transferred into Afghan custody were and continue to be at real risk of torture or serious mistreatment and that the practice of transfer was therefore unlawful. There was a CMP for part of the proceedings, with the consent of all parties. After examining all the relevant evidence, the judge concluded that transfers into Afghan custody at two sites could continue only provided that a number of additional safeguards were observed, and that a moratorium on transfers to another site should continue until there were clear improvements that would reduce the risks of mistreatment. In his judgment, Lord Justice Richards paid tribute to the way that the case had ultimately been conducted by all concerned and the Secretary of State's conscientious approach to disclosure.

Lord Campbell-Savours: Before the Minister moves on and following the question asked by the noble Marquess, Lord Lothian, why were inquests singled out? There must be some explanation.

Lord Wallace of Tankerness: I have indicated that there was a consultation. There was strong representation that it would not be appropriate to have this kind of procedure in inquests. My main line of defence is that we listened to the consultation and responded to it. I believe that the right judgment was made.

Lord Lester of Herne Hill: My Lords—

The Minister of State, Ministry of Justice (Lord McNally): I draw the attention of noble Lords to the *Companion* which says that,

"frequent interventions should not be made, even with the consent of the member speaking".

This has the taste of a House of Commons debate about it. The convention of this House is not for frequent interventions.

Lord Wallace of Tankerness: Maybe it is an old habit from the House of Commons that is making me reply.

Lord Lester of Herne Hill: Is not the answer to those noble Lords who have asked these questions quite simply that the right to life under the European convention requires particular requirements of openness and transparency, and therefore there is a strong case for separating inquests anyway?

Lord Wallace of Tankerness: There is a strong case, and having heeded the representations, we took that particular route.

I was trying to explain that CMPs have been part of our legal system sometimes by agreement in civil cases and that is compatible with the interests of justice, so why bring forward the Bill? The reason is that the Supreme Court last year, in a case called Al Rawi, held that a court is not entitled to adopt a closed material procedure in ordinary civil claims for damages. The court held that it was for Parliament, not the courts, to decide where closed material procedures should be available. The consequence has been that we are no longer able to rely on the ability of the courts to find their own way through this difficult issue of disclosure.

Hence the provisions in Part 2 of the Bill, which seek to respond to this challenge in a proportionate and targeted manner. It makes CMPs available in narrow circumstances—namely, in civil proceedings in the High Court, Court of Appeal and Court of Session, where material is relevant to those proceedings, disclosure of which would damage the interests of national security. Importantly, it will be only after the Secretary of State has considered whether a claim for public interest immunity should be made. In line with a recommendation of the Joint Committee on Human Rights, Part 2 also allows for the transfer of judicial reviews of exclusion, naturalisation and citizenship decisions to the Special Immigration Appeals Commission, which has well established closed procedures.

Under the plans, where the Secretary of State applies for a CMP in civil cases, it will be for a judge to declare whether a CMP may be used. The judge will make this declaration on the basis only of national security considerations, not crime or international relations. Inquests, as we have indicated, have been excluded, and we were never intending to make CMPs available in the criminal courts.

Let me stress the safeguards that will apply. The Secretary of State will first have to consider whether the material can be dealt with by making a claim for public interest immunity. This will be a legally binding obligation and failure to comply can be judicially reviewed in the courts. The Secretary of State will then apply to a judge, and that judge will declare whether in principle a CMP may be used. That judge is the decision-maker. He or she must be satisfied that there was material relevant to the case, the disclosure of which would damage national security.

Once the judge has taken a decision in principle that a CMP may be used, a second exercise will take place in relation to the individual pieces of evidence which he decides are national security sensitive, following representations by a special advocate whose job is to act in the interests of the claimant. The judge will determine the treatment of each piece, whether redacting individual names or sentences would allow the evidence to be heard in open, or whether a summary of the evidence withheld must be made available to the other party and so on. The Bill does not upset the established position that it is for Ministers to decide whether to claim PII. Consequently, it should be the responsibility of the Secretary of State to apply for a declaration to the court that a closed material procedure may be used.

Some suggest that the Government may choose between claiming PII and applying for a closed material procedure opportunistically. Some say that the Government would apply for a closed material procedure where the material was helpful to the Government on the basis that the material could be considered by the court and that the Government would claim PII where the material was unhelpful so that, if successful, the PII claim would exclude that material from consideration.

It is not a realistic concern. The intention behind the closed material procedure proposals is precisely so that allegations made against the Government are investigated and scrutinised by the courts. The intention is that all relevant material—helpful or unhelpful—will be before the courts. It is hard to see that a judge assessing a PII claim would conclude that material should be excluded if the Government were seeking cynically to use PII to exclude material that undermined its case when a closed material procedure was available as an alternative.

The Bill makes absolutely clear that the court must act in accordance with the obligations under Article 6 of the European Convention on Human Rights—the right to a fair trial. The overall effect will be that in practice all evidence currently heard in open court will in consequence of the CMP provisions continue to be heard in open court, including allegations against the state. In reality, claimants will receive as much information where there is a CMP as they would following a PII exercise.

A number of respondents to the consultation made the points that CMPs are a departure from the tried and tested fundamentals of open justice. I agree. No Government propose measures in this area lightly. However, as we have seen, CMPs are already used in our justice system, and have been endorsed by both domestic and international courts for the good reason that they provide a fairer outcome when the alternative is simply silence—no judgment at all and no questions answered.

Briefly, I move on to the final set of provisions in the Bill—namely, ensuring the protection of our intelligence-sharing relationships and our domestically

[LORD WALLACE OF TANKERNESS]
generated intelligence through reform of an area of law that is known as the Norwich Pharmacal jurisdiction. The Norwich Pharmacal jurisdiction grew up in the sphere of intellectual property law, where it is used to force a third party who—however innocently—is mixed up in suspected wrongdoing, to disclose information that a claimant feels may be relevant to a case that they are bringing elsewhere.

However, in 2008 a particularly innovative group of lawyers sought, in the case of Binyam Mohamed, to extend this jurisdiction to argue disclosure of sensitive intelligence information held by the British, including that provided in confidence by our allies. A specific right to the disclosure of intelligence services information has been ruled out by Parliament in the Freedom of Information Act and the Official Secrets Act. Yet, since Binyam Mohamed, there have been no fewer than nine attempts to use this jurisdiction in relation to sensitive information, including secret intelligence.

What is particularly troubling about this area of law is that, as the purpose of the proceedings is solely to gain disclosure of material, the Government do not have the option to withdraw from or settle the proceedings. If a judge orders disclosure, there is no option but for the Government to release the secret intelligence. Those who cannot keep secrets soon stop being told secrets. We expect our allies protect to intelligence material that we share with them from disclosure, and they expect the same from us. It is a regrettable fact that uncertainty about our ability to properly protect classified information provided by foreign Governments has undermined confidence among key allies, including the United States. In some cases, measures have already been put in place to regulate or restrict intelligence exchanges.

This is not just about material from overseas partners. We also need to protect from disclosure United Kingdom-generated sensitive material, which, if disclosed, could reveal the identity of United Kingdom officers or their sources and capabilities. To give but one example, not only could disclosure of sensitive intelligence derived from a UK human source jeopardise an ongoing intelligence dividend from that source, it could also blow the source's cover, putting his or her life at risk. Our intelligence agencies cannot operate effectively if they cannot offer their sources protection. Norwich Pharmacal is the wrong tool for national security cases. The Government must regain the discretion to decide what the best way of assisting someone should be. Unless we address this situation robustly, the UK will continue to be seen as a soft touch by those wanting to get access to sensitive information. Our allies will—

Lord Martin of Springburn: I am sorry that the noble and learned Lord is upset about this interruption—

Lord McNally: You of all people.

Lord Martin of Springburn: Yes, me of all people, but I am entitled to seek information. The noble and learned Lord mentioned the Freedom of Information Act and people seeking access through that Act. Is it the case that someone living abroad can make an application under the Freedom of Information Act to information officers over here, including those in Parliament? I hope that I have been brief enough for the noble and learned Lord.

Lord Wallace of Tankerness: I cannot give an immediate answer to that question, but I suspect that it may be the case. The important point in this context, as I have just indicated, is that Parliament has decided that, under the Freedom of Information Act, a specific right to the disclosure of intelligence services information has been ruled out, irrespective of where the applicant comes from.

That is why the Government intend to legislate to exempt from disclosures under a Norwich Pharmacal application material held by, originating from or relating to an intelligence service defined as including the intelligence agencies and those parts of Her Majesty's Armed Forces or the Ministry of Defence that engage in intelligence activities, or if the Minister has certified that it would cause damage to national security or international relations if it were disclosed. I seek to reassure the House that these measures will have no impact on claims that the Government or the security and intelligence agencies have been directly involved in wrongdoing; nor do they prevent someone enforcing their convention rights, and nor do they exempt the agencies from their disclosure obligations in other civil cases. We are not seeking to abolish an ancient right. The Norwich Pharmacal jurisdiction has existed only since the 1970s and it has been found to apply in national security cases only since 2008. Our reforms will affect the jurisdiction only in so far as it applies to national security and international relations.

In conclusion, the Bill seeks to reshape the way we scrutinise the actions of our security and intelligence agencies both inside and outside the courts. The Bill raises significant issues about how we can best achieve that scrutiny, and what should be the respective roles of Government, Parliament and the courts. As I have said, the Green Paper that preceded this Bill prompted much public debate. The Government listened carefully to that debate and have responded by amending their proposals, including taking up a number of suggestions made in a useful report published by the Joint Committee on Human Rights, a number of whose members I am sure will contribute to this debate. There has also been an important report from the Constitution Committee, to which we intend to respond soon.

I think that the provisions in this Bill are a measured and proportionate response to the challenges I described earlier. We need to ensure that the courts can secure that justice is done. We must maintain the rule of law and ensure that proceedings are fair for all parties to the case. We must protect information that is shared with us in confidence, particularly if it would inhibit the ability of our security and intelligence agencies to keep us all safe if there is a risk that it could be disclosed, and we must make sure that those we trust to oversee the work of the agencies on our behalf have the powers to do an effective job and are able to command public confidence.

I look forward to what I am sure will be a thorough and instructive debate both today and as we proceed into Committee on how we meet those challenges and

seek to balance the age-old tension between liberty and security. I commend the Bill to the House and I beg to move.

3.37 pm

Lord Beecham: My Lords, the House will join me in congratulating the noble and learned Lord on a typically lucid exposition of a very complex Bill. In his closing speech at the end of the Second Reading debate on the Crime and Courts Bill, the noble Lord, Lord McNally, made a gracious but utterly misguided reference to me as a "distinguished lawyer". I have no pretensions whatever to such a description. Fortunately, particularly having regard to the Bill we are debating today, this House is not lacking in expertise of the highest order, including as it does eminent legal practitioners, former senior members of the judiciary and others with ministerial, political or professional experience of the intelligence and security world. The latter category embraces, among others, six Members who have served on the Joint Committee on Human Rights, whose report on the Government's Green Paper is required reading, especially for those who, like myself, are seeking to get to grips with this hitherto unfamiliar world.

The very Title of the Bill, juxtaposing as it does two desiderata, justice and security, reflects the dualism with which the legislature has to contend, calibrating as we must the balance between two principles which are potentially in conflict. By its nature, this is a topic in which, as the Government proclaimed at the outset, consensus is highly desirable, if not essential. The Joint Committee managed to achieve just such a consensus on the Government's original proposals, as did the Constitution Committee. It is perhaps unfortunate that the Government chose to proceed from the Green Paper straight to a Bill without first seeking to achieve that broad consensus they had adumbrated, but we are where we are.

I pay tribute to the Government for responding to some of the concerns raised by the Joint Committee and others, notably in relation to restricting closed material procedures to matters of national security and to abandoning proposals for secret inquests, although that may not be universally approved. However, the question for the House to consider is whether the Government have gone far enough—in particular, in relation to making the case for the proposed extension of closed material procedures to further categories.

The process appears to bear the hallmark of the Lord Chancellor, a larger-than-life figure whom his party, many of us think, twice mistakenly rejected as its leader. He is what one might describe as a practitioner of the John Lewis-style of politics—never knowingly understated—and is perhaps inclined to be a little cavalier. Let us consider paragraphs 26 and 27 of the Joint Committee report, in which the committee commented on the Government's initial refusal to publish the responses they received to the Green Paper—perhaps an ironic echo of the closed material procedure, which is one of the most controversial parts of the Bill. On the claim that "improved executive accountability" would be advanced by the Government's proposals, the committee comments in paragraph 212:

> "With the exception of the ministers, not a single witness in our inquiry suggested that the proposals in the Green Paper will improve the accountability of the executive".

Let us consider further the initial refusal to disclose to the independent reviewer of terrorism legislation papers relating to the 20 cases on which the Government purported to rely in support of their proposals.

My noble friend Lady Smith will deal with Part 1 of the Bill when she winds up for the Opposition. In relation to that part, therefore, I confine myself to asking whether the changes proposed in relation to the Intelligence and Security Committee, some of which are welcome, do enough to strengthen parliamentary oversight of intelligence and security activities and, in particular, whether the membership criteria should not perhaps reduce the role of former Ministers and provide for limited terms of office so as to underline the committee's independence of both the Executive and the relevant services, and to allow some refreshment of that membership from time to time. In raising those questions, I of course pay tribute to present and past members of the committee who have sought—and seek—conscientiously to fulfil their role.

I now turn to the most difficult parts of the Bill; first, those dealing with closed material procedures—or applications, in the first instance—under which the Secretary of State may apply to the court for an order in any civil case excluding the disclosure of evidence to a party except to a special advocate, if such disclosure would be damaging to national security. There is a broad view that this effectively will tie the hands of the trial judge.

The second area relates to the so-called Norwich Pharmacal cases, about which the noble and learned Lord closed his opening address. As he indicated, these prevent the disclosure of "sensitive information" which the Secretary of State certifies it would be contrary to the interests of national security or international relations to disclose. In those cases, a party seeks an order for disclosure of evidence in order to pursue or defend a case against a third party, possibly outside the jurisdiction, as in the cases that have attracted attention thus far, where the defendant—that is, the Government—is to some degree mixed up in events; perhaps quite innocently they have come into possession of information. We certainly agree that there is an issue here that needs to be addressed and a case for regularising the situation created by the Norwich Pharmacal cases. The question, of course, is whether the Government's approach is proportionate.

In that connection, Clause 13(3)(a) and (d) appear to go much further than would, on the face of it, be desirable, barring as they do disclosure of any information held by or relating to the intelligence service. That is a very broad definition. Again, it is surely necessary for the role of the judge in deciding on an application not to be more apparent than real so as to ensure a strong judicial check on the information to be exempt.

Of course, it is natural and reasonable for the intelligence and security services to operate in these matters on the precautionary principle. However, it is surely a step too far to accept that their view must be unchallengeable in all circumstances. After all, elements within the service, although not the service itself, have occasionally demonstrated a capacity to follow their own inclinations, sometimes of a political nature, whether of the left or right. One has only to think of the

[LORD BEECHAM]

generation of Soviet agents recruited from Cambridge—I am relieved to say—in the 1930s, or the Zinoviev letter of the 1920s and the campaign waged against Harold Wilson by elements within the Security Service.

Even more important are the questions about the definition of national security and of sensitive information—obvious enough in military cases, but what else might the terms encompass? Should concern for international relations prevent the disclosure of information tending to show unlawful conduct—for example, the use of torture by a foreign power? How are the interests of justice to be preserved and, moreover, to be seen to be preserved? This is an area to which the Joint Committee report drew attention in its closing section. It referred to:

"The impact on media freedom and democratic accountability",

and drew particular and highly critical attention to the Government's position, to which the Government's response was, frankly, extremely weak and unconvincing.

The Joint Committee rightly called for legislation to facilitate the admissibility of intercept evidence to be brought forward urgently. However, its main thrust was to criticise the approach to closed material procedures and the Norwich Pharmacal cases. It makes a strong case that the need to extend closed material procedures beyond the very limited categories to which it applies at present—for example, as the noble and learned Lord reminded us, the Special Immigration Appeals Commission, and there some other areas too—is not based on robust evidence. Further, it argues that the Government are wrong to discount the public interest immunity procedure, under which, as the noble and learned Lord indicated, the Government can always decide not to disclose their arguments, albeit potentially at the cost of having to settle or lose their case.

It is surely not good enough for the Government to plead in their response to the committee that the public would prefer the Government to be able to defend themselves and allow cases to continue to judgment, rather than be settled at greater expense to the public purse. That is to place too heavy a weight on financial considerations, your Lordships might think. In any event, the committee found a,

"troubling lack of evidence of any actual cases demonstrating the problem",

which the Government seek to solve. It was also concerned by the vagueness of the evidence on which they rely.

In relation to the closed material procedure, the whole process conflicts with the words of the noble and learned Lord, Lord Kerr. He said:

"The central fallacy of the argument, however, lies in the unspoken assumption that, because the judge sees everything, he is bound to be in a better position to reach a fair result. That assumption is misplaced. To be truly valuable, evidence must be capable of withstanding challenge".

He continued:

"I go further. Evidence which has been insulated from challenge may positively mislead. It is precisely because of this that the right to know the case that one's opponent makes and to have the opportunity to challenge it occupies such a central place in the concept of a fair trial".

The committee clearly leans towards a modified public interest immunity procedure as an alternative, perhaps including redactions, confidentiality, restricted publicity and "in private" hearings. I commend further consideration of that approach.

In relation to the Norwich Pharmacal cases, the committee rejects the proposed effective ouster, as some would see it, of the court's jurisdiction to authorise disclosure. Its preferred option is for the public interest immunity procedure to be applied where issues of national security arise in cases where a party seeks disclosure of evidence material to his case in another jurisdiction. In paragraph 192 of its report, the committee sets out how this might be achieved. It suggests, as an alternative to other proposals, a rebuttable presumption against disclosure of national security-sensitive information, a test for when the presumption can be rebutted and an agreed list of factors which the court should take into account in determining whether the presumption is to be rebutted.

As I have indicated, there is certainly here an issue which needs to be addressed and a case for regularising the Norwich Pharmacal situation. Again, the question is whether the Government's approach is proportionate and whether the evidence on which they base it is robust. There is a case for qualified exemptions to the residual disclosure jurisdiction, but the House will wish carefully to scrutinise the detail of the Government's proposals and, again, so far as it can, the evidence on which they are based.

In respect of closed material procedures, the question is whether under the Bill as it stands we would end up with a major incursion into the right to a fair trial of issues before the courts, impacting on civil justice rather than preventing damage to national security, which can be and has been achieved in other ways. The Bill's provisions, after all, represent a fundamental change to our system of civil justice and to the rights of parties. Even the parliamentary website headlines today's debate as being about "secret hearings"—a somewhat Kafkaesque description which may nevertheless strike a chord with Members of your Lordships' House.

We must also take note of the independent reviewer's statement that he,

"deprecated the tendency of Ministers to characterise their CMP proposals as justified by national security … as a scare tactic in order to achieve its unrelated proposals on secret civil trials".

Crucially, he added:

"Existing PII procedures do not risk compromising foreign intelligence. The secret trial proposals must stand or fall by their ability to produce just outcomes".

Although Mr Anderson was eventually allowed limited access to some case material and concluded that there is a case for extending CMP, again crucially, he remains convinced that the decision is one for the judge and not the Executive—a point made forcefully by Mr Andrew Tyrie, to whom my noble friend Lord Clinton-Davis made reference, in his analysis of what he described as,

"the inadequacy of the Government's concessions".

In conclusion, in the week in which we welcome Aung San Suu Kyi to address both Houses, I very much look forward to listening to the diverse arguments and opinions of Members of this House as we debate these complex and difficult issues of jurisprudence

and public policy. I know that in the noble and learned Lord, Lord Wallace, we have a thoughtful and sensitive interlocutor, and I hope that, collectively, we might reach a satisfactory conclusion. So far, about the only substantial consensus appears to be a consensus of the concerned, ranging across the political divide—as exemplified by articles in this week's *House Magazine* from the noble Lord, Lord Lester, and the noble Baroness, Lady Berridge, and a powerful critique from Mr Tyrie—to civil liberties organisations, the Law Society and nearly all the special advocates. It is now for the legislature to seek to build a consensus around such change as can be justified as being essential to protect the public, for which the evidential bar is necessarily high and in which the rights of the citizen or claimant are adequately protected. In that process, your Lordships' House is perhaps uniquely well placed to lead the debate.

3.54 pm

Lord Mackay of Clashfern: My Lords, I disagree with the noble Lord, Lord Beecham, about whether his qualifications entitle him to address this House. He is an extremely experienced member of the legal profession who has considerable experience at the heart of the legal profession.

The Bill deals with justice and security. It deals with those two in the opposite order to the title. Although I had the responsibility of introducing the first Bill to Parliament to regulate the security services, I do not propose to get involved in that part of the Bill, but rather in the parts that deal with justice—in particular, Clauses 6 and 13.

I can claim some experience, a long time ago, in the area of public interest immunity. I had the responsibility of informing this House in 1996 that the Government had decided to depart from the old distinction between class cases and content cases in relation to public interest immunity and to concentrate on only one type of public interest immunity: where the specified documents could damage the public interest if disclosed. I am humbled by the remembrance that the junior in one of the cases on public immunity I took before the Appellate Committee of this House has just retired as a member of the Supreme Court. That shows that that was not yesterday.

The doctrine of public interest immunity is a doctrine of substantive law which has a long history and was recognised by Parliament more than once, but particularly in the Crown Proceedings Act. The way the system operates is that the Secretary of State asks for a public interest immunity certificate to be issued in respect of material which would otherwise be disclosed or matters which would be answered orally. He has to decide whether, in his judgment, on the facts of the particular case, those disclosures would damage the public interest.

For a while, it was thought that those certificates should be conclusive, but in a landmark case, Conway v Rimmer, in this jurisdiction, and very much earlier in the northern jurisdiction, it was decided that the certificate would not necessarily be conclusive if the area in question was such as to be central to the determination of the case. The method of dealing with that devised in Conway v Rimmer was that the judge or judges concerned with the case looked at the documents apart from any other party to the case except the person who had responsibility for production and the Secretary of State who had claimed the immunity, so that a degree of secret trial, if you like, has been long established in relation to public interest immunity.

If a public interest immunity certificate was granted in respect of the disclosure of particular information and it was held that it should succeed—in other words, that the balancing exercise of justice to the particular claimant came down in favour of the Secretary of State—that evidence was excluded altogether from the case. That is of itself a type of damage to a completely fair trial, because normally one is entitled to use all the relevant evidence in determining the issues, but a public interest immunity certificate, long established in law, has the effect of completely excluding that evidence, whether it helps or hinders the case of the Government or any other party. So one starts in this area with a system under which a very serious innovation is made to the ordinary rules that in civil cases all relevant evidence is available.

In my view, Clause 6 brings in a new system that is generally available in relation to national security only. It does not bring in any such system in relation to public interest immunity generally. It is only in relation to damage to national security that this arises. The obligations are that when a document is thought by the Secretary of State to be damaging to national security, he can apply to the court in any civil proceedings for a declaration that the case is one in which closed procedure should be allowed. The decision on that point is one for the judge as to whether the disclosure which is required to be made will damage the public interest. A judge of course has a jurisdiction in relation to the nature of the disclosure that has to be made, because it is fundamental to this whole thing that there is an obligation to disclose on the part of what is called the relevant person.

Reference has been made to Mr Andrew Tyrie in the course of the deliberations. I had the privilege of a very full conversation with Mr Andrew Tyrie on the telephone this morning, after receiving a number of communications from him. He rang me up because I had told him in rather brief terms what I was proposing to say about it. I had a full discussion with him, the result of which causes me to emphasise that it is important that the judge in the case has a jurisdiction to decide what has to be disclosed. For example, if it is possible to remove the difficulty by redaction or some other procedure of that kind then the whole difficulty disappears and closed procedure would not be necessary. It is only when there is a residue of material that the judge considers is required to be disclosed and considers that the necessary disclosure would be damaging to national security that this procedure is available. When it is available, it is of course a closed procedure in the sense that it has only the party producing the documents—the Secretary of State—and no other, the other party being represented by a special advocate. The special advocates have made observations about this, which I shall mention in a moment. There is quite elaborate provision for what this procedure is. I want to draw attention to that because it is quite important that we do not lose sight of this matter as it is set out in Clause 7.

[Lord Mackay of Clashfern]

Clause 7 contains provisions arising out of the closed procedure and its subsections (3)(a) and (3)(b) are of great importance. I should say that these provisions are to be introduced by rules of court; I will have a word to say about that at the end of my observations. Clause 7(3) says that the court "must be authorised" by rules of court,

"(a) if it considers that the material or anything that is required to be summarised might adversely affect the relevant person's case or support the case of another party to the proceedings, to direct that the relevant person—

(i) is not to rely on such points in that person's case, or

(ii) is to make such concessions or take such other steps as the court may specify".

Now, the court hears this evidence in the absence of the other party, but let us say that the court is satisfied that in the course of this work by government agencies something is wrong. The court could insist that the Government could no longer maintain a case that there was nothing wrong. These are very powerful inferences from the evidence to be heard. They are very much better than the evidence being excluded altogether. I know of one case where, if the evidence had been excluded altogether, the case for the Government might have gone ahead, whereas when it was, in fact, not excluded, the Government's case collapsed. That is what this allows the court to do, by order. So there are two branches to subsection (3)(a).

Subsection (3)(b) says,

"in any other case, to ensure that the relevant person does not rely on the material or (as the case may be) on that which is required to be summarised".

The court is therefore able to decide that the person in question—that is, the relevant person with the documentation—does not rely on the evidence which is being heard in the closed procedure.

I have only summarised these provisions. They are a great improvement in the case to which they reply to the present situation, where the relevant evidence is excluded altogether, and no inference one way or the other can be drawn from it. My submission to your Lordships is that this closed procedure is an advantage over the present situation and is subject to a good deal of safeguard in the fact that it is the judge who decides what the disclosures have to be and whether they will in fact damage national security. In my discussions with Andrew Tyrie this morning, he was concerned that I should emphasise these points. I think that he had the impression that they may not have been sufficiently emphasised already.

I turn to Clause 13 and the Norwich Pharmacal jurisdiction which was recognised as an authority in 1974 in a case of that name which went to the House of Lords. It was a simple case in a way. Norwich Pharmacal had a patent and discovered that patented material was being imported into the United Kingdom. It could not find out who the importer was, and thought, "It must come through Customs and Excise, and so Customs and Excise must have a note of who the importers are". It applied to the Court and to the House of Lords. Lord Reid, a distinguished Scottish judge, Lord Kilbrandon, another distinguished Scottish judge, and others, decided that Customs and Excise should reveal to Norwich Pharmacal the name of the importer, so that it could take the necessary proceedings.

That seems to be a very straightforward principle. The Explanatory Memorandum says that it does not apply in Scotland. I am not sure why that statement was made, but anyway, it does not matter very much, because the cases that are the subject of the Green Paper and the like have all taken place in this jurisdiction.

Clause 13 describes the jurisdiction, I hope, in accordance with what I have just said:

"This section applies where, by way of civil proceedings, a person ('A') seeks the disclosure of information by another person ('B') on the grounds that … wrongdoing by another person ('C') has, or may have, occurred … B was involved with the carrying out of the wrongdoing (whether innocently or not)"—

the Customs and Excise people were concerned at the import of this, that B was not involved in wrongdoing but was merely carrying out their own responsibility—

"and … the disclosure is reasonably necessary to enable redress to be obtained or a defence to be relied on in connection with the wrongdoing".

It goes on to say:

"A court may not, in exercise of its residual disclosure jurisdiction, order the disclosure of information sought … if the information is sensitive information".

I agree with the noble Lord, Lord Beecham, that the description of "sensitive information" seems extremely wide, and I have questioned whether it is necessary to have it anything like so wide. Clause 13(3)(a) to (d), as the noble Lord said, relate to various aspects of the Security Services, while (e) is for a specified certificate in which the Secretary of State has to consider that it would be contrary to the public interest for the information to be disclosed because of the interests of national security or—and here is the extra—the interests of the international relations of the UK. We know that it is the relationships particularly with the United States, though not only those, that are the issue here. For my part, subject to anything that my noble friend or others may say, I cannot see why the provision needs to go beyond the certification procedure of Clause 13(3)(e).

I have one other rather technical point. This provision is restricted to the residual disclosure jurisdiction of the courts, which means,

"any jurisdiction to order the disclosure of information which is not specifically conferred as such a jurisdiction by or under an enactment".

That, I think, is intended to describe the Norwich Pharmacal jurisdiction. I question whether it is effective for that purpose, because the Norwich Pharmacal jurisdiction was established and quite clearly recognised in 1974. In the Supreme Court Act 1981, the Court was specifically empowered to exercise all the powers that it previously had. Norwich Pharmacal is included in that for the Court of Appeal and the High Court. I question whether this is an effective description of the jurisdiction. There is of course provision for judicial review of the certificates, which are regarded as quite important.

My final point is that in Part 2 of Schedule 3, on the closed material procedure, paragraph 3(1) provides that the Lord Chancellor may make the first rules of court himself. For my part, I would prefer that the rules of court were made by the court authorities that make rules of court ordinarily. I gather that the reason for this is possibly that Parliament might like to see a draft of these rules before the Bill is finalised, and that

the committees of the court might not be willing to provide such a draft. I would have thought, though, that on the whole it would be wiser if the ordinary procedures for rules of court were used. I entirely trust these methods. Of course I entirely trust the Lord Chancellor, but in this case it would be better to use the established methods.

4.12 pm

Lord Thomas of Gresford: My Lords, I declare an interest as a practising barrister. Indeed, I think I was involved in the first case in which public interest immunity procedures were developed following the case of Johnson in January 1993. I was then instructed by the CPS and the security services to prosecute a number of letter bombers who had distributed letter bombs to important and prominent people in north Wales.

I welcome the proposed reforms of the Intelligence and Security Committee, subject to the pertinent criticisms that I know my noble friend Lord Macdonald will advance and which we hope will lead to improvements in the provisions. I intend to confine myself to the second part of the Bill, which deals with CMPs. In a criminal trial, the judge does not decide the facts; he does not decide what happened. The jury hears the evidence presented to it, almost always in open court, and it must be both admissible and relevant.

If either the prosecution or the defence questions the admissibility or relevance of any evidence that the other seeks to adduce, there is an argument in the absence of the jury, and the judge gives a ruling. The judge in a criminal trial may be, and usually is, in possession of information, such as the previous convictions of the accused or evidence that he has ruled to be inadmissible or irrelevant, that the jury—the judges of the facts—never hear and which therefore play no part in its decision. The judge may also know of secret matters, which are never released, even to the defence, because the prosecution successfully claims public interest immunity from disclosure. In a criminal trial, the judge carries out a balancing test between the interests of justice and the interests of national security or other public interest. Crucially, in a criminal case the secret material plays no part in the jury's decision because it does not know about it.

In the vast majority of civil trials, on the other hand, there is no jury. The judge decides the facts, and in applying the law gives a reasoned judgment in favour of one side or the other. Very often he will hear evidence that is prejudicial to one side or another which he deems to be inadmissible or irrelevant, and in these very common circumstances he is trained to ignore such evidence and to put it out of his mind altogether in coming to his conclusions. Invariably, in the course of giving a ruling or a judgment, he will openly and transparently say so.

Part 2 of this Bill is primarily concerned with actions brought by an individual against the state for damages for human rights violations such as torture or other cruel, inhuman or degrading treatment, false imprisonment, illegal renditions, or complicity in such violations in other jurisdictions. This Bill proposes that the judge should hear secret material from one party, the state, which is withheld altogether from the other party, the claimant. In complete distinction from public interest immunity applications, whether in criminal or civil procedures at present, and rulings on inadmissible or irrelevant evidence, the secret material proposed in this Bill is not to be disregarded or put out of the judge's mind. On the contrary, the state claims that the secret material should play a part, perhaps even a crucial and central part, in the judge's ultimate decision on the case before him. Your Lordships will appreciate that this is therefore a very considerable step.

There is an obvious unfairness to the claimant, who cannot answer or test any allegations that may be contained in the secret material. In addition, it is against the public interest generally that the state should hide its case behind a cloak of secrecy and therefore potentially hide its misdeeds, or give the appearance that it is so doing.

It is argued, however, that the claimant can be protected through the closed material procedures that have been developed whereby the state brings an individual before the Special Immigration Appeals Commission in immigration and in other naturalisation and extradition matters. I must tell your Lordships that I opposed these procedures in June 1997, at the Second Reading of the SIAC Bill, on the basis that it was a straightforward breach of natural justice that proceedings should be held in the absence of the appellant or of any legal representative who is instructed by him. I questioned whether a special advocate appointed by the Attorney-General would ever be able to take the appellant's instructions, to have confidentiality with his client, or to have the benefit of legal professional privilege. The model later adopted was that he most certainly would not have those standard requirements of a lawyer, which is repeated in this Bill.

The body of special advocates, security cleared and appointed by the law officers, and now with 15 years' collective experience of the system in action, have unanimously opposed the extension of CMPs to civil proceedings of this nature. They rejected the argument set out in the Green Paper that:

> "A judgment based on the full facts is more likely to secure justice than a judgment based only on a proportion of relevant material".

It was rejected on the grounds on which the noble and learned Lord, Lord Kerr, in the Supreme Court in al-Rawi rejected it. The noble Lord, Lord Beecham, quoted his judgment, but I will not repeat it.

The noble and learned Lord, Lord Kerr, pointed out that the right to know and the right to challenge the other side's evidence is essential to the concept of a fair trial. The special advocates said that his reasoning reflected their experience as special advocates operating in existing CMPs. They added this important point:

> "Our knowledge of the nature of closed material makes us doubt that most of it could be admissible as truth of its contents in civil proceedings, on an application of established rules of admissibility. Such documentary evidence",

which they have seen,

> "routinely contains information which may be second or third hand, and of which the primary source will usually be unidentified (and may be unknown) … It scarcely seems worth applying CMPs to civil proceedings if the evidence concerned will be largely inadmissible as evidence of the truth of its contents (or to which no weight can be attached)".

[LORD THOMAS OF GRESFORD]

In addition to the argument on principle, there is a practical side to this issue. Ninety-five per cent of civil litigation settles. When the pleadings that set out the issues clearly between the parties have been completed and all the documents have been disclosed, as there is an obligation to disclose all the documents relevant to a case, the lawyers on both sides will assess the risks of the litigation and generally can and do come to a compromise based on their assessment of risk in 95% of civil litigation. Settlement may not give both sides all that they want, but sometimes it arrives at satisfactory solutions that are beyond the scope of the trial judge, who can award only the remedies pleaded in the pleadings. One very relevant example of that is that a confidentiality agreement can be entered into on a settlement.

Lord Williams of Elvel: The noble Lord will be aware that members of the Armed Forces have come into our Gallery. As I understand it, this is not a military coup, but we should welcome them in attending our debate.

Lord Thomas of Gresford: I am most grateful for that intervention. Perhaps I may add my welcome and that of these Benches to all visitors, whatever they may be, who come to listen to our proceedings.

Settlement in civil proceedings, which generally happens, is threatened by these procedures. It is ironic that the motivation behind this Bill is that the Government dislike settlements. They demand a judgment, so they say, to clear the air and to banish suspicions of nefarious conduct on the part of government agencies. I reject the reputational damage argument advanced by my noble and learned friend Lord Wallace. That is why I interrupted and pointed out that you cannot say that allegations of torture have been answered when the judge delivers a judgment and says, "Well, I find against you but I can't tell you why". I cannot imagine what that does to clear the air.

What will the Government do in the pleadings? What will they say their case is? How do they propose to alter the disclosure rules to hold back documents which they are duty bound to disclose? How can the claimant's lawyers begin to assess risk in order to consider proposals for settlement that may be advanced by the Government, or to make proposals themselves when that lawyer does not know whether or what secret material is before the judge? When the Government's lawyers go behind the claimant's back into the judge's chambers, they are seeking judgment in their favour on their untested allegations against the claimant. What is more, by this means they can keep secret any embarrassments or nefarious conduct of their own. How does the claimant's lawyer, in practice, advise his client to settle the case? You put settlements out when you adopt a procedure such as that suggested in Part 2 of this Bill. What then should be done?

The experience of the Diplock courts in Northern Ireland provides an acceptable answer. It became impossible, your Lordships will recall, to hold normal jury trials in terrorist cases in that jurisdiction due to intimidation and prejudice arising out of sectarian divisions in the Province. In Diplock trials, the judge sat alone and in criminal cases became the judge of fact as well as of law. He decided what had happened. Accordingly, a separate judge, a disclosure judge, heard applications, for example for the exclusion of inadmissible evidence and applications for public interest immunity. The noble and learned Lord, Lord Kerr, then Lord Chief Justice, in the case of McKeown in the Northern Irish Court of Appeal in 2004 described this different model of procedure in the Diplock system. He said:

> "The system of non jury trial, involving as it does the judge as the tribunal of fact as well as the arbiter on legal issues, clearly calls for a different model than that which is suitable for trial by judge and jury … Since it is a non-jury trial, it would be plainly unsuitable for the judge who must decide on the accused's guilt to see material that might be adverse to him. A 'disclosure judge' had to be assigned to examine the subject of the material that should be made available to the defence. The level of intervention by the disclosure judge depended on the nature of the issues that arose on the trial".

So there, in Northern Ireland, we have experience of where, in criminal matters, the judge was the judge of fact and a separate judge dealt with disclosure and with the sensitive matters of public interest immunity. In my view, it is directly analogous and I shall be putting down amendments to the effect that applications to withhold sensitive material should be made to a designated judge, a disclosure judge, who will be quite separate from the trial judge. The disclosure judge would first of all carry out a public interest immunity exercise so as to identify what material, if any, would assist the claimant's case or damage the Government's case. In my view it is an utterly unsatisfactory feature of this Bill that the Secretary of State only has to "consider" whether he should make a PII application before launching into a CMP application. We shall endeavour to ensure that there shall be no CMP application unless it is preceded by a PII hearing. It should be for the court to consider whether the Government's concerns could be met by the public interest immunity application without recourse to this very much more serious dent in principle of CMP procedures.

The disclosure judge carrying out a public interest immunity application would look at the sensitive material and hear submissions from both sides, including any special advocate appointed for the claimant. He might even, in proscribed circumstances and subject to safeguards, give permission to the special advocate to speak to the claimant. In his ruling on disclosure, the disclosure judge would exclude irrelevant and inadmissible evidence, such as hearsay, opinion and intercept. He could determine what should be disclosed and the form in which the disclosed evidence should be received in open trial before the trial judge who is to decide the facts of the case. He could use redacted documents or precautions to preserve the anonymity of the sources and secret techniques of the security services, and the other precautions that are currently available in PII cases. The point is that the claimant or another interested party, and the public, can be reassured that in the generality of cases, the trial judge—the judge of fact; the judge who produces the final judgment—has not seen anything more in secret from the Government than the claimant has seen and has not been prejudiced thereby. I stress "the public" because public confidence in justice and fairness underpins the whole justice system.

What would happen if the Government were unwilling to disclose secret material that the disclosure judge on a public interest immunity application ordered should be disclosed? In a criminal case at present, the prosecution ordered to disclose something may refuse to do so and may drop the case. In civil cases, as the Government complain, they may decide to settle the case and pay damages to the claimant without admission of liability. It is only in this situation, where the Government still seek to rely on secret material after the public interest immunity application has been heard and the PII possibilities have been explored, that CMP procedures would have any part to play. I concede that in rare and extreme instances, where the interests of justice are overwhelming, the disclosure judge should have the power to convey to the trial judge some fact or circumstance relevant to his determination of the case heard that could not be disclosed to the claimant. Although it is contrary to the principle for which I argue, I can conceive that, sparingly used, such a power would be a safeguard—a safety valve—that should satisfy the Government's concerns. I bear in mind that matters that the Government wish to conceal might not necessarily be in their interests and might reveal facts that would assist the claimant, even though he does not know about them. I also bear in mind the safeguards in Clause 7(3), to which the noble and learned Lord, Lord Mackay, has spoken.

Your Lordships will be pleased to hear that I do not have time to comment on the Norwich Pharmacal issues, which will be developed by my noble friend Lord Lester. I agree with him and the Joint Committee on Human Rights that it is essential that the jurisdiction of the court should not be ousted in these cases, and that any ministerial certificate should be reviewable—not simply on procedural grounds but on the balance of the public interest.

Baroness Stowell of Beeston: My Lords, for the benefit of the whole House, and before the noble Lord, Lord Butler, contributes to the debate, noble Lords might find it helpful if I remind them of what the *Companion* says about speeches in debates where there are no formal time limits. It states that,

"members opening or winding up, from either side, are expected to keep within 20 minutes. Other speakers are expected to keep within 15 minutes. These are only guidelines and, on occasion, a speech of outstanding importance, or a ministerial speech winding up an exceptionally long debate, may exceed these limits".

4.32 pm

Lord Butler of Brockwell: My Lords, I shall do my best to comply with the noble Baroness's exhortation.

The Bill before the House is important, although its purposes are limited. It is also urgent because the Intelligence and Security Committee—I have the honour to be one of its members from your Lordships' House—has seen direct evidence that uncertainty over the matters covered in Part 2 of the Bill is already affecting co-operation with our intelligence allies on matters of national security. I do not want to exaggerate the effect of that but the House should be aware that our proceedings are being watched with more than usual attention by our allies, particularly our United States allies.

The Bill has been the subject of consultation through a government Green Paper, and that consultation has been valuable. It has not only enabled the provisions of the Bill to be widely understood but caused the Government to modify their original proposals in significant ways. As previous speakers have explained, the Bill essentially has two purposes. One is to modernise parliamentary oversight of the United Kingdom intelligence community. The other is to address the problem which has arisen in relation to the disclosure of intelligence in certain civil proceedings. As one of the two Members of your Lordships' House in the Intelligence and Security Committee, which otherwise consists of members of another place, it may appear a little self-centred if I deal first with the Bill's provisions relating to the committee. However, in doing so, I follow the order of the provisions in the Bill.

Like the noble and learned Lord, Lord Mackay, I can claim a certain parental interest in the Intelligence and Security Committee, because as Cabinet Secretary and a counting officer for the secret vote, I was involved in the discussions inside government which led to the establishment of the committee through the Intelligence Services Act 1994.

In the early 1990s, when the main British intelligence agencies—the Security Service, the Secret Intelligence Service and GCHQ—had been publicly avowed, it was recognised that Parliament should have more oversight of the services than the very limited and secret supervision of the agencies which the Public Accounts Committee had previously had. There was a good deal of nervousness within the Government, and particularly within the agencies, about giving parliamentarians access to their work. This was not because the agencies were defensive or embarrassed about their activities. On the contrary, they felt that the scrupulousness with which they carried out their duties could stand up to scrutiny perfectly well. Their anxieties understandably related to the necessary secrecy of their work and about the admission to their secret world of parliamentarians who necessarily conducted their lives in public. So the method of appointment and the range of activities of the committee were very tightly controlled in the 1994 Act. The committee, though comprising Members of Parliament, was appointed by the Prime Minister. The range of supervision of the committee omitted intelligence operations and was confined to expenditure, policy, and administration; and it was restricted to the three agencies rather than to the intelligence community as a whole.

It is greatly to the credit of successive committees and their chairmen, many of whom are Members of your Lordships' House, that the fears of the intelligence agencies have proved unfounded. The members of the committee, admitted within the ring of secrecy, have recognised and observed the obligations of discretion which that access has required. Over the years the intelligence community has developed confidence in the committee as independent friends, sometimes critical but invariably trustworthy and conscious of the importance of the agencies' work.

Consequently, the work of the committee has progressed beyond the confines of the original legislation. It continues to scrutinise expenditure, administration and policy, but it has been useful to the Government

[Lord Butler of Brockwell]
as well as to Parliament that it should sometimes look retrospectively at operations, especially when those operations are controversial or there are lessons to be learnt from them. It is sensible that the opportunity should be taken through this Bill to bring the legislation in line with how the committee now operates in practice. However, the tight restrictions on the way the committee was established have one major disadvantage. The fact that the committee is appointed by the Prime Minister and reports to the Prime Minister can, and does, suggest that the committee is the creature of the Prime Minister and the Government. This has on occasion reduced the confidence of the public and Parliament in the committee's independence.

Some restrictions on the committee continue to be necessary. It is right that the committee should be able to report unrestrictedly to the Prime Minister, but the coverage of its published reports needs to be restricted so that secrets are not disclosed. The record of the committee in the 18 years of its existence demonstrates that it can be freed of some of the shackles originally imposed upon it.

It is now time for the committee to come of age and for legislation to catch up with the extensions of coverage and freedom of action which have, in practice, been extended to the committee as confidence in it has grown. In consequence, the committee will become more useful to Parliament and the public as its independence is more manifestly demonstrated.

I turn now to the more controversial provisions of the Bill, which have been the subject of earlier speeches: those relating to closed procedures. It is important to emphasise—it has been clear from the speeches that this is well recognised—that the provisions in the Bill relate only to civil proceedings. In criminal cases, it has always been the case that when material is so sensitive that it cannot be disclosed to the defendant and yet the prosecution cannot proceed without it, the case cannot proceed. Defendants cannot be convicted in criminal cases on the basis of material of which they cannot be made aware and do not have the opportunity to contest. Criminal cases are brought only by the Crown. The Crown is the prosecutor and members of the public are the defendants. The difference in civil cases is that the Crown may be the defendant. The new development in this area is that the events following 9/11 and detention in Guantanamo Bay and elsewhere have given rise to a spate of civil cases against our Government and others. In the case of our own Government, some of those cases can be defended only by the deployment of intelligence belonging either to our country or to other countries. In the case of action against other Governments, application can be made under a procedure known as the Norwich Pharmacal procedure for disclosure of information held by our Government even though there may be no suggestion that our Government were involved in any wrongdoing.

In such cases, there are only three possible courses. One is the disclosure of the intelligence. The second is conceding the action because material necessary to defend it cannot be used. The third is to institute a procedure such as the closed hearings provided for in the Bill. The seriousness of disclosing intelligence, particularly but not only intelligence supplied by allies, cannot be stressed too strongly. The potential breach of the principle that intelligence provided by allied countries must be restricted to our Government and used only for the purposes for which it was given—a principle known as the control principle—would have very serious consequences. It has already had serious consequences in the one case in which it has occurred.

The second alternative of having to assert public interest immunity and perhaps to concede the action because it cannot be effectively defended means, in my submission, that justice cannot be done. The Government may have to concede large sums in settlement in cases in which the use of intelligence might have enabled the Government to defend themselves and, as has been recognised, that has already happened in some cases. I submit that taxpayers are also entitled to justice.

The third alternative is a closed procedure in which special advocates are given access to the information on behalf of their clients and that is proposed in the Bill. The noble Lord, Lord Thomas of Gresford, in his extremely well informed speech, proposed an alternative procedure which may well be worthy of consideration. However, I think we are all agreed that some way must be found of enabling justice to be done, while information essential to national security is protected. We all agree on the importance of protecting such information.

These closed procedures are an exception to the principle that all relevant information should be freely available to all parties in litigation. It should be clearly limited to cases where it is absolutely necessary. It is therefore welcome that the Government have already reduced the scope of their original proposals from sensitive material to material prejudicial to national security. It is also welcome that the judge should be given the final decision on the application of such procedures.

But I have no doubt that, for example, intelligence provided by foreign partners who do not consent to its disclosure, must be protected. If a judge ruled that its disclosure was essential to the resolution of a case, the Government would have to withdraw their defence. But that is better than the Government having to withdraw their defence in all such cases.

No one pretends that closed proceedings are ideal, but they seem to me to be the least worst option in these cases. It may be that we can make improvements in the special advocate procedure along the lines, for example, of the recommendations in the excellent report of your Lordships Constitution Committee or those of other countries which, in similar circumstances, have introduced closed proceedings legislation. But a procedure on these lines is preferable to the public interest immunity procedure in the United States where Binyam Mohamed was unable to bring any action at all because the Government asserted state secrets privilege.

There are aspects of the Bill with which the Intelligence and Security Committee is not yet fully satisfied and which will need clarification and perhaps amendment as the Bill proceeds. But I think that I speak on behalf of my colleagues on the committee when I say that we welcome the general thrust of the Bill and agree with the importance and urgency that the Government attach to it.

4.46 pm

The Marquess of Lothian: My Lords, it is with pleasure that I follow the noble Lord, Lord Butler of Brockwell—with whom I have the honour to serve on the Intelligence and Security Committee—not least because, after his comprehensive speech, I can keep my own comments relatively brief. I will try not to cover the same ground as he has, although that may not be possible in all instances.

I was first appointed to the ISC when I was a Member of the other place in January 2006. I am therefore reasonably well aware of the current weaknesses of the committee as well as its undoubted strengths—many of which, by the nature of the committee, by necessity go unsung.

The committee has long been criticised for lacking independence, mainly because it is appointed by and reports primarily to the Prime Minister. In fact, all my colleagues on the committee take our independence very seriously. Looking round the House I see others who have served on the committee. I am sure that they, too, would emphasise that they saw their independence as an important part of their function. However, that is not the public perception—and as they used to say to me in Northern Ireland, "It's the perception that matters". This Bill therefore provides that the committee will in future be appointed by Parliament on the nomination of the Prime Minister, after due consultation with the Leader of the Opposition, and will in future publish its main reports direct to Parliament.

Whereas in the past the committee could only request information from the intelligence agencies, in future it will be able to require it and will have enhanced resources with which to obtain it. The committee will also be able to exercise retrospective oversight of the operational activities of the agencies on matters of significant national interest. It has in practice done so for many years past but will now do so on a much wider scale, more regularly and within a legislative framework.

At a time when oversight of the agencies becomes increasingly important, this Bill will enable the ISC to perform its task more effectively on Parliament's and the public's behalf. From being a committee of parliamentarians appointed by the Prime Minister, it will now become effectively—in practice if not in name—a committee of Parliament. There are some details to which I will return at later stages of the legislative process, but by and large the first part of the Bill is a substantial move in the right direction.

The second part of the Bill, on closed material procedures in civil actions, is indeed more contentious. Anything that seeks on the face of it—and once again, perceptions matter—to offend against the principles of open justice is bound to give rise to concern, not least in the media. However, I believe that the Bill, if it is studied carefully, meets nearly all those concerns. The Minister dealt with much of this, and indeed my noble and learned friend Lord Mackay of Clashfern—at whose feet I sat many years ago as a very junior member of the Scottish Bar—gave us a full explanation and justification of the procedure and the ways in which it will be used.

I therefore just want to make a number of general points. My first is that the use of the procedure refers only to where disclosure of the material in question would be damaging to national security—and I emphasise the words "national security". Those two words are vital because they are rightly far more restrictive than the original proposal in the Green Paper of damage to the "public interest". The test of the level of sensitivity that could damage national security must be a narrow one. I too have some doubts as to whether the Bill has created a sufficiently narrow definition. We cannot have a situation where intelligence information is excluded because it was marked "secret" and could embarrass the Government or the intelligence agencies. It has to be shown that it risks the security of this country and its citizens. Secondly, it is important in this respect that it is a judge and not a Minister who will ultimately determine whether the procedure should be used.

There are two such categories of intelligence information which it covers. First, there is the United Kingdom intelligence material, disclosure of which could endanger and undermine our intelligence officers and the vital work that they carry out on our behalf. I hope that we would all agree that that particular definition meets the test of sensitivity. Secondly, there is foreign intelligence material shared with us on the strict understanding of confidentiality—the so-called control principle to which the noble Lord, Lord Butler, referred. Such intelligence, which is essential to us in meeting the threat of international terrorism, does not belong to us; it belongs to those who share it with us. We have no right to disclose it without their consent. This principle is sacrosanct, and it works both ways.

There are those who still question whether breach of the principle would really have serious repercussions in terms of intelligence sharing in the future. I say as categorically as I can that I am in no doubt of this. The noble Lord, Lord Butler, and I have talked to people in the intelligence agencies in the United States and elsewhere and what they have said to me leaves me in no doubt that that would be the case. The truth is that we need their intelligence, and anything that puts that at risk puts at risk our national security and that of our citizens too. Therefore I welcome the changes to the Norwich Pharmacal principle envisaged in the Bill.

My other point is that the CMP is the procedure most likely in the circumstances to achieve justice while protecting—necessarily protecting—the information in question. At present, where such genuinely sensitive material is at issue, there are effectively two options for protecting it. The first is to withdraw the defence, however sound that defence may be, and face massive compensation claims—which, as the noble Lord, Lord Butler, made clear, are met in the end by the taxpayer. The second is to apply for public interest immunity certificates which prevent, as the noble and learned Lord, Lord Mackay of Clashfern, said, the material being seen or heard at all in that it will be totally excluded from the legal proceedings. In my view—as someone, I have to say, who has not practised the law for a very long time—neither of those options is conducive to justice. At least the closed material procedure means that the judge and the special advocates can see and question the material, and in the judge's mind it can then form part of his or her judgment.

I want to make one other point. National security is not just about the general safety of our nation—which of course is paramount—it is also about protecting

[The Marquess of Lothian]
the lives of innocent citizens threatened by terrorism. Frequently that protection is achieved through secret intelligence from both home and abroad, intelligence which must be protected; and therefore sometimes the price of that protection is a curtailment of long-standing rights. I have long believed that the freedom of the individual, enshrined within these rights, is paramount. However, the greatest of these rights is the right to life itself. Protecting life from existential threat must be the priority, even at the cost of some restriction on other rights. I have seen for myself the carnage of terrorist outrages. No rights can take precedence over the means that can prevent them. In the end it is a question of a delicate balance, and in my view, this Bill gets it just about right.

4.55 pm

Baroness Ramsay of Cartvale: My Lords, it is a particular pleasure to follow such distinguished members of the current ISC as the two noble Lords who have spoken before me in this debate. The ISC is a committee on which I have twice had the pleasure of serving in the past. I welcome the Bill which, although not long, deals with rather a large number of important issues that have been in need of being addressed for some time. At later stages I will consider whether amendments might be desirable, but at this Second Reading, I would just like to seek assurances from the Government on some points.

Part 1 of the Bill, on the oversight of intelligence and security activities, deals almost wholly with the Intelligence and Security Committee. The ISC came into being through the Intelligence Services Act 1994 for which the then Prime Minister, John Major, deserves considerable credit. Although the intelligence community had long desired such a development—especially the SIS, which until then was not officially avowed—previous Governments had been reluctant to go down that route. The excellent work of the ISC since its inception has demonstrated the correctness of Prime Minister Major's decision at the time.

Nearly all the proposals, as far as I can see, regularise what in fact has come to be the practice of the ISC, as the noble Lord, Lord Butler, indicated. For example, it looks at intelligence activities outwith the three main agencies and examines in retrospect operations of particularly significant national interest. I would just comment here that there has been a feeling for some time that, as a Joint Committee, consideration should be given to increasing the number of members from your Lordships' House on the ISC. It should be acknowledged here that the present Government have increased that representation from one to two members, but I think a further increase should be considered.

However, there is one point in the Bill on which I would urge caution and seek reassurance; that is, that the ISC should have powers to require information from the agencies subject to a veto from the Secretary of State rather than, as now, the head of an agency. As a general comment, I would advise the Government to be careful of eroding the authority of the heads of the agencies. I was concerned to discover that there had been changes in recent years in the writing of annual confidential reports on the three agency heads, so that where the Secretary of State had featured in the past, the first National Security Adviser was considered to be the "line manager" of the three agency heads. I understand that there has been a change with the change of National Security Adviser. I must make clear here that I have absolutely no idea what the three agency heads felt or feel about this, but that is not the point, This has nothing to do with personalities or personal feelings; to my mind, it is a matter of constitutional propriety.

I do not consider it appropriate that the three heads of agencies should be simply slotted into senior Civil Service rankings. In a democracy, it is essential that the security and intelligence services should be independent, answering to a Secretary of State and directly to the Prime Minister. Of course, in practice it will probably make little difference to refer to a Secretary of State for release of refused information, because it would be a very brave—in the Sir Humphrey usage of that word—Secretary of State who would overrule a director-general of the Security Service, a chief of SIS or a director of GCHQ on the wisdom of releasing sensitive material, and of course much fuller detailed reasoning can be given to Secretaries of State about the sensitivity of sources than can be revealed to the ISC.

However, I urge the Government to proceed with great caution here. Of course the agencies have to be accountable but their independence is crucial. That independence has to be from political or—dare I say it?—Civil Service operational interference. I would appreciate hearing the Minister's comments on this point and would like to be reassured that there is no slippage about safeguarding the operational independence of the agencies.

Part 2 of the Bill, which deals with the disclosure of sensitive material in courts, is of course long overdue but the delay has been caused by having to wrestle with some hugely difficult problems of how to use sensitive intelligence material in our legal system without taking unacceptable risks of damaging sources, both human and technical. This set of proposals seems to tackle these problems rather well. I would just like to make two comments from my own past professional experience—one of revealing information from a liaison service and the other on the use of intercept material as evidence. Both these issues are much more complex, sensitive and difficult than they appear at first glance or to the uninitiated. I have spoken before in this House at some length on both of them, and today at Second Reading I will be very brief.

On the first point, it is a rule—in my day it was called the "third party rule"—engraved on the heart of every intelligence officer, however junior or senior, that material from any liaison service cannot and must not ever be passed on or revealed to a third party without the express permission of the originator. If that rule is violated, the intelligence flow is endangered. We, the British, would enforce this rule absolutely on our own material, so it is to be expected that liaison services would do the same to us, which in some cases would result in very serious adverse consequences and loss of intelligence, as the noble Lord, Lord Butler, and the noble Marquess, Lord Lothian, have made very clear in their speeches today.

Secondly, the question of using intercept as evidence has occupied this House at great length on many occasions over the years, as well as the whole of Whitehall, and I will not rehearse the detailed arguments again here. In spite of the ardent desire of successive Secretaries of State and law officers to achieve this, and the best legal brains in Whitehall wrestling with it, no solution has been found—perhaps until now. It has never been a question of principle but rather one of sheer practicality. A team of distinguished privy counsellors produced a report after lengthy consideration of all the evidence, and an implementation unit was set up in the Home Office to test various possible solutions in conjunction with the privy counsellors, one of whom was my much admired and now sadly missed noble and learned friend Lord Archer of Sandwell. How does all this relate to Clause 6(3)(b) of the Bill, which states that the court must ignore Section 17(1) of the Regulation of Investigatory Powers Act 2000, which deals with the exclusion of intercept material?

I would be grateful if the Minister could elucidate and explain how the Bill's provisions satisfy the requirements of the report of the privy counsellors. I hope that I can be reassured on this and the other points I have raised. On receiving such assurances, I would very happily support this Bill.

5.03 pm

Lord Lester of Herne Hill: My Lords, the Joint Committee on Human Rights is obtaining evidence about this Bill. We intend to report to Parliament before Report stage and to table amendments in the mean time. It is a highly controversial Bill and we welcome the Minister's assurance that there will be sufficient time to scrutinise and improve it during its passage in this House. Like the noble Lord, Lord Beecham, whose speech I found particularly impressive, I think we should strive across the House to achieve consensus where we can.

There are welcome ways, identified by the Minister and others, in which the Bill improves on the overly-broad proposals in the Green Paper, in accordance with the recommendations of the JCHR and others. However, the Government have not accepted our criticisms or recommendations, or those of the independent reviewer of terrorism legislation, the special advocates and civil society, about the lack of sufficient judicial control of the closed material procedure, the judicial balancing role of public interest immunity, as described by the noble and learned Lord, Lord Mackay of Clashfern, and the use of the Norwich Pharmacal disclosure jurisdiction post the Binyam Mohamed decision of the Court of Appeal. I regret to say that the Bill betrays an unjustified lack of confidence in our fine system of civil justice and the capacity of our courts to protect state secrets.

The Select Committee on the Constitution has published its very significant report on the Bill, rightly noting that exceptions to the constitutional principles of open justice and natural justice should be accepted only where demonstrated on the basis of clear evidence to be necessary. The JCHR considers that the Government have not demonstrated by reference to evidence that the fairness concern on which they rely is in fact a real and practical problem.

That said, I must now plead guilty. It is to some extent because of my role at the Bar that the closed material procedure was first introduced. It happened as a result of litigation in both European courts. In the first example, Marguerite Johnston v Chief Constable of the Royal Ulster Constabulary, a Minister had certified that national security prevented part-time reservists in the RUC having the merits of their sex discrimination cases heard at all in Northern Ireland. I had to go through Luxembourg for them to get that conclusive ministerial certificate set aside so that we were able to hold a merits hearing before a tribunal in Northern Ireland, partly in camera, and I am glad to say that the women won.

The second example is the Tinnelly and McElduff cases, where Northern Irish complainants said they had been black-balled from getting government contracts because of their religion, and the Government said otherwise. Again, the puzzle was how to do justice to them when the Government said there were national security considerations affecting their cases. I plead guilty to having suggested, as had many NGOs, that the answer was a closed material procedure. That is what was developed in SIAC. I do not, therefore, start off with a root-and-branch opposition to the closed material procedure. Where properly controlled, it is in my view a proper compromise.

The Constitution Committee rightly decided that the scheme contains three basic flaws. I agree with that but I am not going to talk about it, because the committee did not look at Norwich Pharmacal. I am simply going to concentrate the remainder of my remarks on the ouster in Clause 13. This refers to the court's ability to order the disclosure of any information held by or originating from the intelligence services in civil proceedings where the claimant alleges that wrongdoing by someone else has, or may have, occurred; that our intelligence services were involved in the carrying out of wrongdoing, innocently or not; and that the disclosure is reasonably necessary to enable redress to be obtained or a defence to be relied on in connection with the wrongdoing.

As it stands, Clause 13 would deprive the courts of the ability to make such an order in any circumstance. It is a complete and absolute ouster clause. What would this mean in practice? I will illustrate this in the real world. Shaker Aamer is a Saudi Arabian citizen and the last remaining former British resident detained in Guantanamo. Following his capture in Afghanistan in December 2001, he was detained by US military authorities in Afghanistan, and since February 2002, in Guantanamo. Despite repeated requests by the United Kingdom Government, he has still not been released from Guantanamo.

Shaker Aamer maintains that, during his detention by the US military authorities, he has been subjected to torture and cruel, inhuman and degrading treatment. In English proceedings, he sought disclosure of material alleged to be in the Foreign Secretary's possession supporting his case before the Guantanamo review task force that any confessions that he may have made during his detention were induced by torture or ill-treatment. The basis of his application is the Norwich Pharmacal jurisdiction, as developed in the Binyam Mohamed case.

[Lord Lester of Herne Hill]

The Divisional Court gave judgment on 15 December 2009 granting his application subject to hearing further argument on statutory prohibitions and public interest immunity. The judgment records his allegations of ill-treatment during his detention at Bagram air force base, where his interrogators included a member of the UK Security Service, and his interrogation at Kandahar air force base by two members of the UK Security Service. The Divisional Court held that, to the extent that the information held by the Secretary of State supported that claim, it was essential to the presentation of the claimant's case before the task force. Without the information sought, and without the ability to make submissions on the basis of that information, the claimant's case could not be fairly considered by the task force of the review panel.

The current Norwich Pharmacal cases are also those of Omar and Njoroge, both of which are death-penalty cases pending in Uganda. Their substantive claims have been heard in the Divisional Court and judgment is still awaited. Both men claim that the Foreign Secretary holds information, in the possession of the intelligence service, that will prove that they were rendered and tortured and that this was part of a plan. I shall not say any more about those cases because they are pending, but those men are on trial for their lives in Uganda.

If the powers of our courts to order disclosure in those cases in the interests of justice are abrogated by Clause 13, these men and other alleged victims of torture and serious ill-treatment who are on trial for their lives, and their security-cleared lawyers if they have them, will be denied access to crucial information. It is not appropriate to describe cases of this kind as "legal tourism". They have real and close connections with this country and British intelligence actions here and overseas, and they are properly brought in British courts, just as they could be in other common law countries, including the United States, and civil law countries. Given that it has been suggested that this is some novel English jurisdiction, I have summarised the comparative position on a website, www.odysseustrust.org, where one can find the comparative position across the common law world, the civil law world and the United States.

The motivation driving the Bill is the political need to reassure the United States Government and the CIA, and our own intelligence services, that sensitive information imparted in confidence will remain secret. The working relationships between the intelligence services of the UK and the US are subject to an understanding of confidentiality described as the control principle, which is very important.

In the landmark judgment in Binyam Mohamed, the Lord Chief Justice, the noble and learned Lord, Lord Judge, referred to,

"the painstaking care with which the Divisional Court addressed the public interest arguments advanced by the Foreign Secretary. The approach of the Divisional Court ... represented an exemplary model of judicial patience … If for any reason the court is required to address the question whether the control principle, as understood by the intelligence services, should be disapplied, the decision depends on well understood PII principles. As the executive, not the judiciary, is responsible for national security and public protection and safety from terrorist activity, the judiciary defers to it on these issues, unless it is acting unlawfully, or in the context of litigation the court concludes that the claim by the executive for public interest immunity is not justified. Self evidently that is not a decision to be taken lightly".

I know of no case in which a British court has failed to respect the intelligence relationship between the UK and United States or the need to protect state secrets and national security, including the case of Binyam Mohamed, where the only information ever revealed by a court was information revealed by Judge Kessler in the district court for the District of Columbia in a federal habeas corpus case. When my friend, the noble Lord, Lord Butler, refers to the damage done by that case, he may not appreciate that the only information ever revealed was public and had been revealed in the United States by the federal district court. That, in truncated form, was all that was ever revealed.

Lord Butler of Brockwell: My Lords, I am well aware of that, but the fact is that that was a breach of the control principle. I assure the noble Lord that the United States authorities regarded that as a breach of a sacrosanct understanding between them and the United Kingdom.

Lord Lester of Herne Hill: Yes, surely, just as the previous Government thought that even though in *Spycatcher*, information had been available throughout the United States, it should be stopped in this country. I do not question the sincerity of the belief, simply its rationality.

I hope that the Minister will be able to confirm in winding up this debate that he agrees with the assessment that the British courts have invariably protected state secrets from harmful public disclosure. It is important that that be on public record for the benefit of our American cousins. The Lord Chief Justice also noted in Binyam Mohamed that it had been accepted by and on behalf of the Foreign Secretary, the right honourable David Miliband, in the litigation that,

"in our country, which is governed by the rule of law, upheld by an independent judiciary, the confidentiality principle is indeed subject to the clear limitation that the Government and the intelligence services can never provide the country which provides intelligence with an unconditional guarantee that the confidentiality principle will never be set aside if the courts conclude that the interests of justice make it necessary and appropriate to do so. The acknowledgement"—

that is, by the right honourable David Miliband—

"that the control principle is qualified in this way is plainly correct, and it appears to be accepted that the same limitation on the control principle would apply in the USA. Presumably therefore our intelligence services accept that although the control principle applies to any information which they disclose to their colleagues in the USA, the ultimate decision on disclosure would depend on the courts in the USA, and not the intelligence services, or for that matter the executive".

Indeed, in his first PII certificate, the right honourable David Miliband MP fairly recognised that he,

"may well have been inclined to reach a different conclusion on the balance of the public interest were the US authorities not to have made the commitments to make the documents available"

to Mr Mohamed's US counsel. In other words, the previous Government rightly recognised that the control principle was not absolute. Clause 13 would reverse that.

The Government's briefing describes the Binyam Mohamed case as controversial. It certainly is, and that remains the view of our ally. Even though the previous British Government sought to provide information about his torture and ill-treatment to security-cleared lawyers so that he could have a fair trial for offences carrying the death penalty, the US Government refused to do so. Even after the federal court had published the information in detail, the British Government persisted in seeking to persuade the English Court of Appeal not to publish for fear of offending our American allies who, according to the Government, have lost confidence in our ability to protect their intelligence, and as a result have put measures in place to regulate or restrict our intelligence exchanges. President Obama deserves better informed advice about our courts. The American Supreme Court has itself said:

"Judicial control over the evidence in a case cannot be abdicated to the caprice of executive officers".

Finally, in his evidence in the Binyam Mohamed case, Morton Halperin, a senior expert on security issues, gave extensive evidence explaining how both Governments understand that in both countries the right to order the disclosure of information has to be in accordance with law and subject to the judiciary. Surely the US Government understands our parliamentary system of government under the rule of law by the independent judiciary and would accept a decision by our Parliament that the absolute ouster of the courts' jurisdiction in Clause 13 is disproportionate and unfair. My noble and learned friend the Minister said that Clause 13 will not affect convention rights, but the Government's handout on the human rights memorandum says that there are no convention rights that would obtain so that is not an appropriate safeguard. I very much hope that limitations can be written in to ensure that Clause 13 will no longer continue as an absolute ouster clause.

5.21 pm

Lord Pannick: My Lords, your Lordships' Constitution Committee, of which I am a member, has published a report which emphasises the constitutional significance of Part 2 of the Bill. The closed material procedure would create broad exceptions to two vital principles of our law: the principle of open justice, that evidence must be given in public; and the principle of natural justice, that each of the disputing parties must have the opportunity to respond to the evidence on which the other relies.

These departures from fundamental constitutional principles arise in the context of the point made in the Supreme Court last year by the noble and learned Lord, Lord Kerr of Tonaghmore, which the noble Lord, Lord Beecham, has already quoted:

"Evidence which has been insulated from challenge may positively mislead".

These constitutional principles are not sacrosanct—I entirely accept the point made by the noble Marquess, Lord Lothian—but there are two central questions which the House will wish to consider in Committee and on Report. The first is whether the Government can show that the CMP provisions are truly necessary, so as to justify the breach of fundamental principles. The second question is whether the detailed provisions in the Bill allow for a fair balance between competing interests. I was very pleased that, in opening this debate, the noble and learned Lord the Lord Advocate said that he recognised that the Government were aiming for a fair balance between competing interests: security on the one hand and liberty on the other.

As your Lordships have already heard this afternoon, the courts have very long experience in seeking to ensure the confidentiality of information the publication of which would damage the public interest, whether it is national security or any other interest. The law on public interest immunity—PII—has been developed for that purpose. I declare an interest as a practising barrister who has appeared in cases concerned with PII. As the report of your Lordships' Constitution Committee explains, the Minister produces a certificate and explains that items of relevant evidence cannot be disclosed to the other parties because of national security or some other public interest consideration. The judge then makes an assessment of whether disclosure would harm the public interest and, if so, the judge weighs such harm against the interests of administration of justice and the need to disclose the documents. Because the task of the judge is to balance competing interests, the judge vitally considers whether there are means of preserving confidentiality other than excluding the material from disclosure and other than saying that the evidence cannot be adduced at trial. For example, the court may sit in private. The court may say that there is to be no publication of the names of witnesses such as serving security agents. Disclosure may be restricted to named legal representatives. Most important of all, the judge may decide that the material can be disclosed but only in a redacted form, and that the court will have regard to the redacted form of the material which is seen by all the parties in the case.

The courts have been applying these principles and developing them in PII cases since the decision of the Appellate Committee in Conway v Rimmer in 1968, and indeed before then in Scotland, as the noble and learned Lord the Lord Advocate mentioned—or perhaps it was the noble and learned Lord, Lord Mackay of Clashfern, although both of them have knowledge. I accept, of course, that in some respects the law in Scotland leads the law in England, and this is one of them.

The point is this, and I say it with genuine respect for the noble and learned Lord the Lord Advocate. He wrongly presents PII as a mechanism which, when it applies, necessarily means that the material is excluded from the trial. It is on that premise—a wrong premise, with respect—that he suggests that a CMP is preferable because it will not reduce the amount of information which the other party will receive and it enables the judge to have more information available. The reality, as I have sought to indicate, is that the court has an ability applying PII to devise means by which security and fairness can be reconciled by the use of the mechanisms that I have mentioned. The provisions of this Bill are a long, long way from striking a fair balance between security and liberty or between security and the fair administration of justice, which is the goal stated by the noble and learned Lord the Lord Advocate.

Clause 6(2) obliges the judge to order closed proceedings in relation to material if the judge is persuaded that disclosure of that material would be

[LORD PANNICK]
damaging to the interests of national security. The judge is obliged to order a closed material procedure even if the judge thinks that the case could and should be fairly tried under PII rules and so there is no need for a closed material procedure. The judge may come to that view, if he were allowed to do so, because there are other means of protecting the confidentiality of the material, such as redacting the truly confidential part of it; or perhaps because the material that we are concerned about is of very limited significance in the proceedings, as the judge can see; or because the damage to the public interest by the disclosure of this material might be found by the judge to be absolutely minimal and the damage to the fairness of the proceedings by denying the other party access to it might be substantial.

I suggest that it is quite extraordinary that none of this fair balance is included and that Clause 6(3) requires the judge, when deciding whether to order a closed material procedure, to ignore the possibility of resolving the issues through a public interest immunity certificate. How can that be said to be sensible and proportionate—again, the criteria stated by the noble and learned Lord the Lord Advocate in opening the debate today? If, as I doubt, CMPs are required at all, given the availability of a flexible public interest immunity procedure, the judge surely must have a discretion over whether to impose a CMP, which discretion the judge should exercise only if that is the best available means of securing fairness in the light of confidentiality concerns and having regard to the availability of public interest immunity.

I am also concerned about Clauses 13 and 14—that is, the Norwich Pharmacal provisions. I agree with everything that has been said on that subject by the noble Lord, Lord Lester of Herne Hill. Let us be clear what this involves: those clauses would remove the jurisdiction of our courts to order the disclosure of information to an individual who has a properly arguable case that the representatives of this country are involved in wrongdoing. As pointed out in the powerful memorandum from 50 of the special advocates, these cases may involve the gravest of allegations of wrongdoing —allegations of torture or death abroad in which the authorities in this country are said to be implicated. Surely, in such a context, the House will want to be very careful indeed to ensure that any restrictions on the disclosure of information are strictly necessary.

The Bill would prevent the disclosure of any "sensitive information"—an unjustifiably broad concept, as pointed out today by the noble and learned Lord, Lord Mackay of Clashfern. Disclosure of most of the specified categories of sensitive information under the Bill would be prevented, whether or not it would harm the public interest. The judge makes no such assessment, nor an assessment of whether there is a balance between any harm to the public interest and the detriment to the individual, or indeed the detriment to the public interest by the concealment of this information. Again, I ask the Minister how that can satisfy the attractive criterion that he stated when he opened this debate:

"protecting the public should not come at the expense of our freedoms".

Why are these provisions being brought forward? It is primarily because of the experience in the Binyam Mohamed case in 2010. The Government's concern, which I understand, is that the courts should not require the disclosure of information supplied in confidence to the security services of this country by the security services of our allies. There are two points here. The first is that the provisions that we will be debating in Committee, Clauses 13 and 14, are not confined to information supplied in confidence by a foreign intelligence service when disclosure would damage our relations with that service. The second and perhaps more fundamental point is that there is absolutely no material—the noble Lord, Lord Lester, made this point—to suggest that courts allow or order the disclosure of confidential information that has been supplied to the security services of this country by our allies. The courts have a record of recognising, rightly, the vital importance of protecting national security and the sources of information that go towards it.

It is vital to recollect that in the Binyam Mohamed case the Court of Appeal, the final court that heard the matter, made it clear that the only reason why it was ordering publication of the relevant information was that that very information had already been publicly disclosed by reason of an order made by a court in the United States. The three judges in the Court of Appeal—Lord Judge, the Lord Chief Justice; Lord Neuberger, the Master of the Rolls; and Sir Anthony May, the president of the Queen's Bench Division—stated expressly that they would not have ordered publication in defiance of the statement made by the United States authorities that disclosure of the information would damage national security there and a statement by Ministers here that disclosure would damage our national security because of the need to maintain a relationship of trust with the United States, even though the court was highly sceptical of those claims, but for the fact that that very material had been published by reason of a court order in the United States. If this is the basis of the concern of the security services, which presumably are responsible for asking the Government to bring forward these measures, they simply have not learnt the basic lessons from the *Spycatcher* case.

The Minister sought to assure and reassure the House that Clauses 13 and 14 would not prevent claims by litigants who allege that they have been the victims of serious wrongdoing. What he ignores for that purpose, though, is that without the disclosure of the information such claims cannot in practice be pursued. That is precisely why in 1973 the Appellate Committee created the Norwich Pharmacal jurisdiction that is the subject of Clauses 13 and 14.

On the case made so far by the Government, the provisions of Part 2 of the Bill regarding both CMPs and Norwich Pharmacal orders are, I suggest, unnecessary and unfair, and will undoubtedly damage the ability of the courts to give judgments that are fair and are seen to be fair.

Lord Mackay of Clashfern: Before the noble Lord sits down, he has referred several times to my noble and learned friend as the Lord Advocate. The Lord Advocate is now an officer in Scotland; my noble and

learned friend is the Advocate-General. I understand perfectly what the noble Lord said, but I just wanted to get it right for the record.

Lord Pannick: I am very grateful; I was carried away with enthusiasm for the merits of the debate. I apologise to the Minister, and I hope that that was the only error that the noble and learned Lord, Lord Mackay, could find in the points that I was making.

Civil Service Reform

Statement

5.40 pm

Lord Wallace of Saltaire: My Lords, with the leave of the House, I will repeat a Statement on the Civil Service.

"The British Civil Service plays a crucial role in modern British life. It is there to implement the policies of the Government of the day, whatever their political complexion, and its permanence and political impartiality enables exceptionally rapid transitions between Governments.

Most civil servants are dedicated and hard-working, with a deep-seated public service ethos, but like all organisations, the Civil Service needs continuous improvement. I want today to set out the first stage in a programme of practical actions for reform.

In 2010 we inherited one of the largest Budget deficits in the developed world, and, despite success in improving Britain's financial standing, we still face significant financial and economic challenges, as well as rapid and continuing social, technological and demographic changes. The Government have embarked upon a programme of radical reform of public services to improve quality and responsiveness for users and value for the taxpayer.

In order to succeed we need a Civil Service that is faster, more flexible, more innovative and more accountable. Our Civil Service is smaller today than at any time since the Second World War, and this has highlighted where there are weaknesses and strengthened the need to tackle them.

We need to build capabilities and skills where they are missing. We need to embrace new ways of delivering services. We need to be digital by default. We need to tie policy and implementation seamlessly together. We need greater accountability, and to require much better data and management information to drive decisions more closely. We need to transform performance management and career development.

Today Sir Bob Kerslake, the head of the Civil Service, and I are publishing a Civil Service reform plan, which clearly sets out a series of specific, practical actions to address long-standing weaknesses and build on existing strengths. Taken together, and properly implemented, these actions will deliver real change. They should be seen as the first step on a programme of continuing reform for the Civil Service.

This is not an attack on the Civil Service, and nor have civil servants been rigidly resistant to change. The demand for change does not come just from the public and from Ministers but from civil servants themselves, many of whom are deeply frustrated by a culture that is overly bureaucratic, hierarchical and focused on process rather than outcomes. This was revealed in the responses to our 'Tell us How' website, which aims to get fresh ideas from staff about how they could do their jobs better. Civil Servants bemoaned a risk-averse culture, rampant gradism and poor performance management.

This action plan is based heavily on feedback from civil servants, drawing on what frustrates and motivates them, while many of the most substantive ideas in this paper have come out of work led by Permanent Secretaries themselves. Reform of the Civil Service never works if it feels like it is being imposed on civil servants by Ministers, and neither would it succeed if the Civil Service was simply left to reform itself. Because we want this to be change that lasts, we have discussed these proposals widely, including with former Ministers in the last Government to draw on their experiences and ideas.

The Civil Service of the future will be smaller, pacier, flatter, more digital, more accountable for effective implementation, more capable, and more unified, consistent and corporate. It must also be more satisfying to work for. These actions, therefore, must help to achieve this.

Under published plans, the Civil Service will shrink from around 500,000 to around 380,000 by 2015. It is already the smallest since World War II. Sharing services between departments will become the norm. This has been discussed for years—it is now time to make it happen.

Productivity also needs to improve. For too long, public sector productivity was at best static, while in the private services sector it improved by nearly 30%. Consumer expectations are rising, and there is, as we have been told, no money. The public increasingly expect to be able to access services quickly and conveniently, at times and in ways that suit them.

We are conducting a review with departments to decide which transactional and operational services can be delivered through alternative models. Services that can be delivered online should be delivered only online. Digital by default will become a reality, not just a buzz phrase.

We should no longer be the prisoner of the old binary choice between monolithic in-house provision and full-scale privatisation. We are now pursuing new models: joint ventures, employee-owned mutuals, and new partnerships with the private sector. MyCSP, which manages the Civil Service Pension Scheme, became the first joint venture mutual to spin out of government recently, and provides a model for future reforms.

The Civil Service culture can be slow-moving, hierarchical and focused on process rather than outcomes. Changing this would be very hard in any organisation. We can make a start by cutting the number of management layers. There should only exceptionally be more than eight layers between the top and the front line, and frequently many fewer. This helps to speed up decisions and empower those at more junior levels. Better performance management needs to change

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the emphasis in appraisals emphatically towards delivery outcomes, and to reward sensible initiative and innovation. We also need to sharpen accountability, which is closely linked to more effective delivery.

Management information in government is poor, as the NAO and the PAC, the Institute for Government and departmental non-executive board members have all vigorously pointed out. By October this year, therefore, we will put in place a robust and consistent cross-governmental management information system that will enable departments to be held to account by their boards, Parliament, the public and the centre of government.

We will make clearer the responsibilities of accounting officers for delivering major projects and programmes, including the expectation that former accounting officers can be called back to give evidence to the Public Accounts Committee.

The current arrangements, whereby Ministers answer to Parliament for the performance of their departments and for the implementation of their policy priorities, will not change. However, given this direct accountability to Parliament, we believe that Ministers should have a stronger role in the recruitment of a Permanent Secretary.

We will therefore consult the Civil Service Commission on how the role of the Secretary of State can be strengthened in the recruitment process of Permanent Secretaries. The current system allows the selection panel to submit only a single name to the Secretary of State. At other levels, appointments will normally be made from within the permanent Civil Service or by open recruitment. However, as now, where the expertise does not exist in the department, and it is not practicable to run a full open competition, we are making it clear that Ministers can ask their Permanent Secretaries to appoint a very limited number of senior officials for specified and time-limited executive and management roles.

By common agreement both inside and outside the Civil Service, there are some serious deficiencies in capability. Staff consistently say in surveys that their managers are not strong enough in leading and managing change. In future many more civil servants will need commercial and contracting skills as services move further towards the commissioning model. While finance departments have significantly improved their capabilities, many more civil servants need a higher level of financial knowledge. As set out elsewhere in the plan, the Civil Service needs to improve its policy skills, and to fill the serious gaps in digital and project management capability.

By autumn we will have for the first time a cross-Civil Service capabilities plan that identifies what skills are missing and how gaps will be filled. For the first time, therefore, leadership and potential leadership talent will be developed and deployed corporately.

In 1968, the Fulton commission identified that policy skills were consistently rated more highly than skills in operational delivery. This is still the case today. We will establish the expectation that Permanent Secretaries appointed to the five main delivery departments will have had at least two years' experience in a commercial or operational role. We will move over time towards a more equal balance between those departmental Permanent Secretaries who have had a career primarily in operational management and those whose career has been primarily in policy advice and development.

A frequent complaint of civil servants themselves concerns performance management. They feel that exceptional performance is too often ignored and poor performance is not rigorously addressed. In the future, performance management will be strengthened by a Senior Civil Service appraisal system that identifies the top 25% and the bottom 10%, who will need to show real improvement if they are to remain in the service. Departments are already introducing similar appraisal systems for grades below the Senior Civil Service.

The Government are committed to ensuring that the Civil Service will be a good, modern employer and continues to be among the best employers in the country. Departments will undertake a review of terms and conditions to identify those that go beyond what a good, modern employer would provide. We will also ensure that staff get the IT and security they have been asking for so that they can do their jobs properly.

Another key goal is to improve and open up policy-making so that there is a clear focus on designing policies that can be implemented in practice. Too often in the past, policy has come from a narrow range of views. Whitehall does not have a monopoly on policy-making expertise and in the future open policy-making will become the default. We will create a central fund to pilot policy development commissioned from outside Whitehall.

I repeat that this plan is just the first stage in a programme of reform and continuous improvement. It responds to concerns expressed by Parliament, Ministers and former Ministers but, most importantly, civil servants themselves. None of the actions in the plan is in itself dramatic and none will matter unless it is properly implemented. But together, when implemented, they will represent real change. I will oversee the implementation of this plan. As the paper sets out, Sir Bob Kerslake, the head of the Civil Service, and Sir Jeremy Heywood, the Cabinet Secretary, will be accountable for its delivery through the Civil Service Board.

Change is essential if the Civil Service is to meet the challenges of a fast-moving country in a fast-changing world. I commend the plan to the House".

My Lords, that concludes the Statement.

5.52 pm

Baroness Hayter of Kentish Town: My Lords, first, I thank the Minister for repeating the Statement and therefore giving us the opportunity to comment on it. The Civil Service is key to the provision of public services. Thus, whether we are ensuring the country's security, educating its children, raising taxes, paying benefits or safeguarding the vulnerable, plans for how to achieve high-quality services and their delivery rely enormously on the staff who create and deliver these. The structures, recruitment, training and management of this cadre of staff are a vital part of our delivery of services to the citizenry. The more effective we are in developing and implementing polices, the more we can achieve in improving the lives of all. That means getting value for money out of every pound spent,

whether it is on staff, IT or delivery services. That is important because it leaves more for the end user. The more effective the civil servant, the more resources are released to reach that end user of whatever initiative we have in mind.

For that reason, we welcome the Statement, much of which we should be able to endorse, particularly the aim of focusing on outcomes rather than process, a less hierarchical structure, a pacier—I like that word—regime, speeding up decisions, empowering those working at more junior levels and an emphasis on managing change. All these, and other parts, are to be welcomed, but perhaps the Minister will answer just a few questions on the Statement.

First, while welcoming taking advice from a wider section of stakeholders, experts and academics that there may be in Whitehall, how does that sit alongside the Conservatives' endless attacks on our similar use of consultants when we were the Government and used them for exactly this purpose? Secondly, does the Minister accept that amending policy as it is implemented—learning from mistakes, in the wise words of Sir Terry Leahy in today's *Guardian*—is also vital to any project? That is much harder if there is any split between the external blue-sky thinking and the implementation process. We can see that with the introduction of universal credit where there is a horde of little devils who dwell in the detail. We see it in the Dilnot commission where its hard policy thinking now needs robust resource and policy advice to combine ideas with practical politics. We will look carefully at the suggestion of piloting policy development outside Whitehall.

Thirdly, given that the public service is about delivery—whether collecting taxes, paying out pensions, running courts, staffing our national borders or overseeing financial services or the Insolvency Service—does the Minister acknowledge that this often means sufficient staffing, whether at Heathrow or GCHQ? Will he reassure the House that the cut in numbers will not leave empty seats just where they are most needed?

Fourthly, will the Minister outline the discussions he has held with stakeholders, trade unions and others on these proposals? Is it to be a top-down initiative or a genuine collaborative effort to improve the quality and value for money that we get from this public resource? We know that morale is low, with 30% of the top echelons having left. Will these plans promote or reduce the staff's confidence in their own profession and, in the words of the Statement, make the service "more satisfying to work for."?

Fifthly, are there proposals within this to ensure a more diverse Civil Service, particularly in extending well beyond Oxbridge and the south-east, and increasing gender and ethnic diversity? Sixthly, while applauding the proposals for training and developing "leadership talent", this costs money, especially as the Government have closed the National School of Government. Will the Minister tell us what budget has been set aside for this implementation and what impact assessment has been made of the proposals? Seventhly, what will success look like with these reforms? How will the Minister measure whether the plans achieve their ends?

Finally, public servants serve us all. Sometimes they can do that best when they say, "No Minister". Will the Minister assure us that nothing in these proposals will undermine the ability of senior civil servants—say, fear of dismissal or loss of income—to advise a Minister that a brilliant-sounding scheme might be hare-brained? The impartiality of our Civil Service will be in jeopardy if the people at the top of our policy advice and implementation profession only say, "Yes Minister".

We look forward to examining the detail of these proposals. Where the Government get it right in the need to modernise and improve our Civil Service, we will stand by with our advice and support. We look forward to further discussions on this.

5.58 pm

Lord Wallace of Saltaire: I thank the noble Baroness very much for her cross-party welcome for these proposals. Indeed, much in them builds on and extends the experience of the previous Government. As she will know from watching the exchanges in the Commons, a number of former Ministers also welcome the proposals and regretted that in one or two respects they did not go further. I shall do my best to answer her questions. The search for an effective and efficient Civil Service is constant, and one has to return to it every few years. The demands on the Civil Service are rapidly changing. The digital revolution is an enormous challenge for the Civil Service and for all of us. Those changes are part of what is driving this whole process.

Perhaps I may say as a former academic and think-tanker that outside advice from academics and think tanks comes far cheaper than management consultants. I say that partly with bitter regret at how cheaply I sold myself on occasions to government. However, that is part of what is intended. As the plan sets out, there is a preliminary budget of £1 million for piloting this access for outside advice. I assure the noble Baroness that we are thinking not so much about going back to the consultants who provided their extremely expensive advice but about drawing on outside think tanks and the wealth of academic advice that we have in this country and elsewhere. Again, the previous Government did a certain amount of this; indeed, in the Cabinet Office only yesterday I met an academic whom I know very well and who I know was actively engaged in advising the previous Government.

In terms of ideas and implementation, we are already piloting some delivery models and this is very much a process that we will be pursuing. Those following this will know that the idea of mutuals is being tested. There is already some evidence that it improves the morale and therefore the effectiveness of those involved, and it will be taken further if it proves successful.

Something that we are also always looking at is whether we are sufficiently staffed in the right places. Sometimes you find that you have too many staff in one area and not enough in another. Those of us familiar with the BSE scandal will remember that part of the problem was that not enough staff were left in place for the contingencies that took place. It is a constant problem.

On consultations, I simply repeat that there were very wide consultations inside the Civil Service. Some of us were a little frustrated that more civil servants

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appeared to have seen earlier drafts of this paper than we had. The extent to which senior and relatively junior civil servants had their views taken into account was very wide. That has very positive implications for morale because, if you are carried along with proposals for change, you feel that you are part of it.

As far as the diversity of the Civil Service is concerned, I think that our predecessors, the Labour Government, did extremely well with this, particularly regarding the number of highly talented women in the Civil Service. The departments that I am aware of also have a much higher number of people from different ethnic minorities. I asked a rather senior ethnic minority civil servant what he would say to a young woman of Chinese origin in the Civil Service—a former student of mine—who asked me whether there were any barriers to getting to the top. He said he had not noticed any. I compliment our predecessors on how far they moved on that and assure them that we are continuing very much along that line.

In terms of the budget for implementation, this plan builds in the promise that there will be at least five days of training per year for officials. Civil Service Learning is setting out how this will be done using a range of different providers inside and outside the Civil Service.

We are constantly looking for metrics and measures of success. Management information systems are of course best for measuring the achievement of success, and improving management information systems is a vital part of this.

Finally, I turn to the independence of and challenge for senior civil servants. I can only quote what a senior civil servant who is a very good friend of mine said to me many years ago. He said that at a certain level a competent senior civil servant should always have at the back of his mind that he could move before telling Ministers his thoughts. That was under the previous Government. I think that a number of senior civil servants would say the same but we are always looking for robust and independently minded civil servants who will express their thoughts to Ministers. Of course, the other side of that is that Ministers need to accept that their relationship with officials has to be on that basis.

6.03 pm

Baroness Turner of Camden: My Lords, it so happens that this evening the Public and Commercial Services Union is holding its annual parliamentary reception in the Strangers' Dining Room, so I went along to talk to its members. I found that they were very concerned because they believe there is the possibility of hundreds of redundancies and they do not seem to have had very much consultation or negotiation. I promised them that I would faithfully represent them as far as consultation is concerned.

Criticism in certain areas of public work has indicated a lack of public acceptance, but members pointed out that, rather than fewer public servants, in many instances there is a case for having more. They pointed out, for example, that at airports there were very long queues because there simply were not enough staff. That is true in many areas of public service where the union believes there should be more public servants rather than fewer.

Public service is very necessary to ordinary people. If you are very rich, you do not rely on public services, but if you are not very rich you do. Therefore, an effective public service is something that we expect the Government to provide. From what the officials of this union told me—and one must remember that they represent 280,000 public servants—it is quite clear that they do not feel they have been consulted or had the opportunity to negotiate on what is a very substantial plan. Is the Minister making arrangements for this union and other unions in the sector to be properly consulted and properly involved before we proceed with what seems to be a very large upheaval within the provision of public services?

Lord Wallace of Saltaire: My Lords, I can promise the noble Baroness that there is a constant dialogue with all the unions. I am sorry that the PCS feels it has not been consulted sufficiently but I am well aware that the dialogue goes on. I am also well aware that people in all sectors of society have contact with the public service. If the noble Baroness has read the *Times* today she will know that there are some rich people who prefer not to hear from HMRC, but HMRC is indeed determined that they should hear from it.

Lord Shutt of Greetland: My Lords, it is true that managing change and driving though radical policies can prove difficult. It is also true that there are areas where the private sector can and does deliver good-quality public services at competitive costs. We should not be opposed to moving the boundaries between public and private sector delivery of public services where it can be justified or in testing payment by results as a way of promoting greater efficiency and value for money for the taxpayer. However, for the past 140 years we have benefited from a public service selected on merit and political neutrality. As someone who stood down from government last month, I can say that I found civil servants civil, hard-working and helpful. Does the Minister agree that we should not approach public sector reform with a mindset of "public sector bad, private sector good"?

I do not think there is evidence that the public sector yet has in place the kind of legal, contractual and commissioning expertise to make sure that the taxpayer is going to be properly protected or the quality of service required guaranteed. Does the Minister agree that it is essential that the reforms have built into them full and proper systems of parliamentary accountability? We must ensure that, in commissioning externally sourced policy-making, we do not fall into the habit of commissioning external consultancy almost as an alternative to ministerial decision-making.

Lord Wallace of Saltaire: My Lords, as we all know, a number of processes are under way. This Government are also committed to decentralisation as far as possible, and one reason why the central Civil Service will shrink is that more decisions and areas of policy delivery are being put down to the local level. Some of

this will be carried out through local authorities; some of it will be carried out through mutual and other agencies. The division between the public and private sectors is not entirely a binary one; there is also, as we all know, the third sector or voluntary sector. I think we all agree that, together with the decentralisation of the delivery of public services, some services are better delivered as a partnership between the public sector and the third or voluntary sector. All those processes are under way. Put together with the technological revolution that is pushing us towards a much greater dependence on digital services, this is part of the revolution we are facing.

On the question of parliamentary accountability, there is less in this plan on the details of accountability than there might otherwise be because there has been a deliberate decision to await the study of the House of Lords Constitution Committee on that very area. That will feed into further consultations on how we strengthen accountability to Parliament. However, noble Lords will be aware that the role of Commons parliamentary committees in particular in relation to the Civil Service has strengthened over the years. I was reading the Osmotherley Rules earlier today and began to look at how they may need to change further as part of this. That is the sort of thing that the Constitution Committee will be considering.

Lord Butler of Brockwell: My Lords, the Statement paid lip service to the quality of the Civil Service but it sounded to me—as, I am afraid, it will sound to many civil servants—like a litany of criticisms. Will the Minister accept from me that, while proposals for improved performance by the Civil Service are always necessary and welcome, it is essential to their success that the Civil Service should be led and not just driven—as the Statement said—and should not be reviled and unattributably dumped on when Ministers' policies run into difficulties?

Lord Wallace of Saltaire: My Lords, I strongly agree with that. I am very conscious—again, I make a non-partisan remark—that there have been occasions under successive Governments over the past 50 years or more when some Ministers have occasionally wished to blame their civil servants for things not happening. I would be extremely upset if the noble Lord interpreted this plan as being an attack on the Civil Service. We have emphasised very strongly that that is not the case and that it has come out of a partnership between Ministers and the senior Civil Service with extensive consultation. We value the quality of leadership within the Civil Service. I am one of the many within government who have serving and former civil servants as close members of their family. It matters very much for the quality of our society, our public services and our country as a whole that we have the best-quality Civil Service working for government and the state as a whole. We very much hope that this plan strengthens that.

Lord King of Bridgwater: My Lords, I very much support much of what the noble Lord, Lord Butler, said. Although it is perhaps not a series of attacks, the Statement rather dodges along a line that opens it to that sort of criticism. With the Government talking as they are, perhaps I may repeat the phrase, "There are no bad men, only bad officers". The need for leadership in the Civil Service is absolutely critical, and I very much support many of the practical measures in the Statement. The devil will be in the detail, but the figure that hits very hard is that there will be a 25% reduction in Civil Service numbers over the next three years. This has happened before and, in some cases, it has been achieved simply by transferring people to independent agencies and moving them out of the Civil Service. Can my noble friend give some indication of how those figures are to be achieved and to what extent it will be a case of smoke and mirrors or of a genuine reduction in Civil Service numbers? If local government is to take up some of the strain in areas that have been covered by the central Civil Service, will that involve an increase in numbers in local government?

Lord Wallace of Saltaire: My Lords, I merely repeat that this is not intended in any sense as an attack on the Civil Service and we very much value its quality. A certain amount will be achieved by putting more on to the digital level, and this is well under way. Members of this House may remember our discussions about universal benefits and the extent to which that scheme will enable us to provide those sorts of payments and services more efficiently with fewer staff. That is the sort of reduction that we see coming through. We plan for more services to be provided in partnership with local authorities and through third-sector organisations. We are already experimenting with that sort of model.

Baroness Symons of Vernham Dean: My Lords, perhaps I should remind the House that in a former life, quite a long time ago, I was the general secretary of the First Division Association, which represents senior civil servants.

In the Statement, the Minister said, "We need a Civil Service that is faster, more flexible, more innovative and more accountable". No one could argue with that as a general statement, but the whole issue is about how that is to be achieved. I do not think that the Minister properly answered the question of the noble Lord, Lord King, about how you achieve a reduction of 120,000 civil servants in less than three years—only two and a half years. Is there going to be a system of compulsory redundancy and, if so, has that been costed? To what extent will there be a charge on the public purse for compulsory redundancies? Those are crucial questions when we are arguing about something that ought to be costing less money.

The real point at issue in the Statement arises in relation to the future appointment of senior civil servants. It stresses the importance of political impartiality but we are told that the role of Secretaries of State will be strengthened in the recruitment of Permanent Secretaries. It is the duty of civil servants to maintain the confidence in their impartiality not only of Ministers but of those who may become Ministers after a general election. How does the noble Lord reconcile the appointment process, which includes politically appointed Ministers, whereby politically impartial civil servants can pass over to a new set of Ministers? Will there be a

[Baroness Symons of Vernham Dean]
requirement for Permanent Secretaries appointed in that way to resign at the time of an election? It is an important point about the confidence of the Opposition.

It was also said in the Statement that it may not be practical to run "full and open" competitions. When will it not be practical to do so? How will the diversity of the Civil Service and the opportunity for women and people from ethnic minorities to break into the Civil Service ranks be maintained in those circumstances? At the moment, they come in through open competition.

Lastly, the Statement says that, "Ministers can ask their Permanent Secretaries to appoint a very limited number of senior officials, for specified and time-limited executive and management roles". This is an important point. There was such a fuss in 1997 when two politically appointed people were, under Privy Council terms, given executive and management roles. I have to say that the Conservative Party going into opposition went ballistic about it. What will be done about this? Will it be done under Privy Council terms, and will those contracts be terminated on a change of Government? Those are very specific questions.

Lord Wallace of Saltaire: My Lords, as the plan states, the proposals on the role of Secretaries of State in very senior appointments are to be discussed with the Civil Service Commission. The proposals have been discussed with former Labour Ministers, and there have been criticisms from former Labour Ministers in the other place that these proposals do not go far enough. We have not committed ourselves fully on this, and there is therefore a dialogue to be had about the future relationship between the appointment of permanent secretaries and the role of Secretaries of State. Jack Straw said in the other place that he did not find our proposals terribly surprising because on three occasions he had insisted on having an active role in the appointment of permanent secretaries. So although we are not entirely moving from one world to another, we are discussing how much further we should move along a continuum.

On the scale of reduction under way, departments are already engaged in processes which will reduce numbers without compulsory redundancies. I will write to the noble Baroness if substantial compulsory redundancies are on the way. However, seven out of 10 civil servants are involved in the big five delivery departments: the Ministry of Justice, the Home Office, HMRC, the Ministry of Defence and the UK Border Agency. Many of them turn over at a rate which I anticipate enables us to avoid very substantial compulsory redundancies, but if I am incorrectly briefed on this I will write to the noble Baroness afterwards.

Baroness Browning: I attended many courses at the National School of Government over the years, and I always reminded it that it was the best in the world. However, I recognise in the report today the need for change within the Civil Service, and I welcome it. Having had 15 years out of Government I returned last year to ministerial office, and I recognise some of the needs here, particularly in changing the culture. However, in making the changes that are needed, particularly in terms of management within the Civil Service and the skills needed by Ministers—because ultimately the buck stops at the Minister's desk—it is very important to ensure that we do not confuse management systems that deliver competent management and those that lack the leadership skills that make the difference in culture. It is quite possible to be a competent manager at any level, but if you do not have the leadership skills you will get a culture as described in this document today—and again that applies as much to Ministers as it does to the Civil Service. I hope my noble friend will ensure that we do not miss out on what is a very important part of making these important changes.

Lord Wallace of Saltaire: My Lords, my noble friend is right to point out that a number of things fit together here. Extending the role of Parliament in holding the Government and the Civil Service to account, which is part of what the Constitutional Committee will be discussing, will be continuing with what has evolved over the last 20 years with the relevant Commons committees. The question of the management skills of Ministers is very much a cross-party thing that we all need to discuss a great deal more. We do not currently train Ministers. We also need to discuss the changing role of the Civil Service itself. One point I did not answer for the noble Baroness, Lady Symons, was the question of the impact of these proposals for ethnic minorities and women. I remind the noble Baroness that for the first time, some six months ago, we reached the point at which there were more women than men at the level of Permanent Secretary. That is a real breakthrough. We have also had our first ethnic minority Permanent Secretary. Having a close female relative rising up the Civil Service, I hope this is a trend which will go further.

Lord Brooke of Alverthorpe: I welcome parts of the Statement, and I welcome the conversion of the Minister who made the Statement in the other place. He was the man who was in charge of the Next Steps programme in the 1990s, which broke the Civil Service down into smaller pieces and split it up. He is now happily seeing the errors that were made, and bringing parts of it back together again.

I am concerned about the way in which we keep moving forward with changes in public service operations without actually speaking to the customers or the taxpayers. This is another example where the default position will be open policy making, where in fact the taxpayers and the citizens have not been involved one iota in this exercise. If they had been, we would have heard more complaints. I have a former connection with the Inland Revenue as I was the general secretary of the Inland Revenue Staff Federation. If you go online now, you do not necessarily get answers to internet inquiries; if you go on the telephone, as was recently published, you wait longer for a reply from the Revenue than you did two years ago; and if you come into the country, you queue longer at one and two o'clock in the morning. In so many areas of the departments the Minister has just mentioned the Civil Service is falling down. Now we are faced with a cut from 500,000 down to 380,000 civil servants within the space of three years, on top of the other changes

already taking place. I think an awful lot of taxpayers are going to be very unhappy indeed with the services that they will get in the next few years, unless there can be a quite different approach to that which we have adopted so far.

I hope there will be a way in which we can look at how we measure efficiency. Take two building societies, A and B, and put them together. Get a new computer system, cut the number of staff employed, and you can say that you have increased the company's efficiency. Invariably, in practice you find that the customer suffers and waits longer for services from that combined building society. We have tried to bring the same principles to bear within the Civil Service. I hope we can have a clearer definition of what efficiency means. I am not against changes, or reductions in numbers, provided that ultimately the service will be better. However, there is nothing in this statement to prove that it will be.

Lord Wallace of Saltaire: My Lords, I accept that challenge. The effectiveness of these proposals will indeed need to be challenged precisely in terms of how they impact on the quality, effectiveness and speed of delivery, and the satisfaction of the citizens who are receiving those services. Before we close, I remark that this is also part of a long process of change in the Civil Service. The proposals in the plan for bringing together some core services across Whitehall—the management of major projects, human resources, digitisation—are also part of trying to make a more economical and unified Civil Service. As I have observed in the five departments I have worked across since I joined the Government, there are real cultural differences between a number of departments across Whitehall, and we will benefit from bringing departments together, rather more into a single corps. We have also been looking at the estate of the Civil Service, and making a number of changes which make for more effective use of that estate. This will also provide a number of efficiencies and savings. However, I accept the challenge that a number of noble Lords around the House have made, which is that the impact of all of this will be seen in the quality of the services that are provided, we hope, with much greater productivity, efficiency and effectiveness in three to five years' time.

Justice and Security Bill [HL]

Second Reading (Continued)

6.27 pm

Baroness Stowell of Beeston: My Lords, as we continue the Second Reading debate on the Justice and Security Bill, and at the risk of sounding boring, I feel duty-bound to remind noble Lords that speeches from Back-Benchers are expected to be kept within 15 minutes. When I remarked on this earlier, I should have stressed that exceptions to those guidelines are made on occasion, rather than frequently.

6.28 pm

Lord Hodgson of Astley Abbotts: My Lords, as we return to the debate on this very important second reading, I need to begin by saying I am not a human rights lawyer. I am not a lawyer at all. I have had no contact or involvement with the intelligence or security services, so I tread rather warily and carefully into this specialist area for fear that the ground may open and swallow me up.

My interest in this area comes about because I am the treasurer of the All-Party Group on Extraordinary Rendition. I am also a trustee of Fair Trials International. Therefore in my rather amateurish and non-legalistic remarks, I want to focus on what seem to me as a layman some of the dangers and challenges of Part 2 of the Bill. My experience in those two particular roles is that the processes of international justice, or perhaps I should say, justice with an international aspect, do not always proceed as smoothly or as even-handedly as we all would wish.

The issue of partial access to information and the inability to check its veracity causes me concern because of what happens at Fair Trials International. The average FTI case usually involves someone of modest means being somehow swept up in the proceedings. By definition, the proceedings are normally abroad and the partial sharing of information and the inability to challenge their veracity comes about because the defendant does not understand what he is being accused of because it is in a foreign language, which means that he cannot test the truth of the case against him. All too often, once the full facts are laid out and once everyone knows what is being complained of, the defence is able to ensure that the case falls away. I want to ensure that in the Bill we are not creating circumstances in which these sorts of events become prevalent.

My second general concern stems from the fact that in my professional life I have worked in the City and I have spent some time as a regulator. The regulator of financial services has to create a balance, not on the époque-like matters that we are discussing this afternoon, but on the level of regulation. Too much regulation will be very expensive in money or management-time terms, will discourage innovation and will diminish the reputation of the financial community of this country over a period of time. On the other hand, too little regulation, with a free for all, no standards of behaviour and lower market confidence, will have the same effect. So I quite understand that a balance has to be struck.

However, the danger in real life is that regulators are, by their very nature, risk averse. An innovation that never happens reflects no discredit on a regulator but a failure does: it is public, it is controversial and it damages reputation. There is an inevitable tendency to raise the bar. In effect, there is always a danger of what we call regulatory capture. As we go through the Committee stage of the Bill, I want to be convinced that there is not an equivalent of regulatory capture taking place in this area.

My third general point, which is more specific to this Bill, is that I am currently undertaking a review of the Charities Act for the Government and there have been strong suggestions from certain quarters that charities in the United Kingdom are raising considerable sums of money which are to go overseas for purposes that are less than charitable. That is a serious accusation. The fact that donations in this country, no doubt enhanced by gift aid, should end up in the hands of

[Lord Hodgson of Astley Abbotts]
al-Shabaab or the Taliban, is indeed worthy of investigation. When one looks into it in detail and asks for even minor facts to be produced, there is very little. There are a few wisps of smoke perhaps but certainly no fire. The Charity Commission has been called on to investigate only a handful of cases. That sort of broad statement about our intelligence and security, which is long on assertion but which turns out to be very short on fact, makes me concerned about whether we have the balance of the Bill right and whether what we may be surrendering in our civil liberties is yet justified.

As a result of this Bill, if I read it correctly, we are going to surrender, or certainly substantially amend, the right of citizens to hear and to challenge all the evidence presented by the state against them in the High Court and substantially amend the right of victims of kidnap, rendition, torture and other unlawful abuse to obtain evidence from the state to help to prove their case. That right applies only where the state has been involved in, or has facilitated, the commission of the wrongdoing.

If we are to surrender those two substantial matters, why are existing processes for the public interest immunity certificates suddenly inadequate? I understand that the system of PII has been operating for more than 50 years without significant government complaint. As the noble Lord, Lord Pannick, said, in applying the PII system, the courts have a raft of weapons that they can deploy to keep confidential the sensitive features of government evidence while permitting the essentially relevant parts to be disclosed. These include hearing parts of a case in camera with both parties represented; the use of confidentiality rings; redacting the sensitive parts of documents to which the noble Lord referred; allowing evidence to be gisted; and directing informers or secret agents to give evidence anonymously behind screens. My noble and learned friend Lord Mackay in his remarks earlier said that there were residual issues which were not covered by these provisions. I understand that and I obviously will stand corrected by him. I look forward to having a chance to discuss what those residual issues are. The report from the special advocates, who I assume know a bit about this area and certainly a great deal more than I do, says in paragraph (7):

> "There is no fundamental difficulty with the existing principles of public interest immunity … which have been developed by the courts over more than half a century and which enable the courts to strike an appropriate balance between the need to protect national security (and other important public interests) and the need to ensure fairness. Nor is there any sufficient evidence that the application of these principles has caused insuperable logistical difficulties in any particular cases".

That is my first broad concern.

My second broad concern is the assertion that CMPs are being used. A judge will still be able to weigh up the strength of the evidence before deciding whether a CMP may be used. I understand from what my noble friend was saying earlier from the Front Bench that it is a procedure which could be described as PII light. When I see the use of the words "must" and "must ignore" in Clause 6, it seems to me that the judge will have relatively little discretion. Reviewing evidence and making an assessment seems to me to be one thing—that is the PII procedure—but presumably the Secretary of State will turn up at the court and make a strong assertion that national security is involved, otherwise why would you have a CMP application? I leave it to those of your Lordships' House who are involved in the legal profession to tell me whether or not a court is likely to rebut such an assertion involving national security. My view is that it seems unlikely but I have no direct evidence.

My concerns on this point are further increased by the lack of transparency about CMP procedures and the extent to which they will be used. I can find no provision for closed judgments to be opened up at a later date, when secrecy is no longer required, so that the public can see how they worked; I see no requirement for notice to be given by the Government that a CMP will be sought; and I see no requirement for any reporting of the number of requests for and granting of CMPs. These are the pieces of information which should at least shed some light on this difficult area and go some way to reassuring us and the general public.

My third and final point is to repeat what has been said by other noble Lords about the Norwich Pharmacal case in Clause 13, where I believe that subsection (3), which defines "sensitive information", is extremely broad and frankly could be used to cover almost any sort of information that the Government of the day might find it helpful to include.

I want to reassure my noble friend that I am not nihilistic about the Bill, nor am I naive about it. I do not think that the world is an entirely sunny place. Nor do I think that it is filled exclusively with friendly people of a sunny disposition. Further, I certainly do not wish to belittle, demean or hinder the activities of our security services. I am profoundly grateful to those men and women who are prepared to devote their careers and sometimes their lives to keeping me, my family and the country safe. Those men and women also have civil liberties that need protecting, which is why I still remain to be convinced that the balance of the Bill is right.

6.38 pm

Lord Dubs: My Lords, I am not a lawyer and I have searched my mind about whether I have ever seen an official secret in my life. The answer is that I do not think that I have. In Northern Ireland, we had Cabinet minutes which were heavily redacted and the contents had appeared in the papers before I read them anyway. I do not count that as having seen any official secrets, so perhaps I am disqualified from contributing to this debate.

I recall that in the past, not that many years ago, the name of the director of MI5 or MI6 was an official secret. We were not even to know that such people existed. That has moved on now and it is much more possible to have some element of knowledge and scrutiny of the security services. Of course, the threats in the intervening years have become more international and more serious, and to deal with them has required more international co-operation. I say that in the context of how anybody would look at the Bill.

I regret that the noble Baroness, Lady Manningham-Buller, will speak after me because I would have liked to have known what she had to say before I contributed, although I had a little chat with her a few minutes ago

so I have some idea. I remember vividly the contribution that she made when we debated 42-day detention. She knocked the Labour Government for six with a short maiden speech, which many of us who were present will remember vividly and almost word for word. I regret that I cannot listen to her before making my contribution.

I want to talk mainly about Part 2 of the Bill. This is not a specialist issue just for lawyers: it is central to our country and to the way that the rule of justice operates. It is constitutionally a significant change. It undermines the principles of open justice and natural justice. I welcome the concessions that the Government have made between the Green Paper and the Bill, but I contend that there are still weaknesses.

I served on the Joint Committee on Human Rights. I was rotated off about three weeks ago, so I am not as up-to-date as I would like to be, but I recall that when we published our report on the Green Paper it was embargoed. The Deputy Prime Minister made a passionate statement criticising the Green Paper. I assumed that he had somehow got hold of a copy of the embargoed report because the timing was too close to be coincidental, but be that as it may. I also welcome the report of the House of Lords Constitution Committee.

Clearly, there must be concern about the anxieties in the United States and other countries that we might reveal information given to us in confidence. On the other hand, we have had examples where the Americans themselves have not been that good at keeping secrets. Indeed, there was one instance in addition to the one quoted. In the Yemen case, the Americans leaked or revealed the fact that one of our people had given valuable information from Yemen. That endangered the safety of that individual. I say that only to demonstrate that the Americans themselves are not always as good at keeping to the principles that we are told are the basis for this legislation.

I welcome the fact that inquests will be excluded. I welcome the fact that the Bill will confine itself to national security material and that SIAC's jurisdiction will include the possibility of JRs regarding citizenship and exclusion from the UK. However, there is something I do not understand. If someone has lived in this country for some years and then applies for citizenship, why is that aspect covered by the secrecy implicit in the Bill? Surely, if a person has been here for years, we know that he or she is here and we are onto them. Indeed, there is an argument that we should keep quiet and see what else we can learn from them. If we start challenging their entitlement to citizenship, albeit in a secret court, we are actually giving the game away. I do not understand the argument there. Perhaps the Minister can reveal it.

The key issue is the secret hearings and the CMP material inherent in Part 2 of the Bill. Of course, the problem is that the Government may use and rely on closed material even though other parties are not allowed to see it. To quote again from the noble and learned Lord, Lord Kerr, who has been quoted before:

"Evidence which has been insulated from challenge may positively mislead".

That surely has to be the theme for those of us who are concerned about the Bill.

I understand that the courts traditionally are reluctant to challenge the Government on national security matters and if the Government say that it is a national security matter, the courts will normally accept that. The effect of the Bill will be largely to replace PII with CMP where the Government want that to happen. In truth, the Bill preserves the PII process in cases involving national security where in the Government's words it is more appropriate. But as the Bill stands, it is the right of the Secretary of State—his exclusive discretion—to decide which way to go. I think that that is more power than should be the case. I do not believe that the Government have fully demonstrated the case against PII.

I understand that the key benefit of the PII procedure is that there can be balance. The courts can balance one consideration against another. That is surely its particular strength. If we are throwing that out, that is a retrograde step. Do we have to have the alternative of the Secretary of State saying either that PII is okay or we have to have CMP? I wonder whether there might not be a way in which the strength of PII and the benefits of CMP as alleged could be put in such a way that the court itself could decide which of the two methods to use. I am not sure how well that would stand up, but I put it forward to the Minister as a possibility that might get the Government off the hook.

As for Norwich Pharmacal, I share the concerns that have been expressed by others. In particular, Clause 13(5) refers to disclosure that would be damaging,

"to the interests of national security, or … to the interests of the international relations of the United Kingdom".

That seems to be very wide indeed. I understand national security, although it is vaguely defined. But if we are talking about damage to the international relations of the United Kingdom, all sorts of things damage our international relations, even a leak about something that a British embassy is doing. I wonder whether that is going too far and if we dropped that the Norwich Pharmacal jurisdiction approach would still apply more happily.

I turn briefly to Northern Ireland. While it is good that inquests have been excluded from the Bill as a whole, there is still a range of civil proceedings in Northern Ireland dealing with the legacy of the conflict that will be affected by the introduction of CMPs. I give three examples. There are possible challenges to the PSNI, possible concerns about decisions by the historical enquiries team and possible miscarriages of justice. Some of the issues in Northern Ireland are very serious. We have already had difficulties with the Finucane case with too much secrecy causing lack of confidence in the system. I wonder whether we are not getting into rather difficult terrain by applying this approach to some of the sensitive issues in Northern Ireland. I noted with interest the suggestion of the noble Lord, Lord Thomas of Gresford, that there should be a disclosure judge as well as a Diplock judge. I do not know enough about that, but that is another option worth considering.

I notice that the Government for the first time retain the right to use intercept evidence in CMP cases. Given all the arguments that we have had about intercept evidence, I still believe that we should find a

[LORD DUBS]
way, where appropriate, of occasionally using intercept evidence in our courts as a way of bringing people to justice. Every time the Joint Committee on Human Rights had a meeting with Home Office officials we were told that it was all being considered, but nothing seemed to come out at the other end. It is interesting that the Government have in a small way conceded the case by saying that intercept evidence may be used in CMPs. I hope that that is a sign that the use of intercept evidence in a wider sense is still on the Government's agenda.

6.48 pm

Baroness Williams of Crosby: My Lords, I am happy to join the noble Lords, Lord Hodgson of Astley Abbotts and Lord Dubs, in being one of the outsiders contributing to this debate. It has such an important nature that it is important that those who are not lawyers as well as those who are take a substantial part in it.

In many ways, what has happened to the Bill is a great credit to some of the recent changes that have been made in Parliament. The fact that we have had a brilliant and succinct report from the Constitution Committee and a very full, factually based and sensible report from the Joint Committee on Human Rights says a great deal about the way in which committees are now beginning to complement and in many ways strengthen what has been something of a weakness in the House of Commons: its ability to scrutinise legislation going through Parliament. These two committees have served us extraordinarily well and I think it would be appropriate on this occasion for me to pay a passing tribute to the shade of the late Lord St John-Stevas for having made such a major and significant contribution to our constitutional development.

The Deputy Prime Minister deserves a word of praise. Having intervened fairly early in the process of considering the Bill, he was able almost immediately to challenge two elements of the Green Paper that were particularly disturbing: one of those aspects being the particular right of Ministers to decide whether a court should be held in closed session; and the second being, in my view at least, the attempt to include inquests within the scope of the CMP. I think he deserves recognition for having intervened and drawn attention to these two particularly extreme and in many ways odious provisions of the Green Paper.

Having said all that, I am also delighted with the strengthening of the position of the Intelligence and Security Select Committee—on this I think I share the view of the noble Lord, Lord Butler of Brockwell. The decisions that it should choose its own chairman and that it should be accountable to Parliament rather than just to the Prime Minister are significant steps in gaining much greater accountability over the whole area of intelligence. For reasons that I will come to a little later, that is vital.

On the Bill itself, I have to admit that the state of the judiciary, as well as the care taken by the Select Committees of Parliament, has been impressive. I share the view of my noble friend Lord Lester of Herne Hill that the judiciary has consistently behaved with extraordinary integrity and real commitment to the concept of human rights and the individual liberties of our citizens, and at the same time has been sensitive and aware, all the way through, of the national security requirement. We are extraordinarily lucky in the judiciary that we in this country enjoy and we need to do everything that we can to sustain it.

One aspect that is perhaps particularly important is the limitation of the introduction of the CMP into civilian proceedings. As has already been mentioned in the debate, it is quite striking that the special advocates could not have been clearer in their views that any further extension of the CMP into civilian proceedings would be unacceptable and would contribute very little to the quality of judicial statement and conclusion in our country. Given the pressures on them, it seems quite remarkable that they achieve near unanimity in a bold and strong statement about their position on the Bill. We have to pay careful attention to this because, as we know, virtually every currently practising lawyer who has had direct experience of the CMP in his or her own proceedings was deeply clear that it was a very unfair procedure and that steps to make it fairer were very difficult to attain. Also very clearly indicated was their view that a much stronger case needs to be made even in the field of national security and certainly beyond it in looking very hard at the CMP proposal.

In many ways the special advocates also regarded public interest immunity as a more satisfactory safeguard for the claims of those who came before the courts. Such cases became particularly difficult—this was mentioned in debate—where claimants invoked the Norwich Pharmacal precedent whereby information had to be disclosed, as my noble and learned friend Lord Wallace pointed out, originally with regard to intellectual property. However, as it was extended from intellectual property and ingeniously used as a way to get access to sensitive security matters, it obviously presented the Government with a very serious difficulty. Under present practice, it meant the Government withdrawing cases altogether rather than risking disclosure. This could lead to an unjust outcome. The former Lord Chancellor, the noble and learned Lord, Lord Mackay of Clashfern, is clearly particularly exercised about the possibility of injustice here. I wonder whether he would agree that judges must be consulted on the balance of interest in deciding whether a court should accept the CMP and whether he could be asked to explain openly their reasons for giving such a decision.

The Government's response to the Green Paper was far too cavalier on the essential principles of natural and open justice. Even in the redrafted Bill, Clause 13 defines "sensitive information", which I know has now been somewhat changed to "national security information", far too loosely and ranges far too wide. What my noble friend Lord Lester had to say about this was absolutely right. It therefore provides for unacceptable and unaccountable executive power by including within the definition a certificate by the Secretary of State if he or she considers that disclosure might damage the interests of national security or the international relations of the United Kingdom. This latter condition—I share this worry with the noble Lord, Lord Dubs—is usually interpreted by the media as being damaging to our relations with the United States, but it might also of course include damaging

our relations with other countries that lack any commitment to the rule of law or to refuse the use of torture as something that can be presented in evidence.

I therefore ask my noble and learned friend Lord Wallace of Tankerness whether the Government are absolutely sure that other countries, not including the United States, could not object, for example, to there being a decision to allow this material to be used if they found it offensive to their view of themselves regardless of whether they had a commitment to the human rights of other human beings and whether they had a proper commitment to laws that establish the freedom and independence of courts. There are a large number of countries—I could mention some but for reasons of diplomacy I will not—that are very close allies of the United Kingdom and that have virtually no commitment to the rule of law. What, therefore, is the position meant to be if they then use this part of the Bill to claim that they should not have been forced or compelled to make any revelations at all.

I turn briefly to the concept of security itself, which has become an autonomous noun—a self-justifying concept. Security may be understood as securing the health and safety of innocent citizens. The noble Marquess, Lord Lothian, made this his central definition of security, but I find it very difficult to do that. The concept of security should also be understood as securing the liberties and freedoms of a democratic society, not in principle contradicting them. I find it very hard to believe that security is strongly established if it is set in contradiction to these basic values. There is a worrying inclination to move in that direction: to treat security, as I said, as an autonomous noun—as something that has a right to itself other than that fundamental right of protecting individual liberty and safety and the basic values of a democratic society.

After 9/11—I should probably now declare a rather modest interest as a member of the governing committee of the Belfer Center for Science and International Affairs at Harvard—some measures were taken that gave security precedence over any other values and rights. Among some of those precedent measures were measures that went quite directly contrary to what most of us would regard as the fundamental principles of being a law-abiding society. I am a little disturbed by our debate having paid so little attention to what I have to say is one of the shaming dimensions of intelligence: the whole story that has emerged about extraordinary rendition and the misuse of intelligence to bring about results and ends that are simply not compatible with those basic values.

I strongly argue that one of the great concerns that we ought to share is the continuation of the existence of Guantanamo Bay, despite the general intentions of President Obama to get rid of it when he was first elected in 2008. We should also be disturbed by the appalling story of extraordinary rendition by the CIA, which, deeply regrettably, some British intelligence was involved in and which has not yet fully emerged into the light of day.

I shall say this very carefully: an American President under increasing pressure from Congress, particularly a Congress of somewhat extreme views about how civil liberties should be subordinated in every possible instance where there is a clash with so-called security, could use Clause 13 as a way to demand the wider use of the CMP in the British judicial and political system. I for one would find that deeply regrettable.

I conclude by saying that it is rather ironic that the Government have not proposed the use of security-cleared lawyers in such cases. In this the United States has shown strength by insisting that such security-cleared lawyers can be trusted in the recent habeas cases of two people who are being retained at Guantanamo Bay. The US has been willing to accept, as we have not, that security clearance is a sufficient and substantial safeguard. We seem disinclined even to look at the possibility, but I would add it to the list of options referred to by the noble Lord, Lord Dubs, as one of the various alternatives. This is one that we might want to look at.

Another might well be the one proposed by my noble friend Lord Thomas of Gresford, which draws on the Diplock court principle and priority, with the idea of a separate judge having particular responsibility for the levels of disclosure. The judge would have to satisfy him or herself that there had been no failure to disclose where necessary, but equally whether there should be any insistence on disclosure that runs contrary to natural justice and natural law. Finally, one other prospect might be looked at carefully. It was mentioned earlier by the noble Lord, Lord Pannick—the more extensive use of various forms of redaction as a way of dealing with the problem.

There are several options before the Government, all of which should be carefully considered because one or more of them are preferable to the direction that we are moving in under Clauses 6 and 13. I hope that the Government will give serious and detailed consideration to these proposals because, with amendment, the Bill will make a useful contribution. Without amendment, it will stand as something that should not be allowed to pass into law.

7.02 pm

Baroness Berridge: My Lords, I am a member of the Joint Committee on Human Rights. When we were considering the Green Paper and now the Bill, I seemed always to have had in mind the statue of Lady Justice at the top of the Old Bailey, but when seeking to balance the various injustices in these situations I have come to conclude that her scales need at least seven pans.

First, the Government assert that they are not able to defend themselves and are forced into the settlement of claims. I agree with the Lord Chancellor that that is "extremely unsatisfactory". Secondly, the Bill would have the claimant and the lawyers in the corridor of the court and evidence seen fully by only one party. Thirdly, in civil proceedings there can be an appeal on the facts, but if, as the Government assert, these cases are so saturated in intelligence information that most of the judgments are secret, people will be less able to appeal and correct decisions.

Fourthly, there is the exclusionary nature of PII where the evidence is not considered by either side. Fifthly, there are apparently strike-outs of meritorious

[Baroness Berridge]

claims, but currently the only example is the case of Carnduff and Rock. Sixthly, how do we ensure the continued development of the balancing of public interest immunity in national security cases? Seventhly, is there information that has previously been disclosed in court proceedings, and thus available to the general public and the press, that would now remain secret? Some of the injustices do not relate to individual cases as the Bill will change the judicial system. It is a fine balancing exercise that, I would add, gives you a headache, and inevitably people will come to different conclusions about the least bad solution.

However, Lady Justice is usually blindfold, which is apt in this situation as your Lordships cannot observe a CMP in full. That is, the hearing has one party excluded. I trooped down to the Royal Courts of Justice in the February Recess to watch a control order case. I spent nine years as a civil advocate and I can spot a court case when I see one, but this did not feel like a court case: namely, a case in which parties try evidence before a judge. It was more like manoeuvrings, with the open advocate, the special advocate and the judge trying to assist to ensure that enough of the allegations were known before the whole thing—the trial of the allegations and most of the evidence—was held in secret behind what I discovered are literally the locked doors of the court. The controlled person was not even there. When I queried that, I was told that it is not unusual because, "there is not really much point". What I saw worried me and convinced me that the best people to determine this issue were those who have actually done these hearings, which will not necessarily be the most experienced practitioners, judges or academics.

That leaves three groups: those I will call the CMP judges, whose views are not known to Parliament; David Anderson, the independent reviewer; and of course the special advocates. David Anderson QC accepts that CMPs have the capacity to operate unfairly, especially if there is no gisting of the evidence. The last group are the most experienced, and they are not at all convinced. In fact, "inherently unfair" has been their consistent criticism of CMPs. Again, I agree with the Lord Chancellor when he said that the,

"evidence of the special advocates most unsettled me".

It has been suggested that the special advocates underestimate the effectiveness of CMPs, but that is unusual for any group of lawyers, especially one that includes 22 QCs, not because they are arrogant but because they are really excellent at what they do; QC is a top brand. I would like to see the Government gain the support of these independent advocates before being prepared to support such a fundamental change to our judicial process. I might add that these lawyers, the special advocates, will secure more work if we have more CMPs, and that is a rarity in my experience.

On the injustice of evidence excluded under PII, I join the noble and learned Lord, Lord Morris, but I would be grateful if my noble and learned friend the Minister could set out the statistics of how many cases in the past have led to the successful exclusion of all material, and how many have led to the partial admission of material in open court, such as that achieved so ably in the 7/7 inquest. Further, was this technique used in the Guantanamo Bay litigation which the Government have relied on so heavily? Were exclusionary PII applications made in those proceedings? Also, I am perplexed that the Government apparently settled the al-Rawi case before knowing whether they could have a closed material procedure. When questioned by the Joint Committee, the Lord Chancellor maintained that the Government could have defended the claim if they had had a closed material procedure, but if the Supreme Court had decided in their favour, no proceedings would be left to try. I am perplexed about this.

Moving on, it is hard to see how to ensure the future development of PII in national security cases when under this Bill the judge would be required to accede to an application if there is any national security information relevant to the case, even if he considers that the case could be tried using the existing PII rules. I suspect that we will find amendments tabled during Committee on the Bill. Will less information be available in the public domain than there should be? I think there is a danger that closed material procedures will restrict it.

As I understand the Bill, the difference between closed material procedures and public interest immunity is illustrated using an extension of the example cited in the Constitution Committee's report of an aircraft accident where the family ended up suing the Government. Let us imagine that we have gone into a closed material procedure and it becomes clear for the first time, behind closed doors, that cockpit video footage exists. That footage is played behind the closed doors. It is akin to the footage that many noble Lords will have seen from a recent inquest into a friendly fire incident that was leaked to the *Sun* newspaper. Is there any way in which the judge, in a closed material procedure, can balance the interests and pierce the wall of the closed material procedure to put that video into the public domain, given the level of intense interest both in the press and among the public since they know of its existence? As I understand the Bill, that would not be possible. Of course, the claimant may win the claim and the judge may use the powers under Clause 7 to enforce concessions on the claimant, but the public and the claimant will never see that video.

Civil claims are not always about winning or money but about knowing the evidence that establishes the allegation. The same is true for the press, as Ian Cobain, the *Guardian* journalist who gave evidence to the committee, said. His allegations were viewed as conspiracy theories by the Government, but documents disclosed in court proceedings have sadly proved otherwise. As I understand the Bill, CMP applications are ex parte, so there will never be cases in which the press should be represented to argue the open justice issue. Also, apparently meritorious claims are struck out as the intelligence is so central that it cannot be tried. As I understand the Bill, a claimant is not helped as only the Secretary of State can apply for closed material procedures.

What of confidence in Lady Justice herself? I rely here on the words of the noble Marquess, Lord Lothian, that it is perception that matters. We do not legislate in a vacuum and there is concern about the level of trust that the public have in institutions—except, I think, in the monarchy and the judiciary. On "Thought for the

Day" this very morning, the right reverend Prelate the Bishop of Norwich helpfully summed this up for me when he said that confidence in our institutions is dependent on our trust in the individuals in them. Do the public have such confidence in the groups that will give evidence behind closed doors in a closed material procedure?

Before I am accused of being a fantasist, I pray in aid evidence from the Deputy Assistant Commissioner of the Metropolitan Police, Sue Akers. Her witness statement to the Leveson inquiry is as follows:

"Alleged payments by journalists to public officials have been identified in the following categories: Police; Military; Health; Government; Prison and others. The evidence suggests that such payments were being made to public officials across all areas of public life. The current assessment of the evidence is that it reveals a network of corrupted officials".

Your Lordships will remember better than I the West Midlands serious crime squad. I am not a doomsday merchant, but one has to think about what happens if this system goes wrong. Who will do the public inquiry? Not, I think, a judge—not because they lack the integrity but because what is being asked of them is beyond the capacity of any human being if both sides are not there to bring forward the evidence and to rebut one another's claims. Human beings are fallible. Home Office officials have been known to use the power to redact documents to cover up Home Office mistakes. MI6 was found to be incompetent at checking where its seconded staff were for over a week. How will all this not be less challengeable if behind closed doors?

Finally, I ask the Government to consider very carefully the implications of the following scenario. What will be the position under this Bill of the trial in which the right honourable Jack Straw MP is currently sought to be added to proceedings in his personal capacity over allegations from a Libyan military official that he authorised his rendition to Libya? The Government are an existing party to these proceedings and a CMP would be eminently possible. Is Mr Straw going to sit in the corridor outside a locked court? Imagine that Mr Straw loses the claim and has to pay £500,000 damages, and all that is done behind closed doors. He has also previously had security clearance, so he will potentially have knowledge to rebut these allegations from his direct experience, which he will not be able to use.

Baroness Manningham-Buller: Ministers do not have security clearance—if only.

Baroness Berridge: I welcome that correction from the noble Baroness, but I think that the majority of the point still stands. Do your Lordships trust the Twittersphere to carry this information properly without muddying the waters with potentially inaccurate party political accusations? "The Conservative and Liberal Democrat Government changed the law and Jack Straw, the former Labour Foreign Secretary, had to pay damages"—is that fewer than 140 characters? Will this enhance confidence in our judicial process?

Civil justice, with its disclosure provisions, is often the only avenue open to individuals to get the details of what has happened. This should not be underestimated. It is an old adage that justice must not only be done but be seen to be done. Could this Bill actually make matters worse for the security services and the Government? Can no one knowing the truth actually be better than, "We know but we cannot tell you why."?

7.14 pm

Lord Judd: My Lords, the House owes a very deep debt of gratitude to the noble Baroness for an extremely courageous and hard-hitting speech. With her background, we would all do well to listen very carefully to what she has to say. I also put on record my own admiration for the continued work of the Joint Committee on Human Rights. As a former member, I know just how much time and hard work is involved in that committee, and the whole House should be grateful to its members for all they do. I wish there was more evidence that the Government gave higher priority to dealing with the arguments put forward by the Joint Committee on Human Rights when participating in debates of this kind—this is not a party point because, frankly, it was also true of the previous Government.

The relationship between democracy, security, human rights and law is always very complex and intricate. Secrets are inevitable if we are taking security operations seriously. The crucial issue in a democratic society is who decides what should be the secrets and where the ring-fences should be placed. There will be checks and balances—they are inevitably needed—but this is a crucial issue that needs very careful scrutiny. I get worried by talk of trade-offs. I do not think that "trade-offs" is the right term. Human rights and certain fundamental principles of law are non-negotiable. There may be exceptions, but that is not a trade-off. The moment you start talking about trade-offs, you are suggesting that certain human rights and principles of law are not absolute. They should be absolute.

I am glad to see the remit of the Intelligence and Security Committee being extended. I am also cautiously optimistic about greater accountability to Parliament. Of course, ideally that committee should be accountable to Parliament. If, as we examine them, the terms of the legislation suggest that parliamentary accountability is being strengthened, this will be important.

Obviously, I am not a lawyer. My background is totally different. Therefore, I hope that the House will forgive me if I flat-footedly walk around as a lay man in the debate, but sometimes the lay men should be heard. For me, the starting point is: what kind of United Kingdom do we want to live in? I think all of us here would agree that the quality of justice was very central to the kind of United Kingdom in which we want to live. We would like to have a model with which we are happy and which can be a model for the world. When we prattle and preach about the responsibility of other nations to implement the rule of law, it starts with our own demonstrable commitment to upholding those principles.

What are those principles? Habeas corpus is obviously central—no person ever being detained without knowing for what reasons they are being detained and what is being alleged against them; that is absolutely crucial. Justice being seen to be done—not in corners or in secret clubs or secret arrangements, but manifestly,

[LORD JUDD]
publicly seen to be done—is essential. Justice being open is another of those principles—our adversarial system is very important. When I was on the Joint Committee on Human Rights, we went to look and were perhaps a little tempted by and flirted a bit with some of the investigatory traditions of other systems of justice in Europe. I think that most of us came back absolutely convinced about our own. It is through honest, adversarial procedures in court that the truth can be established. It is about a constant search for truth. I would add that compassion—the compassion that comes only from those who are strong and self-confident—is of course an important element in the administration of the law.

It has been a hard struggle to move forward on those principles. We only have to think, in this anniversary year of Dickens, of what was happening in Britain in the 19th century. We have come a long way since the 19th century, and we are the trustees of the outcome of that struggle. It could all too easily be thrown away.

We must also be aware of the issue of counterproductivity—this is something we must never forget. We live in a complex society. I use the word complex again, but complexity is central to life in my own estimation. It is so easy inadvertently to strengthen the wrong elements in society by alienating important sections of the community which become subject to the manipulation of extremists and others. We must fall over backwards not to make that mistake. I believe—and I am somebody who was nurtured in the Second World War, when we stood very firm on these principles—that the more acute the nature and size of the challenge, the more important it is to stand firm by the principles of the society we are defending. That is the hallmark of confidence and real strength.

I am afraid—and I must say it—that too often I see evidence of retreat and erosion in the face of terrorism and extremism. Each retreat represents a victory for the extremist, and we must never forget it. It also creates corrosive precedents. What should always be exceptional can too easily become convenient. We should strive always to deal with offences, however grave, within the normal judicial system and the normal procedures of our penal system. It would be disastrous if it became established over time that in this country we had first-class law available to some people and second-class law available to others.

I am afraid that sometimes we are rather good in Britain at refusing to face up to the harsh realities of what we may be generating. If we have special courts and special advocates, and if there are powers to withhold information—in effect on government say-so—when does the detainee become a political prisoner? What is the absolute dividing line between a detainee and a political prisoner? We very often use language about political prisoners in reference to others societies, but we must ask some very honest questions here about ourselves. We ought to listen to the special advocates on this. I remember that when I was on the Joint Committee on Human Rights the special advocates gave evidence to us. It was very powerful to see how unhappy they were about their lot and how they felt that they were being expected to perform in a way that was absolutely alien to their training as lawyers in this country—the principle of defending somebody with whom you are not allowed to discuss the real substance of what it is all about.

I have listened with fascination in this debate to those who are pre-eminently well qualified to comment on what is before us. It seems to me essential that all the time we are considering the Bill and putting it under scrutiny, we should have four questions in mind. First, does it regenerate and uphold a resolve and unshakeable commitment to open justice? Secondly, does it strengthen the means to deal convincingly and effectively with allegations of serious state wrongdoing? Here of course I have in mind torture and rendition in particular. Torture is an abomination. It is cruel to the people tortured, it is damaging to the people doing the torturing, and it is a total contradiction of everything we say that our civilised values are about. It is easy to say that, but are we taking the action that is demanded if we are serious in that judgment? Thirdly, does the Bill convincingly counter the dangers of manipulation of court proceedings by government, especially when government action goes against the considered wisdom of the judge? Fourthly, does the Bill effectively reverse what I believe to be a disturbing and accelerating trend towards curbing the ability of the public to hold the Government and their agencies to account through the courts? Here I cannot help making a comparison with another Bill that has just gone through this House: I am still dismayed by the way in which we have limited the availability of legal aid in our society. What are we doing to the quality of justice in the United Kingdom?

Let me conclude simply by saying that it is arguable that the 20th century saw a high point in the development of quality UK justice in the context of democracy. It will be a tragedy if the 21st century becomes one in which, by a weak and sad reversal of those considerable achievements, we produce an inferior system of justice. We must not let the extremists and the terrorists win.

7.27 pm

Lord Macdonald of River Glaven: My Lords, I declare an interest as chair of Reprieve, an NGO campaigning against the death penalty and secret prisons around the world. It was involved in the Binyam Mohamed case. I start by acknowledging two things. First, the Bill is a significant improvement on the Green Paper that preceded it, and a very welcome improvement. Secondly, there may be a very limited category and number of civil cases in which closed proceedings may be necessary to ensure that justice can be done in circumstances where, if there were no closed proceedings, material critical to the fair resolution of an issue would be excluded from the court's consideration. This, of course, could include fair resolution in favour of the claimant as well as in favour of the defendant. I would expect this to be a very small—exceedingly small—number of cases.

My question for the House is whether the Bill as currently drafted achieves an appropriate balance between delivering justice in that very small category of cases and the wider public interest in enjoying a justice system that is open and public. Will the Bill deliver that very small—exceedingly small—number of cases, or might it deliver rather more; indeed, too many?

My view is that, despite the obvious improvements, there is still a way to go. I want to focus on two areas: public interest immunity and the Norwich Pharmacal jurisdiction.

Public interest immunity has served us very well over many years and judges are very experienced in the exercise of this jurisdiction. It enables a party to the proceedings to invite a judge to conclude that any given material, while relevant to an issue in the case, should be withheld from that case on public interest grounds. Naturally, those public interest grounds can include national security grounds. In conducting this exercise, the judge is required to balance the public interest in protecting sensitive material from disclosure against the private litigant's legitimate interest in seeing material that may assist his case or undermine the case of his opponent.

I am not aware that it has ever credibly been suggested that judges in our courts are inclined to get this balance wrong. My own experience over many years, including during the five years that I served as Director of Public Prosecutions, is that our judges do not get this balance wrong, despite what American intelligence agencies may quite erroneously believe. Some aspects of the Bill appear to have been included because of what almost everybody accepts is a misapprehension on the part of a foreign intelligence agency.

At present, the Bill requires the Secretary of State merely to consider public interest immunity and presumably to reject it as a suitable mechanism before going on to apply for a close material procedure. This is not enough. I urge the Government to take the opportunity represented by this legislation to strengthen, rather than undermine, our PII jurisdiction. As the Joint Committee on Human Rights has said, it should be placed on a statutory footing to strengthen confidence and to increase clarity. Such a reform could include, among other things, the test to be applied when national security material is the subject of a PII application.

I also believe that it would strengthen the integrity of any CMP were it to be invoked only following a full PII process. In other words, the judge would be invited to rule, in accordance with traditional PII principles, that the relevant material sought to be withheld could properly be withheld on public interest grounds. Having made that ruling, the court would then go on to consider, again on conventional PII principles, the extent to which a redacted form of the material, or a summary, could safely be disclosed consistent with the public interest.

Finally, if at the conclusion of this conventional PII process a party wished to go on to apply that the court should go into closed session to hear any remaining material permitted to be withheld under PII, only then would the court be empowered to accede to that application to the extent that it felt a fair trial would be impossible in the absence of factoring that material into its consideration of the issues in the case.

The scheme would be: first, consider the relevance of the material to issues in the case—normal PII; secondly, consider the extent to which its disclosure might damage national security—normal PII; thirdly, consider the extent to which redaction or summary can cure the problem—normal PII; fourthly, in appropriate cases after that process, rule that the material may be withheld on grounds of public interest; and only then, fifthly, upon an application by one of the parties, rule that the material withheld can be considered by a court in closed session because, in the view of the court, a failure to do so would render the proceedings as a whole unfair. It would be a strong PII system as we understand it today, with the possibility in a small number of cases, once that process had been exhausted, for the court to go into closed session. Such a scheme would encourage a focus throughout the process on the important principles to be decided. It would very strongly discourage abuse or inappropriate, overhasty recourse to the CMP procedure, which is, I fear, a real danger under the current proposals.

I turn to the Norwich Pharmacal jurisdiction and Clauses 13 and 14. These are far too widely drawn for the following reasons. Clause l3 relates to "sensitive material". The listing of this category of material as deserving of special protection is an unfortunate throwback to the excesses of the Green Paper. Worse, whole swathes of material are deemed to warrant, without any further consideration, the tag of "sensitive", so that they are automatically and absolutely excluded from disclosure. This includes any material emanating from the intelligence services in the widest sense.

Of course, some material emanating from the intelligence services, though certainly not all of it, may be "sensitive", but that is the wrong test. It has been abandoned in the rest of the Bill and it should be absent from Clause 13. The test should be the extent to which a disclosure would be damaging to national security, as it is elsewhere. Even then, there should be no automatic carve-out. The power to withhold this material should be subject to a judge's ruling on the merits, as it is in the case of an application for a CMP. It should be the same test.

Even worse, Clause 13(3)(e) allows the Secretary of State to specify that any other material may be excluded if its disclosure in his judgment could damage national security or damage the interests of our international relations. The exercise of this exceedingly broad executive power is reviewable by a judge, but not on its merits and only on JR principles; that is, the judge can reject the Secretary of State's certification only if he finds its exercise to have been "irrational". This test does not provide adequate supervision over such a sensitive exercise of ministerial power, undermining, as it must be, of important principles of open justice.

The Norwich Pharmacal jurisdiction can sound a dry and technical subject, but, as my noble friend Lord Lester of Herne Hill has pointed out, it exists in cases where a great deal may be at stake, including the very life of the complainant who may, for example, be residing in a foreign prison and potentially facing sentence of death, as was the case with a number of Guantanamo Bay inmates. As things stand, the courts will make a Norwich Pharmacal order only where the party against whom it is sought has become mixed up in wrongdoing and where the interests of justice require it. Are we now to say that, however mixed up in wrongdoing the party against whom disclosure is sought may have been, and however strongly the interests of justice may demand disclosure, the behaviour of the wrongdoer, if it is an intelligence agency, shall be afforded total and automatic protection in all third-party

[Lord Macdonald of River Glaven]
applications of this sort? I do not believe that we should say that and this proposal goes too far. It causes deep offence to conventional legal principles because it ousts the effective supervisory role of the court in a way that is almost calculated to lead to injustice, even on a heroic scale.

I accept that, in cases in which national security issues are genuinely engaged, some adjustment to the Norwich Pharmacal jurisdiction may be appropriate, but the solution is emphatically not entirely to exclude certain bodies from its range. The solution may be, as I think the JCHR indicated, a presumption against disclosure in national security cases in the Norwich Pharmacal jurisdiction, overturnable by the judge if, in his or her view, serious injustice is likely to occur in the event of non-disclosure.

Even in the field of national security, I do not believe that it is in the broader public interest to move to a scheme where the interests of justice are entirely exiled from the equation so that they cease to exist as a check against the abuse of state power.

7.38 pm

Baroness O'Loan: My Lords, having had some experience of matters relating to national security involving many of the considerations inherent in this Bill, I absolutely recognise the importance of protecting intelligence sources, intelligence methodologies and those agents who have the complex and often difficult task of running the sources who are often engaged in the very issues on which they provide intelligence.

Such activity is of course regulated but much of it occurs in real time and in situations in which the Security Service necessarily exercises a degree of discretion —for example, about the involvement of sources in crime or terrorism. The noble Baroness, Lady Berridge, referred to where things go wrong. In Northern Ireland, there is a body of evidence about such circumstances. Examples are sources being funded to make trips to other places to buy arms and munitions for the purposes of terrorism, and sources who admit to murder not being prosecuted for those murders because the important thing is to retain their services as sources, the consequence being a lengthy career in serious crime, which could have been prevented. A balancing of the public interest, or even the administration of justice, with their ongoing activities might have led to different state action from that which occurred.

I mention that because it is important that, as far as possible, there should be no provision that enables the Government to withhold intelligence or other sensitive information relating to national security in a manner that prevents a litigant asserting and proving his case if our current situation with regard to the operation of government and the rule of law is to be maintained and, hence, our national security is to continue to be protected. Introducing further limitations to judicial oversight and involvement, as proposed in the Bill, cannot be welcomed where alternative measures can be taken that will better serve the interests of both openness and justice. In that context, it might be useful to consider the references of the noble Lord, Lord Grenfell, to the disclosure judges and their activities in Northern Ireland.

There are mechanisms for the accountability of the Security Service and anti-terrorist policing, to which we have reference in the Bill, but I think that, with respect, the current arrangements cannot inspire great confidence because of the very limited resources and opportunities for access afforded to those who are charged with the responsibility. Great atrocities, both here and in the United States, have led to calls for examination of what happened—for example, with the Omagh bomb 14 years ago or with 9/11. The reality is that the intelligence services do not operate alone; they operate with the police and other statutory agencies. Sometimes there has to be a public inquiry, and we have seen several in Northern Ireland. In such circumstances, there will be consequential disclosure and such inquiries may well be in the interests of national security, so we cannot start with the assumption that everything has to be protected.

I welcome the exclusion of inquests from the Bill. However, I should like the Government to explain why inquests should be excluded but civil actions for damages against the Government taken by the loved ones of those who have died should be subject to the possibility of a CMP. The response cannot simply be that Article 2 does not apply to civil actions. The perception is that the effect of that provision is that the Government might be influenced in their decision to withhold information because to disclose information would be very costly in terms of the damages that they might have to pay. Of course, the claimant may not know the extent of wrongdoing which may have led to death or serious injury and may therefore be inclined to settle for a sum which does not reflect the extent of wrongdoing. I heard the Minister say that without CMPs the Government would have to settle cases which they could otherwise defend because they must protect national security. It is possible that the perception outside your Lordships' House will be that the Government are creating, perhaps unwittingly, a damage limitation mechanism exercised by virtue of this provision.

It is important in dealings with other Governments that our Government should not become complicit by omission or commission in any wrongdoing by those Governments. The removal of people to places where torture and inhuman treatment is likely on the basis of security intelligence is risky, to say the least. I have referred previously in this House to the case of Maher Arar, who was transferred by the Americans to Syria on the basis of intelligence obtained by torture. Mr Arar spent a year in Syria tortured by the Syrian authorities before he was released to return to his homeland of Canada—the Syrian Government and the Canadian Government both acknowledging that he had had no involvement at all in al-Qaeda. There are lessons for us in such cases.

We must have proper arrangements for the transmission of intelligence between countries in the interests of each country's national security, but we must also acknowledge that countries have a wide moral responsibility to share intelligence to protect life. It is important that the United Kingdom does not bow to threats of non-sharing but, rather, asserts clearly the integrity of the judiciary in the United Kingdom and the fact that there has been no breach of security and

that our legal processes are competent to deal with such matters without the introduction of blanket bans such as might emerge from the application of Article 13.

Central to the rule of law in the United Kingdom are presumptions of openness and fairness. It is, in part, confidence in the rule of law which allows us governance. The Select Committee on the Constitution said in its third report:

"This is a constitutionally significant reform, challenging two principles of the rule of law: open justice and natural justice".

Those basic principles should not be diminished—and that is what the Bill will do—unless it is absolutely necessary. The Supreme Court in Al Rawi concluded that such measures would require "compelling evidence". The necessity and proportionality of the measures in the Bill must be considered if your Lordships are to decide whether to approve the Bill or its individual clauses.

If we look at the response of those with significant experience in the area, we see that the Joint Committee on Human Rights, of which I am now a member, states that, even with special advocates, CMP,

"is not capable of ensuring the substantial measure of procedural justice that is required".

It does not accept that replacing PII with CMP is justified. Special advocates have said that CMPs are inherently unfair: they do not work effectively and they do not deliver procedural fairness. The Court of Appeal, commenting on the special advocates procedure, said that even it is "inherently imperfect" and,

"cannot be guaranteed to ensure procedural justice".

Justice has observed:

"There is nothing in the Bill to address unfairness".

If we examine the proposed CMP, we see that much of the judge's discretion and authority, which currently exists under the PII procedure, is negated by the CMP. The power all lies in the hands of the Secretary of State, who can apply for a declaration and then make the applications. The court must grant the application. The court may not even consider whether a PII procedure would be a better alternative. Once that is done, there will be consideration of individual pieces of evidential intelligence, but the reality is that the special advocate procedure does not permit full challenge of the material presented. Once the special advocate has seen the material, he can have no further discussion with the litigant; he has no responsibility to the litigant. That would be fine were it not for the complexity inherent in the assessment and examination of intelligence. The noble and learned Lord, Lord Kerr, stated most compellingly in Al Rawi—this has been referred to repeatedly—

"To be truly valuable, evidence must be capable of withstanding challenge … evidence which has been insulated from challenge may positively mislead",

a court. Can the Minister confirm how the Government propose to ensure the necessary and full examination of national security material in the absence of such great judicial involvement in scrutiny?

Nothing in the CMP procedure would equate to any attempt to carry out the balancing of interests in the administration of justice exercise, which was developed in the Wiley judgment. The Constitution Committee stated that it is,

"difficult to see the justification for removing the *Wiley* balancing exercise".

Will the Minister consider the introduction of some provision to mitigate the inherent unfairness of the Bill, whether by way of disclosure of material to legal representatives or in redacted form, as suggested?

I support the remarks of the noble Lords, Lord Pannick and Lord Lester, about the effect of the Bill on the Norwich Pharmical procedure. There continues to be no definition of national security—something which alternatively mystifies and occasionally benefits those who are required to make decisions in the interests of national security. It is also important to bear in mind that nothing is absolute. Even the identity of sources may be revealed, as was clearly demonstrated in the comments of Lord Chief Justice Carswell in the Northern Ireland case of Scappaticci. He stated, in the context of the "neither confirm nor deny" policy, that the Minister,

"can depart from the NCND policy … if there is good reason to do so to meet the individual circumstances of the Applicant's case.

He continued—this is profoundly important for us in our law-making function—

"A decision maker exercising public functions who is entrusted with a discretion may not, by the adoption of a fixed rule of policy, disable himself from exercising his discretion in individual cases".

We must accept the reality that there are cases in which the general rules about non-disclosure of intelligence material will have to be disregarded. It happens now, for example, if somebody is murdered and a source can give vital evidence about the murder but revealing the source would compromise him as a source. This will happen and he will then be repatriated to a new existence—something which he may not find particularly palatable, but it deals with the problem and with the requirements of justice. It is also the case that intelligence-gathering methodology has evolved. What might have been required to be protected even in 2006 may no longer require protection in 2012. It may be that the Minister will assure me that such consideration will always be part of the making of decisions about whether to apply for a CMP or whether simply not to make an application.

I seek assurances from the Minister on the provision in Clause 13 that,

"disclosure is contrary to the public interest if it would cause damage … to the interests of … international relations".

There is no definition of what this damage might consist of, or of what objective criteria should be used to determine whether disclosure would cause such damage. There is a very clear proportionality and human rights issue here. Issues of the protection of national security are not new. We have long been engaged in battles to preserve and protect our national security, and I use that term in its widest sense. Procedures for dealing with the problem have evolved in a very measured way and the PII system is probably a very good example in this context.

[Baroness O'Loan]

Finally, why did the Government choose not to put PII procedures on a statutory basis, as many have recommended, in an enhanced form but, rather, to move towards the extension of the CMP, which has been described in such negative terms by so many of great distinction who have served this country so well? At this point, I endorse the suggestions made by the noble Lord, Lord Macdonald, regarding the introduction of a statutory PII process with the possibility of, in very exceptional circumstances, a closed material process. This would surely meet the objectives.

7.51 pm

Lord Black of Brentwood: My Lords, I do not intend to detain your Lordships long as I have just one central point to make, but as it relates in part to the media I must first declare my interest as director of the Telegraph Media Group and draw attention to my other media interests in the register. I slightly wonder whether I should follow the example of the noble Lord, Lord Judd, and declare that I, too, am a flat-footed layman, somewhat intimidated by the assembly of the great legal minds that have graced this debate.

As we have heard in many eloquent speeches, the Bill goes to the heart of some fundamental constitutional principles and, indeed, human rights: the duty of government to safeguard the state and its citizens and, consequently, their right to life; the right of defendants to a fair trial, based on information on which they have had a chance to comment; and the demands in a free society for open justice, fully and fairly reported on, and indeed scrutinised, by an independent and robust media.

In the debate on the gracious Speech, I raised some concerns that, based on the Green Paper which foreshadowed the Bill, this legislation would end up undermining some of those vital principles and expressed a great anxiety, which was echoed in the report of the Joint Committee on Human Rights, at,

"its failure to consider the impact of such a radical departure from long established principles of open justice on the media's ability to report matters of public interest".—[*Official Report*, 15/5/12; col. 361.]

It is to their great credit that the Government listened to the widespread concerns expressed by the media and many others about the Green Paper's proposals and likely impact in this area and have acted so decisively to deal with them in the Bill before us. That is warmly to be welcomed and it shows quite how important consultation is in such legislation. I think that the noble Lord, Lord Butler of Brockwell, made that point earlier.

I am particularly grateful to my noble friend the Minister of State for his courtesy in writing to me after the debate on the gracious Speech to reaffirm the Government's strong commitment to open and transparent justice and to outline, as we have heard a number of times today, how their proposals relating to CMP with significantly strengthened judicial control would provide much needed safeguards. I understand that his most helpful letter, dated 11 June, about the media aspects of this legislation is in the Library of the House. Those safeguards will go a long way to protecting the integrity of media reporting, with claims and allegations—and indeed the outcomes of cases—continuing to be made and reported on in open court, with material remaining closed only where it is compatible with Article 6 rights under the European convention. It is also extremely welcome news that the Government have decided that inquests should not be held in secret. A number of noble Lords have referred to that.

I still have some areas of concern, such as the power under Clause 11 allowing the Secretary of State to make an order that would extend CMPs to any court or tribunal, with, as I understand it, important procedural provisions contained in rules of court not subject to the same detailed scrutiny as primary legislation debated in this House. It is crucial that such a move, entailing a substantial departure from our tradition of open justice, will be permissible only in the rarest of cases. I am sure that is what the Government intend and it would be helpful to have confirmation of that.

That said, this is, in the scheme of things, an issue more of subsidiary concern on which I hope we will be able to get reassurances. I ask my noble friend the Minister to continue the Government's constructive dialogue, particularly with the media, that has to date been so effective and to discuss any further suggestions that may come forward for additional improvements intended to safeguard public oversight in this area.

This important Bill is a complex balancing act, as we have heard in so many contributions, between open and fair justice and the security of the citizen. Achieving such a balance between security and liberty, like trying to mesh together Hobbes and JS Mill—not a task I would wish to undertake—is fiendishly complicated. We have heard many concerns today and I have certainly listened to thought-provoking comments. I was struck by the speech of my noble friend Lady Berridge. However, from my vantage point, the Government are to be congratulated on listening to legitimate concerns and striking the balance with care. As a leading article in the *Daily Telegraph* on 30 May put it:

"We are facing a continuing threat from terrorists whose methods are ever more sophisticated, and the manner in which we counter those threats must be protected. This measure reinforces the rule of law without giving ground to those who would do us harm".

Those are sentiments with which I concur. At the start of this debate, the noble and learned Lord said that we should test this legislation by whether it is a sensible and proportionate response to the threats that our society faces. In my view, it passes that test.

7.57 pm

Lord Campbell-Savours: My Lords, I will confine my remarks to Part 1 of the Bill and the Intelligence and Security Committee's operations. I listened to the very reassuring remarks made by the noble Lord, Lord Butler of Brockwell, who poured praise on the committee on the basis of his experience not only as a member but as one of those who engineered the construction of the committee. He was also able to watch that committee's operation in the early days, when people such as me from the awkward squad in the House of Commons were put on it in an attempt to reassure the public.

I was a member of the committee between 1997 and 2001, under the excellent chairmanship of the noble Lord, Lord King of Bridgwater. In 1998, I set out in a paper to the then Prime Minister, Mr Blair, my provisional views on reform of the committee. Sadly, at that stage my views were rejected; they were a minority view that I had been pushing inside the committee. I wanted a committee of Parliament—not of parliamentarians—under a modified Select Committee structure, especially adapted to deal with the handling of national security issues. I should report that in the late 1990s there had been much discussion in the committee in private on whether we should go down the Select Committee route. I recall one particular day when we were discussing the amendment to the annual report from our committee, where we were hassling over the wording so as not to lead the public to believe that we were going to go down that route but to inform them that there was at least an argument going on within the committee on that matter—and that is 14 years ago.

The debate has now moved on. I hope to deal in Committee with some of the recommendations that I made at the time. However, the heart of my case today is that the model the Government are adopting is wrong. Some of the changes I welcome; but I regard the changes that are being made as essentially cosmetic. They will not meet the concerns of Members of the other House, or the expectation of the public, where they have an interest in these matters. Furthermore, the reforms might perhaps be counterproductive. Let us take the process of appointment. Under Clause 1(3) and (4), the Bill proposes that a person is not eligible for membership unless nominated by the Prime Minister. A member is then appointed by Parliament, effectively under a resolution of the House. At the moment a person is appointed by the Prime Minister on a recommendation of the Whips. I know that over the years members of the committee have tried to convince the public that they are appointed by the Prime Minister; the reality is that all members of that committee were appointed on the basis of Whips' recommendations, certainly in the House of Commons. The only difference under the Bill is that the House will have to approve, on a resolution—a rubber stamp—the Prime Minister's recommendations, which means a payroll vote, supported by the opposition Front Bench, backed up with an informal Whip, with bi-party guidance in support. It might even on occasions be a fully whipped vote.

As one of the Commons awkward squad, I was involved in challenging a Select Committee nomination, which very rarely happens in the House of Commons, certainly on only a few occasions over my 21 years there. One never has the support of the Whips, as a challenge is seen as an assault on the workings of the usual channels. What I am arguing, therefore, is that that is no great change.

On the wider issue of ISC operations, there are effectively no changes. On the block on ministerial membership, the length of service, the dissolution of the Commons, the resignation arrangements, quorum and membership cap, determination of procedures, reports, approval by the Prime Minister, and agreements on the remit between the agencies and committee, there is very little change. There is certainly little change on areas which will be set out from the Front Bench by my noble friend Lady Smith of Basildon. The only real areas of change are the arrangements on access to operational material and arrangements for the selection of the chairman, both of which I oppose.

Let us take access to operational material. Under present arrangements:

> "The position for the present ISC is that the Director-General of the Security Service, the Chief of the Intelligence Service or the Director of the Government Communications Headquarters (as well as the relevant Secretary of State), is able to decline to disclose information because it is sensitive information which, in their opinion, should not be made available. Paragraph 3 removes this ability for the Agency heads to withhold information. The ability to decide that information is to be withheld will instead rest (solely) with the relevant Secretary of State (for the Agencies) or Minister of the Crown (for other government departments)".

I am quoting from the Explanatory Memorandum. Well: Secretaries of State; ministerial responsibilities. I regret to say that my then right honourable friend Robin Cook is not here to defend his case today; but I was on the committee where Robin Cook had responsibilities in these areas. When he gave evidence to us on one occasion—it has never been made public before, but I am not breaching national security by saying what happened—we were appalled by how defensive he was towards the services. He was most unwilling to provide for us information which the committee felt that it was entitled to hear. That was the view of all members of the committee, including the chairman, at the time. Let us take the position of Michael Heseltine, for whom I have very great regard, in the early 1980s, when he was in pursuit of CND. Are we saying that people like that should be able effectively to veto information being given to the committee when the law provides that the committee has access to operational material? In other words, they would be able to say, "This material cannot be given to the committee". I have far more faith in the heads of service long before I am prepared to trust Ministers to take particular decisions as to whether the flow of information should be vetoed. To put it more bluntly, I have more faith in the Stephen Landers or the Baroness Manningham-Bullers of this world and in their decisions on these matters than ever I would have in the decision of a Minister of the Crown. Ministers of the Crown on occasions will make thoroughly political decisions; sometimes even their personal credibility might influence the judgments that they make. I think that it is an error of judgment to go down that route.

Under the question of access to operational material, let us take the definition of "sensitive" that might apply to the provision of information to the committee. I quote again from the Explanatory Memorandum on the Bill. Under the present arrangement:

> "The position for the present ISC is that information is considered sensitive information, if (among other reasons) it might lead to the identification of, or provide details of, sources of information … or operational methods available to the Agencies; or if it is information about particular operations which had been, were being or were proposed to be undertaken in pursuance of any of the functions of the Agencies. Paragraph 4 extends these parts of the definition of sensitive information … to cover also equivalent information relating to any part of a Government department, or any part of Her Majesty's forces, which is engaged in intelligence or security activities".

[LORD CAMPBELL-SAVOURS]

I read that as meaning that under sub-paragraph (5)(a) and (b) of paragraph 3 of Schedule 1 to the Bill, we are giving a power perhaps to a junior Minister, perhaps even to a Parliamentary Secretary, to block access to operational material in any department if that Minister, adequate or inadequate, wise or unwise, perhaps even being manipulated, decides that the issue is either national security-sensitive or is not reportable to a departmental Select Committee. That is not a reform; it is a fudge.

Then we have the arrangements for the selection and appointment of the chairman. Under Clause 1(6):

"A member of the ISC is to be the Chair of the ISC chosen by its members".

In other words, at the beginning of a Parliament, perhaps on a change of government, new members of the committee, without any knowledge whatever of the internal dynamics of the committee which are important, of individual member relationships with the agencies, or of the kind of work to be undertaken, are to be asked to appoint a committee chairman. I regard that proposition as ludicrous. When I was first appointed to that committee in 1997, I would not have supported Tom King as chairman. As far as I was concerned, having just come through 17 years in Opposition, to me he appeared to be an abrasive former Cabinet Minister. However, within a matter of months, I realised that he was absolutely ideal for the job; he was perfect in the chair and I would have supported him all the way; but not at the time, after the general election in 1997. Yet under this arrangement, new members will go into that committee and they will be required to vote for a new chairman of the committee. That proposition is quite ludicrous.

The model is wrong. What is my alternative? For a start, it should be a committee of Parliament, not of parliamentarians. We are going partly down that route. The committee should be a creature of Parliament, not of the Executive. I still believe that it is a creature of the Executive because of the ministerial veto. It is not a Select Committee and yet the Labour Party has supported full Select Committee status right through since the debates of 1988, almost 24 years ago. My noble friend Lord Richard made an important contribution to the debate in this House and my noble friend Lord Hattersley, as the shadow Secretary of State at the time, made a similar contribution in the House of Commons, supporting the Select Committee structure. So why are we still arguing the toss after some 24 years? It is widely known that committee members wanted some change, but I do not know what change or even whether this is what they really want. Is real reform being blocked in Cabinet, or perhaps by some boys in short trousers in Downing Street, or is there some legal reason? What is the reason for the fudge?

I believe that the committee should be a Select Committee, meeting on the Parliamentary Estate, established under a modified Select Committee structure, approved by a special resolution of Parliament, with procedures specifically adapted to deal with the handling of issues of national security. It would have the protection of parliamentary privilege, which could be fully considered by the Joint Committee currently being established to deal with the issue of privilege. It could hold those who deliberately misled it in contempt, which is currently the position with Select Committees. It could take evidence under oath and publish reports with the right of the agencies to request redaction, subject to appeal from agency or committee to the Prime Minister, which I call the security override. It should have the power to refer material to other Select Committees, again subject to the override, and have the power to call for persons and papers under similar arrangements. It would be a credible mechanism for the issuing of statements on issues of national security where the agencies might be in the dock in public opinion, as against the present position of a nod and a wink to sympathetic journalists.

I turn to the issue of the handling of operational information and of sensitive material more generally. As I have said, I completely reject the idea that Ministers should effectively have a veto on the flow of such information to the committee. The chairman of the committee should have open, unrestricted access to all post-operational security material, described in the Explanatory Memorandum as,

"retrospective oversight of the operational activities".

It would be for the chairman in consultation with the agencies, not for Ministers, to decide on whether any operational information should be withheld from the committee for reasons of national security; or for the chairman in consultation with Ministers more widely where other Select Committee considerations were in mind. The chairman would decide. The chairmanship of the committee would then be crucial. Noble Lords will now see why I do not want it to be elected.

This model would change the entire dynamics of the operation of the committee. For a start, you could not elect its chairman. It would subtly change the nature and form of accountability. That appointment would have to be on the agreement of the Prime Minister and the Leader of the Opposition and would be an appointment of trust. Malcolm Rifkind, the noble Lord, Lord King of Bridgwater, my noble friend Lady Taylor of Bolton and others who followed could have done that job and been fully trusted by the agencies to be given access to that material. They would then be responsible for deciding what information the committee was given where issues of the veto arose.

I could go further, although I am still turning it over in my mind. I could argue that there are circumstances in which such a chairman could be given access to pre-operational material on the basis that it could not in any circumstances be disclosed to the committee. Post-operation, of course, it could then fall under the general heading of retrospective oversight and the chairman would then have the discretion, following consultation with the agencies. Noble Lords will note that I have excluded Ministers from the process. The discussions that regularly take place between the Government and the agencies would have no bearing on accountability to the committee. I am proposing a very different model, and I hope that the Government are listening.

8.12 pm

Lord Strasburger: My Lords, I am in a small but growing minority in this debate in that I am neither a distinguished lawyer nor a member, not even a former member, of the ISC.

When compared with many other countries, it is remarkable how much the British people hold the courts in high regard and respect their decisions. This is partly because our judges are seen as incorruptible, independent and wise, but the main reason is that court decisions are the result of a process that is fair and transparent. By "fair" I mean that the court will give no privileges to either side, even when one side is the state. This principle is known in European jurisprudence as "equality of arms" and is a very British concept. An important aspect of equality of arms is that each side has an opportunity to see the other side's evidence, to challenge it and test it, and to call evidence of their own to rebut it. The decision that is made after that process has been respected as one that we have good reason to respect.

What does transparency mean in this context? The principle of transparency entails that proceedings should be open to the public unless there is a very good reason why not. The court should make plain the reason for its decision. No matter how high our regard for the judge, it is very hard to trust his or her decision if you do not know how and why it has been reached.

Closed material proceedings are a big departure from the principles of transparency and fairness. The Government are proposing that, in civil cases where they are the defendant and are being accused of wrongdoing, they should be able to stack the proceedings in their favour on what is probably the deciding issue in the case. CMP is not just a secret hearing with the press excluded; the litigants and their lawyer are also locked out. The Government's lawyer would have a private meeting with the judge who will decide the case and give him or her so-called evidence that their opponent cannot see. I say "so-called evidence" because it will simply be assertions that have not been tested or challenged. It may be mistaken or could even be complete fiction. Even so, the Bill requires the judge to take this highly dubious information into account when reaching a verdict—a very one-sided arrangement that cannot in any way be described as fair.

What led to the creation of CMPs in the first place? They were introduced for Special Immigration Appeals Commission hearings involving foreigners for whom a national security deportation was being considered. Previously such appeals were held in total secrecy and, by comparison, CMPs were a bit less bad. We are now being invited to extend CMPs from this highly specialised application to civil cases, where the Government are the defendant and are being accused of wrongdoing.

However, that is not the end of this mission creep. Buried in the Bill, in Clause 11(2), is the power for the Secretary of State to amend the definition of "relevant civil proceedings" by statutory order, into who knows what areas of our justice system.

Of course, we have a good idea of how far the Government would really like to go in extending the scope of CMPs. The Green Paper sought to apply CMPs to all civil proceedings involving the Executive. Secret and unfair hearings, therefore, could have been invoked by a hospital trust fighting a medical negligence claim, or a local authority defending itself against a claim for maladministration. For now, the Lord Chancellor has rowed back on that ambition in the face of a mountain of protest, but he has shown us the ominous and dangerous road that he wants to take us down.

What of the safeguards that the Government have trumpeted? We are told that the case judge will decide whether CMPs will be invoked, not the Minister. However, there is a disconnect between what the Government are saying on this and what is actually on the Bill. According to the Bill at present, judges will have their hands tied, with no discretion to consider the competing interests of disclosure in the interests of justice and national security. This, therefore, will effectively be a ministerial decision, with no effective judicial oversight.

What, then, is the problem that this Bill seeks to solve? The current system of PII certificates works well. It allows a balance to be struck between the requirements of justice and national security. If a Minister believes that disclosure could harm the public interest, he or she signs a certificate to that effect. The court then considers the issue, and the judge has a number of ways to handle the information in question. He can withhold it, release it, redact it before he releases it, protect the identity of the witness, and he has a number of other nuanced solutions. The PII system works well, and the Government have failed to bring forward a single example of where the PII system has led to a disclosure that has been damaging to our national security.

In fact, the Bill requires a Minister to "consider" the PII route before applying for a CMP, but the wording of this provision is so weak and easy to evade that, in effect, Ministers can and will demand CMPs without giving any serious consideration to the much fairer PII route. If this Bill is to proceed, before the Minister can ask for a CMP he should have to demonstrate to the court that for some reason a PII certificate will not do the job.

What do others think of this Bill? The House could do worse than listen to the views of the special advocates, specially vetted lawyers who are appointed to serve the court in CMPs. If anyone knows about the grimy details of this part of the justice system, they do. In a memorandum signed by 50 special advisers—which is basically all of them—they say that,

"CMPs are inherently unfair and contrary to the common law tradition … the Government would have to show the most compelling reasons to justify their introduction … no such reasons have been advanced … in our view, none exist".

There you have it from the horse's mouth. No reason has been advanced and none exists for making part of our civil justice system inherently unfair. That is the opinion of the specialist lawyers with deep knowledge of this type of proceedings and with no axe to grind at all.

What, then, is behind this solution without a problem? Over the past few months we have been offered a series of spurious justifications for this draconian Bill, all of them without any evidence to support them that stands up to scrutiny. I put it to the House that this Bill has nothing to do with protecting national security or preventing the CIA from withholding intelligence from our agencies because they do not trust our courts, or with saving the Government from having to settle civil cases for large sums because they cannot use sensitive

[LORD STRASBURGER]
data to defend themselves. All these reasons and others have been advanced at various times with little or no evidence to support them.

I put it to noble Lords that the real problem that this Bill is designed to solve is the justified embarrassment that the security agencies suffered when a recent civil case exposed their involvement in rendition and torture. In that case, the previous Government sought to conceal from the courts seven paragraphs that admitted what the Americans did to the litigant while he was in their custody.

The judge's view was that:

"Of itself, the treatment to which",

the litigant,

"was subjected could never properly be described in a democracy as 'a secret' or an 'intelligence secret' or a 'summary of classified intelligence'".

This Bill might have prevented the exposure of this wrongdoing and it may do so in the future if we pass it without major amendments.

Lord Lester of Herne Hill: I am sorry to interrupt my noble friend but that is not quite right. The previous Government attempted to provide that information to the United States Military Commissions, but were thwarted from doing so by the American intelligence authorities. What the British Government sought to do was entirely honourable and they did not seek to conceal it from our own court. I thought I should just place that on the record.

Lord Strasburger: I thank my noble friend for that. The Lord Chancellor has indulged in plenty of comforting rhetoric in an attempt to assuage the serious concerns that many people wiser than I have about this Bill. The problem is that there is a yawning chasm between his words and those in the Bill. For example, he assures us that the judge will decide whether CMP will be used but the Bill as currently worded makes clear that the judge's hands will be tied and will have little option but to grant the Minister's request for CMP, even if he or she believes that the case could best be tried using PII rules. The judge will not be able to adjudicate between the competing arguments of justice and national security.

As it currently stands, this Bill is a toolkit for cover-ups. As such it is a threat to our democracy and we have a lot of work to do to fix its serious shortcomings. I hope that my noble and learned friend the Minister will listen to the strong misgivings about this Bill around the House, among civil liberties campaigners and, particularly, the special advocates who have a much more balanced and independent view of these matters than the politicians and the security agencies.

I will listen carefully to the Minister's response today and in Committee. I hope that he is able to give me comfort to support a much-improved version of the Bill in the future but there is a long way to go.

8.26 pm

Lord Faulks: My Lords, this Bill was always likely to be controversial and contributions so far have shown that that is the case. Part 2 has been a particular focus of attention. It is concerned with restricting the disclosure of sensitive material in court proceedings. A number of noble Lords have spoken who are not lawyers, and I entirely agree that the issues that this Bill throws up are not solely the possession of lawyers. I am, however, an advocate and as such am instinctively opposed to any erosion of the principle of natural or open justice. Evidence should be heard and read by litigants and their representatives, and their comments and reactions to it are a fundamental part of what we recognise to be a fair trial, whether that trial is in criminal or civil proceedings.

The Bill involves the extension of CMPs to include civil proceedings. It should be emphasised that CMPs are not of themselves a novelty and exist in a number of different contexts, as the Minister has described. The extension was presaged by the Green Paper, and the Government's proposals have been much commented on in the media and by various interested parties. The Government have acknowledged the contribution of those who commented on the proposals, not least the JCHR, of which I am now a member, although I claim no credit for that contribution as I was not a member at the material time. I am conscious of some of my distinguished predecessors on that committee. Contributors to the debate even included the *Daily Mail*, a newspaper that normally causes the party opposite to reach for their collective smelling salts.

In response to representations, the Government have made some important modifications to their original proposals. The most important seems to be that the CMPs will be appropriate only in the disclosure of evidence that would be,

"damaging to the interests of national security",

rather than in criminal proceedings or disclosure that might damage international relations. I share with the noble Marquess, Lord Lothian, some little confusion as to why inquests fall into a separate category. As the noble Lord, Lord Lester, has said, this may be to do with the jurisprudence in Strasbourg about Article 2 and its expanded approach. The questioning in inquests may be rather different than in civil proceedings or judicial review proceedings, or the Government, as a reasonable matter of political expediency, may have responded to public disquiet.

Be that as it may, there appear to me to be certain relevant questions about what remains of CMPs. Have the Government made their case for an extension of CMPs, and if so are there sufficient safeguards in the Bill to minimise any risk to justice? The problem with the current system is that the Government are between a rock and a hard place. They may take the view that in disclosing material that will damage the interests of national security, but using PII if the application is successful, they may not be able to defend proceedings without what may be crucial evidence in their favour. The result may be that there is an inappropriate compromise of a civil claim.

The noble Lord, Lord Thomas, says that the Government are apparently in favour of the settlement of proceedings. This is not what I detect from the anxiety behind this Bill; they are in fact against inappropriate settlements where evidence has not been adduced. On the other hand, if the PII application is unsuccessful and the judge in performing the relevant

balancing exercise decides to order the disclosure of material, the Government, consistent with their assessment of the potential damage in disclosure, will be placed in a position where they may have to settle a claim, to which there is if not an actual then at least a potential answer. This cannot be satisfactory and is of itself damaging to the interests of justice. The Government are entitled to justice, too.

The noble Lord, Lord Pannick, says quite rightly that in the course of looking at the doctrine of PII, judges have developed a range of responses to mitigate the stark choice that is sometimes presented to the Government. The ingenuity of judges includes the redaction of material and anonymisation and other procedures, but sometimes—this has been the case in the past and will be so again—the Government are left with that stark choice, which I understand is the philosophy behind this part of the Bill.

I am naturally concerned by the comments about CMPs that have been made by the special advocates, some of whom I know well. Many of their points seem valid; in particular, I am unsure how a satisfactory assessment of prospects of success can be made in the absence of critical evidence. How, too, can cases settle on the basis of a proper assessment of likely outcome—and here I acknowledge the point made appropriately by the noble Lord, Lord Thomas? How is Part 36 of the Civil Procedure Rules to operate? I am also very sympathetic to their very understandable regard for their clients' interests, which they feel may be compromised by the lack of a free flow of communication between the special advocates and open advocates and by the risk that some relevant piece of information may remain unchallenged because of this lack of communication.

I am much less convinced, however, by the suggestion that PII is working well. I am entirely sure, as the noble Lord, Lord Macdonald, pointed out, that judges are performing the balancing exercises wisely, but for the reasons I have given the operation of PII may on occasion simply fail to deliver a just decision.

The use of CMPs will inevitably be what has been described by the independent reviewer as a second-best solution. However, it is significant that David Anderson QC, in the course of his providing memoranda to the JCHR, was convinced that there was a need to have a CMP available as an option in civil cases, albeit that it might not be needed to be exercised on anything other than very occasionally, and I agree.

Special advocates, whatever their reservations about these procedures, are known to be tenacious in the defence of their clients and in challenging evidence adduced in CMPs. It must be recorded that a number of distinguished judges, not least the noble and learned Lord, Lord Woolf, who is not in his place, have said that CMPs are capable of producing justice and are consistent with it. Other judges, such as the much quoted noble and learned Lord, Lord Kerr, have observed that the lack of informed challenge, based on instructions, may leave the judge with a significant disadvantage in assessing the cogency of relevant evidence.

While in theory that is undoubtedly right, experience of our judiciary tells me that if evidence is adduced under CMPs, judges are likely to be particular rigorous in assessing its value. For example, if what is adduced amounts to double hearsay from a dubious source, that evidence, which could be unchallenged, is unlikely to be of much persuasive value. I simply do not recognise the scenario described by the noble Lord, Lord Strasburger, whereby little bits and fragments of assertion are put forward and expected to be relied upon by judges. It seems to me that if the Secretary of State elects to invoke CMPs, he or she is likely to do so only when the evidence is of real cogency. Let us not forget that the Government have lost cases after CMPs.

It is also worth observing that the extension of CMPs relates to civil proceedings involving claims for damages or judicial review, rather than to criminal proceedings, as we were reminded by the noble Lord, Lord Butler of Brockwell. While all cases should be subject to a full and preferably open hearing, the extension provided by this legislation is not concerned with criminal charges with a potential for loss of liberty.

The relative roles of the judge and the Secretary of State were much discussed in the responses to the Green Paper. It is for the Secretary of State to make the application, and the court must then make an appropriate declaration. However, I agree with the noble and learned Lord, Lord Mackay of Clashfern, that under Clause 6(2) one would expect the judge to try and devise strategies and to be interventionist in order to have a mode of trial that can, if possible, avoid CMPs, which are perhaps a last resort—but a necessary last resort.

It is said that Clause 6(5), which provides that the Secretary of State must first consider making a claim for PII, is of very little force. However, I would expect the Secretary of State to need to satisfy a judge that there had been at least consideration of such an option, and an explanation provided as to why PII was not used. The rules of court that are to be made pursuant to Clause 7 require a judge to consider providing a summary or gist of the material that is not damaging, within the definition of the Bill. Presumably, it would enable the claimant to provide some comments on the relevant evidence. This would need to be carefully done, but it would provide a potentially important safeguard.

The role of the Human Rights Act is also of importance. Article 6—the right to a fair trial—is specifically referred to in the Bill and provides another safeguard. In fact, we had well established principles of fair and open justice long before the Human Rights Act came into force. However, if one is to view these provisions in Human Rights Act terms, it should be remembered that Article 2 of the convention places an obligation on the Government, as a public authority, to protect the life of their citizens. In focusing on litigants, we should not forget the rest of the population, whose well-being may well be jeopardised by the disclosure of sensitive material.

Such concerns also colour my approach to the removal of the Norwich Pharmacal remedy in relation to sensitive material. It is vital that we protect the sources of our intelligence and that we maintain the confidence of our allies who provide us with that intelligence. If there was any doubt about that, it was confirmed by the noble Lord, Lord Butler, and the noble Marquess, Lord Lothian. This remedy is concerned with cases in which foreign litigants want to see material

[LORD FAULKS]
that we hold innocently and does not affect cases where the Government are alleged to have been involved in wrongdoing, although I do not particularly like the expression "legal tourism" in this context. While I understand why the Government have chosen a wide definition of sensitive material, I invite the Minister to explain why the definition needs to be quite as wide as it is in the Bill. I do not suppose that it is intended to deny access to what most people might regard as non-sensitive material, but the Bill at least has the potential to allow such an approach.

We have heard a lucid analysis of the Binyam Mohamed case by the noble Lord, Lord Lester; and other noble Lords, including the noble Lord, Lord Pannick, referred to it. It can be seen from an examination of that case law that the courts in fact showed a considerable degree of deference to the security services, and some of the concerns expressed by other countries may be rather lacking in justification. However, it has to be remembered that the Norwich Pharmacal power is unqualified. The Government do not have the choice that they have in relation to the CMPs, and if ordered to produce this material they have to comply with the order.

Whether or not the fears of the United States and other countries are unfounded, it is critical for the safety of our country in these dangerous times that we do not jeopardise that relationship. I appreciate that the Government are placed in a very delicate dilemma, and it seems that we should have profound sympathy with their response, albeit that modifications may be made in the rigour of that test, which will more satisfactorily balance the respective interests.

This Bill will be thoroughly scrutinised by your Lordships' House—

Lord Lester of Herne Hill: My noble friend may not be aware of the fact that in the Binyam Mohamed case, after the Norwich Pharmacal order was made, the court reserved the question of public interest immunity, but it never had to be decided because he was then released. It would not have been all or nothing. It is quite clear from the judgments that there would have been something. The courts, having decided Norwich Pharmacal, could then have decided on PII. I am not sure whether that is appreciated.

Lord Faulks: I entirely appreciate that. It is one reason why I suggest that there may be some modification to the test that we may ultimately arrive at, after having considered this matter in Committee. This Bill will be thoroughly scrutinised in Committee by your Lordships' House, and it is clearly right that it should be. I hope and trust that we can avoid hackneyed references to Kafka and the Star Chamber. I am sorry that in an otherwise lucid speech by the noble Lord, Lord Beecham, he did not resist that temptation. The Government have a duty to protect us. This Bill is situated at the junction between that duty and the need to protect civil liberties and the integrity of the trial process. Please let us not forget the people of this country and those in the security services who labour silently on our behalf to protect them, in the course of our zeal to trumpet our commitment to the rights of litigants.

8.41 pm

Baroness Hamwee: My Lords, it is not unusual at this stage of a debate to think that everything has been said and that everyone has said it. Indeed, on this occasion the people who have said it are those who know about the subject. There is one exception, because there is one Back-Bench contribution still to be made. I am sure that what I have said will apply to that contribution as well. Your Lordships are too polite to say, "Well sit down then". However, like some of us, I acknowledge that I speak from a degree of ignorance and, some might say, naivety. The noble Lord, Lord Hodgson, described his feelings as apprehension. I would say that apprehension does not begin to describe it.

Part 1, which deals with the oversight of intelligence and security activities, had been eclipsed by Part 2 in the comments that we received before this debate. It is interesting, and encouraging, that more attention has been given to Part 1 than I expected. It is very significant, not least because we want to avoid the litigation which may be the subject of Part 2. However, just as the question about Part 2 is whether the Bill has drawn back enough from what was floated in the Green Paper, on Part 1 the question is whether the provisions go far enough to meet concerns to achieve all that could be achieved, or are we in danger of missing an opportunity? That would be a pity given the calls, to which reference has been made, for strengthening the powers of the Intelligence and Security Committee and for making changes to its composition, its staffing and its remit to support that strengthening.

There are a lot of related terms for the functions of such a committee: oversight, examination, supervision and scrutiny. "Oversight" is in the heading of Part 1. I wonder whether that is the right word. The functions described are essentially retrospective, and the ability to put material in the public domain—which, to me, is fundamental and possibly the main part needing scrutiny—is constrained. Indeed, the committee itself may not always be able to access key information. However, to be positive, I note that the functions under Clause 2 adding the operational function, which are new in comparison with the 1994 Act, are there and that is welcome.

Operational matters which are not current are of significant national interest. We might want to unpack what that means later. They also have to be consistent with the memorandum of understanding which Clause 2 provides for. I ask the Minister whether we are able to see a draft of the memorandum of understanding so that we can debate it in context, or perhaps a draft or framework or some clues about the principles referred to in Clause 2.

The new status of the committee is important but, given that its reporting function is subject to prime ministerial edit—other noble Lords have said much the same thing—it still reads as a creature of the Executive. Perceptions are important and it is important to demonstrate independence. I note that what is defined as sensitive information, subject to restrictions on disclosure, is to cover not only the three agencies but also,

"any part of a government department, or any part of Her Majesty's forces, which is engaged in intelligence or security activities".

I accept, as the noble Marquess, Lord Lothian, pointed out, that national security is narrower than public interest.

The role played by government departments in the intelligence landscape is an issue and I do not think that that is an irrelevant comment. For some time, I have been wondering whether the Home Office, for instance, would have a different culture if the Office for Security and Counter-Terrorism were not embedded in it; they are in the same building. Perhaps I may indulge in a small flight of fancy: if the Home office building were used, for instance, by civil liberties campaign groups, there would be a very different sort of conversation around the water cooler.

One of the difficulties is that, by definition, intelligence is not evidence, as has been said by many noble Lords. The ISC cannot substitute for the judicial process. We have the Investigatory Powers Tribunal investigating individual complaints. Is that worth exploring? I want this committee to be quite ambitious, so is it worth exploring whether it should have some sort of role in dealing with complaints and perhaps even with inspections? I also wonder aloud whether the committee might have a role—perhaps I am about to be struck by a thunderbolt—in confirmatory hearings of senior appointments.

We need to find out how to do these things without jeopardising what is sensitive within the definition. We know that the intelligence services are understandably sensitive about sensitive material. Even if there is too much such material to make redaction practicable, some such role might provide some reassurances.

In summary, I am searching for ways for the ISC to use procedures, not to be hamstrung by them. Others have spoken in detail on Part 2 and I acknowledge how far the Bill is from the Green Paper—and it was a Green Paper. If it is possible for something to enter one's DNA during one's late teens and early 20s, the fact that a lawyer should be able to take full instructions from his client worked its way into my DNA as I learnt my profession. It is not a matter of a client giving a monologue, but there has to be a dialogue with questions to the client and a discussion of what will or might be said against him. The noble Lord, Lord Judd, said that the special advocates made it clear that the procedures were alien to their training. Evidence is not evidence unless it is the subject of test and challenge. Almost all speakers have referred to that. I use the term "unease" as a description for my response to what is proposed now. I suspect that no one in this Chamber or who has been involved with the Bill is complacent about it.

Is it possible to loosen restrictions on special advocates to security-clear "normal" lawyers, if there is such a thing? I think that my noble friend Lady Williams suggested that. My noble friend Lord Thomas of Gresford shared ideas about changes in the process. I share a concern that closed material procedure will become the default mechanism—it will become normalised. Like my noble friend Lord Macdonald, I acknowledge that there is a small number of cases where some such procedure may be required to achieve justice. Some call CMP "secret justice", but that is not a term that I like, because we and the public need to be convinced that it is justice as well as secret.

I noted the comments that the judiciary is deferential to the Government on security matters. I suspect that the Government may not see it that way, given some of the comments that we have heard about the judiciary over the years. The noble Lord, Lord Faulks, referred to a particular case. I do not share that reading of deference. Instead, I hope that I see the integrity to which my noble friend Lady Williams referred.

Because of that element of my DNA, I was keen during the passage of the recent Protection of Freedoms Bill to pick up an issue that was highlighted by the Bar Council, and I will mention it briefly today because I hope to return to it in Committee. I refer to the issue of legal professional privilege, which ought to sit easily within the Bill. I hope to use the Committee stage to pursue how to prevent the use of RIPA powers of surveillance, covert human intelligence sources, interception of communication and the acquisition of communications data to target legally privileged information while permitting it to be accessed when a lawyer/client relationship is abused for criminal purposes. One cannot do one's best for a client if he does not have confidence that what he says is privileged and he edits his story. The noble Lord, Lord Henley, who is to respond to the debate, will be familiar with that. He was very helpful in meeting the Bar Council during the Protection of Freedoms Bill and I will trouble him again.

Last week, I had the privilege of judging some awards for good scrutiny. There are many dedicated and imaginative scrutineers out in the rest of the world. It reminded me that some words are not jargon. They are very important terms and they will never go out of fashion. Justice is obviously one and so, too, are transparency and accountability.

8.52 pm

Baroness Manningham-Buller: My Lords, I declare an interest. I spent 33 years in the Security Service, but I also have a strong interest in the rule of law. I retired more than five years ago and the difficulties of intelligence and the civil courts, which is what we are talking about rather than the criminal courts, and the problem of Norwich Pharmacal have largely arisen since I retired.

Some important points have been made in today's Second Reading, with many of which I sympathise. When we come to Committee, no doubt there will be a number of amendments that will seek to refine and improve the Bill. At this stage, I want to talk about the three main themes of the Bill in the order in which they come. I start with the Intelligence and Security Committee.

In the 1980s, although the noble Lord, Lord Butler, said that the intelligence and security agencies were anxious about such scrutiny, I can remember many in my service arguing for it. We felt that some parliamentary oversight—what those words mean, I agree the noble Baroness, Lady Hamwee, is not entirely clear—was necessary. We thought that there was a democratic deficit. We found little support from the Prime Minister of the day or from the Government for that sort of committee. Not until many years later, in 1994, did it come into existence.

As the noble Lord, Lord Campbell-Savours, says, what we are seeing here is evolutionary not radical change. It is worth saying that my predecessors, I and I believe my successor have over the years ignored the

[BARONESS MANNINGHAM-BULLER]
narrow rubric of the Act, which says that the committee should confine itself to looking at matters of "policy, expenditure and administration". This was always risible because all of those things are intimately connected with the operations of the service. Although we did not do so to begin with, because confidence needed to build up, certainly over the years we have sought to be very open with the committee and, looking for example at the 7/7 report that has extensive details of operations, we have been so.

I never refused to answer a question of the committee. That may have been because the committee itself was quite sensitive in not asking me, for example, the identity of my most important agent in the IRA or al-Qaeda because the committee itself understood that, in order to fulfil its function, it did not need this sort of really sensitive intelligence. The committee will evolve further. From my own view, I do not see a problem with it becoming a Select Committee. I am very interested and flattered that the noble Lord, Lord Campbell-Savours, thinks that he would get more truth from the head of the committee than the Ministers, on which I could not possibly comment. I end this bit by saying that it is very much in the interests of the security and intelligence agencies that parliamentary oversight is as thorough and convincing as possible. This is why, when my name was put forward to be on the committee, I said I could not possibly do it because the committee would be looking at things when I was director general.

This brings me on to the closed material proceedings. I understand the very real concern expressed in this House and outside that what the Government are proposing in resorting to secret justice—probably itself a contradiction in terms—is to conceal wrongdoing and to protect what should rightly be exposed. From my reading of it—and I accept that a number of bits need amendment—the Bill tries to address serious dilemma in very few cases, though we can argue at Committee how well.

I am interested that the noble Lord, Lord Macdonald, and the noble Baronesses, Lady O'Loan and Lady Hamwee—and probably many others earlier in the debate, I cannot remember—acknowledge that there may be some small, narrow band of cases where the dilemma on how to deliver justice is to bring highly relevant but sensitive material that would be excluded by PII into court and not keep it out. It is surely fair to claimants and to defendants in civil cases that such material is put in. The judge will decide whether it will be a CMP procedure.

Currently, a number of serious distortions in small cases seem to occur. Allegations become facts because they cannot be defended. Settlements presume guilt, even when the Government admit no liability. Perhaps almost more importantly, claimants may get financial satisfaction, but only that. Whether through these proposals or others, we need a way that is safe to test the allegations, some of which, as the noble Lord, Lord Pannick, said, are extremely serious and of the gravest nature against the Government and agencies like my own. These need to be properly investigated by the court and a determination made, which, I suggest, cannot happen without secret material.

This brings me to Norwich Pharmacal, which is new to me. I am interested to hear from present members of the parliamentary committee that it is already seriously damaging the exchange of intelligence, perhaps from a false perception of what the High Court determined.

The control principle is a pretty fundamental one. If we threaten and undermine it, we will be the losers. There is an exchange of intelligence around the world, not just with the Americans. All our European friends produce hundreds of pieces of information a day. It comes from Australia, New Zealand and Belgium—not much from Belgium, but a bit. We receive lots from France, from Germany, from Spain and from friends in the Middle East. We receive intelligence from countries and states that are not friends, and whose intelligence exchange has to be carefully handled. There is an enormous amount of intelligence.

The sources of foreign intelligence, just the same as those of our intelligence, are often fragile. Human sources can be exposed and killed. They have Article 1 rights to life just the same as other people. Technical sources can be quickly compromised and rendered useless. Other countries will not share with us if doing so jeopardises, or they judge it to jeopardise, their sources of intelligence. Who can blame them? We would do the same. We will not always or, indeed, even usually know or be able to judge the risk to their sources. Of course they make a judgment before handing us the intelligence, but if the judgment is that that would risk exposure, they will not hand it over. We need that intelligence when faced with a globalised threat.

I had further points I wanted to make in my speech, but many of them have already been covered by other speakers. I shall therefore end by saying that I have heard a lot in the debate about the conflict between liberty and security. Fundamentally, I feel that these are not concepts that should be in conflict. Security underpins liberty and, as I said in my Reith lectures, without security there is no liberty. I should say that I agree strongly with the comments of the noble Baroness, Lady Williams of Crosby, on that. When we reach the Committee stage, I hope that it is within our capability to pass an Act that damages neither liberty nor security and delivers justice that, while it is not open and therefore definitely second best, is better than the absence of justice in a very narrow range of cases where the use of highly sensitive material in court is necessary.

9.02 pm

Baroness Smith of Basildon: My Lords, we have had an interesting and informative debate and I hope that the Minister is grateful for the detailed and useful comments that have been made. They are an indication of the kind of debate we will have in Committee, which I think will be very constructive. Not only has this debate been worthwhile and informative, but I was struck by where the areas of agreement are, where the areas of disagreement and concern are, and where there is broad agreement on those areas of disagreement and concern, if the noble Lord follows my logic.

I suppose that I have to declare a non-interest in that I am one of those who the noble Lord, Lord, Lord Hodgson, referred to as an "outsider" and who

my noble friend Lord Judd called a "flat-footed layman". However, I should say that in the debate today the majority of speakers were non-lawyers—only narrowly, but we made the majority. I would argue that while it is a legal debate and there are strong legal implications or stages, it is not just a legal debate. As the Minister said when he introduced the debate, these are complex issues that go to the heart of our democracy and our security, so the Government have to find a correct balance that takes into account our national security while not losing sight of individual rights. As many noble Lords indicated, there are times when finding that correct balance is challenging.

I was interested in the analogy drawn by the noble Baroness, Lady Berridge, of the statue of Lady Justice and her seven scales. I know she meant it to be an amusing comment, but there is a lot in it which reflects how complex and difficult these things are. She made quite a serious point in that regard. What is clear is that the level of expertise available in your Lordships' House to contribute to this debate will try to seek the consensus that the Government originally referred to. It might be that one of the reasons the Government started the Bill in your Lordships' House was to make use of that knowledge, experience and expertise.

If I may digress slightly, noble Lords may recall that in making the case for an elected House with 15-year terms, the Deputy Prime Minister Nick Clegg described your Lordships' House as having a "veneer of expertise". That is hardly the case today. We have not seen a veneer of expertise; we have seen very strong expertise, not just from the lawyers that I have mentioned and senior members of the Bar and the judiciary, but members and former members of the Intelligence and Security Committee and the Constitution Committee, those with professional experience of security agencies, those with experience of government, former Ministers, journalists and those with a record of standing up for the protection of civil liberties and human rights. I think that the Deputy Prime Minister also said that the knowledge in the Lords was 40 years out of date. The collective knowledge in this House goes back well beyond 40 years but it is also up-to-date, and that will be very valuable as we progress to Committee.

I do not want to dwell in any detail on the Ministry of Justice issues that my noble friend Lord Beecham has already referred to, but will focus mainly—although not exclusively—on Part 1 of the Bill regarding the oversight of intelligence and security activities. The noble Lord, Lord Butler of Brockwell, referred to the "modernisation" of the committee. I always baulk slightly at the word modernisation because it often means technology and doing things differently for the sake of it. But I think he went on to describe the kind of progress that he was seeking and perhaps the words "progressive reform" might be a better way of looking at this.

The Bill seeks to reform the ISC by giving it the formal statutory function of overseeing the wider intelligence community, not just the agencies but including counterterrorism and the Home Office. It provides for retrospective oversight of operational activities, as happened once before with the 7/7 report that we have heard about. It also provides the power to require information from agency heads, with a veto only by the Secretary of State—or Minister if it is the Cabinet Office—and that Parliament will elect the ISC from a list put forward by the PM after consultation with the Leader of the Opposition. The proposal is that the chair should be chosen by members of the ISC, not the Prime Minister.

In the main, we support what are sensible proposals to strengthen the ISC's power of scrutiny, which stem, I understand, from the ISC's own report, published last summer. There is widespread support for improved oversight and scrutiny, but a number of noble Lords, including my noble friend Lord Campbell-Savours and the noble Baroness, Lady Manningham-Buller, asked whether these proposals go far enough and whether there was scope to strengthen them further. It would be helpful to consider a number of additional items to improve the scrutiny and oversight; for example, for the ISC or its chair to have a greater ability to view individual cases, such as control orders, or for the chair to be a senior opposition MP.

The Government should also consider authorising, where appropriate, some of the committee's hearings to be held in public in order to strengthen public confidence in the committee. In the same vein, we believe it would be helpful and would benefit public accountability for the agency heads to come before the committee in public once a year, just as they do in the US Congress. Furthermore, we want to give further scrutiny in Committee to the ministerial veto over the release of information. Specifically, we want to probe the Government's definition of "sensitive information". I will come back to that because it was raised by several noble Lords, but we want to probe what the Government mean by the definition in sub-paragraph (3)(b) of paragraph 3 of Schedule 1, which refers to,

"information of such a nature that, if the Minister were requested to produce it before a Departmental Select Committee of the House of Commons, the Minister would consider (on grounds which were not limited to national security) it proper not to do so".

I am not clear why this is necessary over and above the test of national security and sensitive information.

As the Bill progresses, we would also be interested to hear the justification for Clause 3(4). It allows the Prime Minister to order the exclusion of part of the committee's report to Parliament if the Prime Minister considers, after consultation with the ISC, that it is prejudicial to the discharge of the functions of any of the agencies.

I move on to Part 2. Clauses 13 and 14 relate to the Norwich Pharmacal jurisdiction. This has been referred to today by a number of noble Lords. In discussing its implications, there are two issues: first, whether the Government have correctly identified the problem and, secondly, whether they have correctly identified the solution. As we have heard, the Norwich Pharmacal case was an intellectual property rights case in 1974. It set the precedent of residual disclosure jurisdiction, whereby the courts can order disclosure of information by a third party—neither the plaintiff nor the defendant—if the following conditions pertain: the information is required in order to bring action against an alleged wrongdoer; the third party against whom the order is sought is "mixed up", however innocently, in the wrongdoing; and the third party is in a position to provide the information sought.

[Baroness Smith of Basildon]

Clearly, in 1974, no-one envisaged the extension of this case to intelligence—that was never the intention—but the Binyam Mohamed case in 2010, mentioned already, highlighted the possibility of application of the principle to the disclosure of foreign intelligence. I understand that there were other cases as well. According to the Government's independent reviewer of terrorism legislation, David Anderson QC, this case also prompted concerns among our intelligence partners that the UK Government could no longer guarantee the control principle, which is that intelligence shared with us would not be published by our courts. There is an interesting quote from David Anderson QC, who says:

"The realisation that secret US material could in principle be ordered to be disclosed by an English court, notwithstanding the control principle, and that the Government had no power to prevent this from happening, appears to have come as a genuine shock to many influential people in America".

I must say that until the noble Baroness, Lady Manningham-Buller, spoke, I was quite disappointed that so much of the debate centred around intelligence sharing and our relationship with the Americans. As the noble Baroness pointed out, there are many other countries with which we share information and which are valued intelligence partners.

We appreciate that the control principle is a central understanding of our intelligence-sharing relationships with other countries and it is therefore essential to provide the necessary assurances to our international partners that this will be safeguarded. We must also recognise that there are profound implications of Norwich Pharmacal in terms of jeopardising foreign intelligence sharing, and the evidence seen by David Anderson QC appears to justify these concerns. Therefore, any solution must provide adequate guarantees to our foreign intelligence partners that intelligence shared will not be forcibly disclosed.

However, as has been rightly indicated by several noble Lords in the course of this debate, the key question here is whether the Government's proposals to resolve this problem, in the words of David Anderson QC again, provide "proportionate limitations" to the Norwich Pharmacal precedent. We can support the direction of the Government's policy, but we want to work with them to get the detailed definition of the clauses right. We will wish to probe some of our concerns around, for example, the Government's definition of sensitive information, and specifically how tightly this definition is drawn. The first point of principle is whether it does the job that the Government say it does—that is, whether it provides the necessary assurances for our foreign intelligence partners. However, equally important is whether it is drawn more widely than is necessary for the specific purpose of safeguarding that control principle. The noble and learned Lord, Lord Mackay of Clashfern, and the noble Lord, Lord Pannick, both queried the extent of the definition of sensitive information, as did the noble Lord, Lord Macdonald. We want to probe the Government further on exactly what they mean in their definition of sensitive information. We also want to know what they mean by,

"information relating to an intelligence service",

and the justification for that inclusion as part of the definition of sensitive material.

In relation to the public interest test under Clause 13(3)(e) of the definition, we will want to probe further what the Government mean in Clause 13(5)(b) by the interests of international relations. The noble Lords, Lord Dubs and Lord Macdonald, also referred to this. The clause refers to the damage,

"to the interest of the international relations of the United Kingdom".

I can certainly understand the need to act in the interests of national security and appreciate the importance of international relations, but we will need to be assured that this will be in the public interest as defined by the Bill and not for reasons of political expediency on the part of any Government. As the noble Marquess, Lord Lothian, said, something cannot be excluded merely because it is embarrassing to government.

I do not recall mention in today's debate of the fact that the proposals seem to extend wider than simply information derived from foreign agencies but also cover information originating from our own agencies that relates to foreign countries. The justification for that cannot be on the basis of preserving the control principle, because it does not relate to information shared with us by our foreign partners. Therefore, we would be interested to hear the Government's explanation and justification for their intention to extend the scope of the Bill in this way.

The noble Lord, Lord Pannick, referred to open, natural justice being a constitutional principle but not sacrosanct, but he made it clear, taking up the point made by my noble friend Lord Beecham in his introduction, that we need far more information from the Government on whether this is justified. Like the noble Lord, Lord Lester of Herne Hill, we are not in principle against closed material procedures, but their use here would require a very high bar. The Government have yet to provide sufficient information to reach that bar. The noble Lords, Lord Pannick and Lord Macdonald, said that the case had not yet been made and both gave very interesting examples of how PII could be used in some enhanced form to create what the Government are seeking. If the case for CMPs relies on the 27 cases that the Government have spoken about, it is clear that a greater examination of those cases is necessary. That will require a far longer, more in-depth study by the independent reviewer or the ISC, because far more information on those cases is needed.

This has been a useful and interesting debate which has given us good material for the next stage of the Bill. If the objective of your Lordships' House is to improve the legislation, the experience that was on offer in today's debate and the information gained from it will enable us to do that.

9.17 pm

The Minister of State, Home Office (Lord Henley): My Lords, this has been an interesting and long debate. It seems quite a while since we started at 3 pm. We have got through some 22 speakers and I find myself being the 23rd. It is a short Bill, of some 16 clauses, but it raises some pretty big issues and has attracted a very distinguished congregation—if I may put in those terms—to speak on it.

There has been some comment about the number of lawyers here today, and I was very grateful to the noble Lord, Lord Dubs, for being the first to point out—echoed by others—that this is not just a legal Bill and not just for the lawyers. I was glad that the noble Baroness, Lady Smith, having done a quick count, pointed out that the non-lawyers are in the majority in this debate, which is probably as it should be. However, as the noble Baroness said, it has attracted a lot of other distinguished speakers. We are very grateful for the presence of all those who are members of the JCHR and the Constitution Committee; all those who, like my noble friend Lord Lothian and the noble Lord, Lord Butler, are currently members of the Intelligence and Security Committee; and former members, self-described as part of the awkward squad, in the form of the noble Lord, Lord Campbell-Savours.

We are grateful for all that, and I hope that, as part of this debate and a fairly lengthy Committee stage and other stages, we will be able to go some way towards achieving the consensus that the noble Lord, Lord Lester, was looking for. It will not be possible to get consensus on every item, because I think that there are some fairly deeply held views that cannot be brought together, but I am sure that there are many things on which we will be able to get agreement. I am sure, too, that we will make every effort to ensure that the best possible Bill leaves this House to go on to another place. As my noble friend Lord Faulks, stressed, we need a very thorough Committee and later stages.

As I said, it is a short Bill that raises some extremely big issues. My noble and learned friend Lord Wallace took it in its proper order. He dealt first with Part 1 and then with Part 2 on the restrictions on the disclosure of sensitive material. If noble Lords will bear with me, I prefer to take it the other way round, because there has been far more talk in the debate about Part 2 than Part 1, but I will get to Part 1 in due course. I must also say in my opening remarks that it will obviously be very difficult for me to answer all the points put this afternoon in the necessarily shortish speech that I have to make, but I shall try to cover some of the broad themes. I hope that my noble and learned friend and I will be able to write to noble Lords and copy those letters to others as appropriate after the debate and ensure that we get those letters out before Committee, which, I understand, will be in the week commencing 9 July, so we have a little time to do that.

I begin with Part 2, with CMPs and Norwich Pharmacal. That has obviously excited most of the debate. Like my noble and learned friend the Advocate-General, I believe that the case is made to change how we deal with sensitive information in our courts. The novel application of Norwich Pharmacal jurisdiction to national security information has had consequences with key allies, as many noble Lords mentioned—I think the first was the noble Lord, Lord Butler. It is not just America, as some have implied, it is all our key allies. However, the provisions in the Bill are not driven solely by our intelligence partners. Secret intelligence generated by the UK's own security and intelligence agencies could be liable to be disclosed as well. Parliament has recognised that the work of the security and intelligence agencies is of a special type. Information is core to their work and special arrangements already cover how they use and disclose it.

Although we all aspire to be able to hear every court case in open court with all relevant information disclosed to all parties in the case, I think that most noble Lords have accepted that there will be times when some of that information cannot be disclosed without damaging the public interest. The question we must put to ourselves—this will take some time in the course of our debate in Committee—is how we deal with that situation. Settling cases or asking the court to strike them out as untriable, may mean that claims, often making extremely serious allegations, can go unexamined and we are unable to get to the truth of what happened. I do not believe that that is justice.

PII has been another approach. It enables cases to go ahead with fully open proceedings but at the expense of excluding relevant and sensitive material from the case. That can work in some cases, but there are times when it does not—for example, where a case is saturated in sensitive material, as David Anderson QC put it. A successful PII application can render a case untriable or leave the Government unable to defend themselves without damaging national security. That can be unfair for claimants or for the Government.

CMPs have been the solution to that problem and they have worked successfully in a number of contexts. The noble Lord, Lord Butler, said that they were the least worst option. My noble friend Lord Lothian described them as being, on balance, about right. Openness is sacrificed for part of the proceedings, and this enables all relevant material, including national security sensitive material, to be taken into account by the court, but it is done in such a way that the proceedings are fair and the interests of any party excluded are properly represented. The Supreme Court has stated that it is for Parliament to decide what the procedures should be for dealing with such cases. The Government produced the Green Paper and we listened to the views. Again, many noble Lords, I think particularly my noble friends on the Liberal Democrat Benches, have accepted that we listened to the views and have moved forward a great deal from what was in the Green Paper and put forward for public consultation. We have brought forward the amended proposals in this Bill.

Noble Lords have highlighted a number of key issues in this debate and those discussions that we will have during subsequent stages of the Bill will obviously let us explore whether the Government have the balance right in these important matters. Perhaps I might deal with one or two of the points that have been raised that deserve some response at this stage, if I can find the right bits of paper—they are all here but in a strange order.

First, I wanted to cover the points made about special advocates and the recent paper that they put to the Joint Committee on Human Rights. I have seen their evidence, which I believe was published last week. The special advocates are reiterating arguments which they have made and, in effect, have had rejected by the courts. To some extent, special advocates do themselves a disservice. They are extremely effective, particularly in arguing in court that more information

[LORD HENLEY]
should be disclosed, and have helped to win cases by challenging closed evidence on occasions. The best way of dealing with this would be to quote what the noble and learned Lord, Lord Woolf, said in M v Secretary of State for the Home Department. He stated:

"Having read the transcripts, we are impressed by the openness and fairness with which the issues in the closed session were dealt with by those who were responsible for the evidence given before SIAC … We feel the case has additional importance because it does clearly demonstrate that, while the procedures which SIAC have to adopt are not ideal, it is possible by using special advocates to ensure that those detained can achieve justice and it is wrong therefore to undervalue the SIAC appeal process".

I commend that to the special advocates and would suggest that they reflect on it.

I turn to the Binyam Mohamed case, which the noble Lord, Lord Lester, raised and has dealt with. He probably knows more about it than anyone else. On the information revealed in that case and whether it was in the public domain, my understanding is that the Court of Appeal ordered that seven paragraphs redacted from the Divisional Court's judgment, which contained a summary of US intelligence reporting, should be restored to the judgment despite the existence of a PII certificate from the Foreign Secretary. The judge in the US did not put the contents, or a summary of the contents of the US intelligence reporting provided to the UK, into the public domain. The court made findings of fact based on allegations about Binyam Mohamed's treatment that were not challenged by the United States Government.

I turn from that to the questions raised by the noble Baroness, Lady Ramsay, about the Bill's provisions on intercept and how the evidence to support the conclusions of the Privy Council's report on intercept would be used in criminal cases. The amendment contained in this Bill to Section 18 of RIPA lifts the prohibition in Section 17 of that Act so that intercept material can also be discussed in a CMP. This is in line both with other, existing statutory CMPs and with our desire to take account of all relevant information in CMPs.

As the noble Baroness knows, the Government are separately conducting an extensive and detailed review in order to assess the benefits, costs and risks of introducing intercept as evidence in criminal proceedings. This work continued under the guidance of the cross-party group of Privy Counsellors that she referred to. It will report in due course. I appreciate—I answered a question on this a few months ago—that we have been using that expression "in due course" for some time. However, I think that it underlines the very great difficulty of coming to a reasonable solution in this matter. I myself have changed my views this way, that way and again, and I know other far more distinguished people than me who have looked at this in much greater detail than I have who have also found it very difficult to come to a final decision. However, the process will continue. I was grateful that the noble Baroness referred to the work being done by the distinguished body of Privy Counsellors that is dealing with that.

The noble Lords, Lord Dubs and Lord Pannick, and other noble Lords, dealt with the whole question of whether it was for the courts to decide between PII or closed material proceedings. We are not convinced that the question of whether there should be a PII claim or a CMP should be left to the courts. It is a very important constitutional point that the Executive in the end have to be the guardian of the United Kingdom's national security interests. Obviously, the courts will play an essential role in scrutinising the Government's exercise of these functions. However, we believe that the question of whether to claim PII, and, accordingly, a CMP, should be left to the Home Secretary.

Similarly, the noble Lord, Lord Macdonald, suggested that a CMP should be held only after a full PII exercise, but we believe that it would be costly and illogical to go through a potentially lengthy PII process first. It may be obvious at the beginning, for example, that too much will be excluded. We understand that the Lords Constitution Committee did see the need for full PII; the report says that we can see force in the argument that it will sometimes be otiose to push the PII process to its completion before turning to a CMP.

Lord Pannick: Does the Minister at least accept that a CMP should be a last resort if, and only if, there are no effective means of addressing all relevant factors?

Lord Henley: That is a point that we will consider at much greater detail when the noble Lord puts down his amendments, which I am sure will appear. We will discuss that in Committee and no doubt at later stages. The point is that at the moment I am making our case and want to clear the arguments in detail. That is why I was rather loath to take too many interventions in this winding-up speech. I appreciate that my noble and learned friend took some seven interventions in opening, but on this occasion I am going to resist most of them, because the important point is that we discuss these matters in Committee, when we can deal with them in greater detail. The noble Lord will then be allowed to intervene to his heart's content.

I see that my time is beginning to run up, and I want to get on. However, I shall say one more thing on this. I will deal with the question on sensitive information in Norwich Pharmacal clauses, which a number of noble Lords—my noble and learned friend, Lord Mackay, and the noble Lords, Lord Pannick and Lord Dubs, for example—all seemed to think was somewhat too wide. I must stress that this is the definition in the Norwich Pharmacal clauses; I appreciate that the noble Baroness also raised the definition of sensitive information for the Intelligence and Security Committee in Schedule 1, but that is obviously a different matter.

The fact is that virtually all material sought by Norwich Pharmacal applicants from the security and intelligence agencies is material the public disclosure of which would damage the public interest in safeguarding national security. Applicants do not seek open-source information or other unclassified material from agencies; they seek information specific to them that would be held by an agency and available only from that agency. If it was information necessarily derived from sensitive sources or from techniques or capabilities from a foreign intelligence department, all or any of that could be damaging to the public interest if disclosed. The approach taken in the clause in the Bill mirrors the protection of such information found, for example, in the Freedom of Information Act.

I turn to the less controversial part of the Bill, Part 1—if I can find the right part of my notes—which deals with oversight. This part had somewhat less coverage than the rest of it, but, after the speech from the noble Lord, Lord Campbell-Savours, and the interventions from the noble Baroness, Lady Smith, I am beginning to understand that it might generate just a bit of controversy and I might have some work to do, unlike my noble and learned friends, as I do that part of the Bill in Committee. I did not want to overlook the important changes that we are making to this and it is right that we should periodically re-examine the way in which we scrutinise that work. Again, I pay tribute to the current members of the Intelligence and Security Committee.

We are grateful to the noble Lord, Lord Butler, and my noble friend Lord Lothian for sharing the benefit of their experience of sitting on that committee. I am also grateful for the views that we heard from the noble Baroness, Lady Manningham-Buller, particularly what she said about trusting the head of the security services far more than she would trust Ministers. I will take that on the chin. I think she was echoing what the noble Lord, Lord Campbell-Savours, said, but she echoed it with approbation.

I recognise the experience that the noble Lord, Lord Campbell-Savours, has, and I am pleased that we will have an interesting time in Committee on that aspect of the Bill. The noble Baroness, Lady Ramsay, was concerned about the membership and thought that there was scope in the Bill for more Members of this House. I do not believe that there is any detail in the Bill about how many there can be, but I think the current rules are that at least one must come from each House, so it would be possible to have eight Peers and one Member of the Commons, or it could be the other way around. It will be for the Committee to decide what the appropriate number should be. That is something that we can discuss.

Lord Campbell-Savours: My Lords—

Lord Henley: My Lords, I will give way for one last time.

Lord Campbell-Savours: Prior to us going into Committee, might the Minister find out for what reason it is not to be a parliamentary Select Committee, as against the structure proposed? There must be some explanation.

Lord Henley: Again, my Lords, I was interested in the noble Lord's suggestion. I do not think that it is necessarily the right path to go down, but that is the sort of point that we need to argue about and try to reach some agreement on in Committee. I am sure that the noble Lord will put down amendments and that we will have the opportunity to discuss them. I look forward to hearing the views of his Front Bench and other Members of this House.

I have more or less used up my time and have answered a mere tithe of the very good points that have been raised. As I said, we are going to have a detailed Committee stage in due course, when we will get to a lot of these detailed points. I look forward to that process, as does my noble and learned friend. Both of us will write a number of letters over the coming weeks that we hope will at least make it easier to deal with these matters. With that, I commend the Bill to the House.

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

House adjourned at 9.39 pm.

Grand Committee

Tuesday, 19 June 2012.

European Union Committee: Multiannual Financial Framework

Motion to Take Note

3.30 pm

Moved by ***Lord Boswell of Aynho***

That the Grand Committee takes note of the reports of the European Union Committee on the multiannual financial framework 2014-2020 (13th and 34th Reports, Session 2010-12, HL Papers 125 and 297).

Lord Boswell of Aynho: My Lords, this Motion invites the Committee to take note of two reports of your Lordships' European Union Committee, which I now chair, regarding the European Union's multiannual financial framework, or MFF for short. These reports were published as the Commission produced its overarching framework for the MFF for 2014 to 2020, and following the Commission's detailed proposals. These proposals are complex but at heart this is a simple, and hugely important, debate. It is about how much money the EU should spend, what it should spend money on and how that spending should be funded.

I should like to begin by thanking my predecessor, the noble Lord, Lord Roper, and the committee members who worked on these two inquiries. Each of our specialist sub-committees examined in detail the spending proposals within its remit, so these two short reports distil a massive amount of research and deliberation. It is indeed a privilege to introduce this timely debate on such a vital topic.

At a time of rapid and wrenching change in the European Union and the euro area, the MFF matters more than ever. The committee is following closely events in the eurozone, but short-term action to stem the current crisis must be consistent with the EU's long-term objectives. The most crucial of these are enhanced competitiveness to support economic growth, based on a fully functioning single market, and greater value for money spent at European level.

Of course, these reports recognise other important factors in deciding where the EU's money is spent: for example, the principles of cohesion and solidarity and the importance of environmental action. Yet these must be fitted into a budget of financial restraint and considered on an objective basis. Such an important budget should not contain fudged political deals, but should be transparent about where money is being prioritised, and why.

There are a number of difficulties with the MFF as it has been proposed. There needs to be more restraint, and we call for the next MFF to be no higher in real terms than the current one, which will end in December 2013. Equally important, however, is that this limited budget is spent wisely and directed to where it will do the most good. In our view it is disappointing that the Commission's proposals contain largely cosmetic changes to the current distribution of spending. Economic circumstances have changed radically; so, too, should strategic budget plans.

In practical terms, the proposed MFF lacks transparency in calculation. Noble Lords will be familiar with the problem of comparing apples and pears. They will also note that there is no systematic resource accounting in it. Anyone reading the Commission's very lengthy set of proposals, or indeed the Government's responses, would struggle with the mixed use of real terms and current prices. The overall size of the MFF, and the way each year's budget increases, are based on out-of-date calculations of gross national income and out-of-date growth forecasts. I submit that more up-to-date figures must be used in negotiations so that a realistic budget can be set. We call for sensible restraint based on accurate figures.

A particular difficulty in such a volatile economic climate is the length of the MFF itself. We would prefer a five-year framework, which could be made consistent or congruent with the European Parliament's political term, offering some real democratic accountability on the strategic budget. Europe's economic climate may look very different in five years' time, and there is no imperative that demands a seven-year MFF.

In any case, long-term projects, such as the Galileo project, do not fit into a seven-year term either. The Commission's proposed solution, which we oppose, has been to take large-scale or unpredictable projects such as Galileo and ITER out of the MFF entirely, calling them off-budget expenditures. Member states will still have to pay for these, just as they will pay for everything else, but they are not counted as part of the MFF when the Commission talks about the size of its budget. This is not good financial sense; the MFF must be negotiated with the same rigour as a proper business plan. Taking major spending lines off-budget will weaken accountability and reduce transparency. Instead, we would prefer to see more flexibility introduced within and between budget lines so that the MFF can offer a more agile growth agenda.

What of the MFF's five major headings? Many members of our sub-committees are going to speak in this debate, so I will not speak for too long on the specific programmes that they scrutinised. However, I would like to say a little on the committee's main conclusions on each heading. Heading 1, "Smart and Inclusive Growth", is a complicated heading taking up almost half of the MFF. It contains several big programmes, such as cohesion funding, the new cross-border infrastructure programme Connecting Europe, and the new Horizon 2020 programme that will fund research and innovation.

The committee supported much of what was proposed for this heading. Cohesion funding can offer an important counterbalance to stringent austerity, which might have an undesirable impact on vital civil society programmes. It can also, if appropriately targeted, facilitate growth in weak regions, which is vital in the present climate. I am sure that the noble Lord, Lord Harrison, will speak in more depth about the work of his committee on cohesion funds.

[Lord Boswell of Aynho]

The committee also supported efforts to boost research and innovation via Horizon 2020. If implemented correctly, this new programme offers benefits over the current structure with a single set of rules and fewer controls and audits to reduce bureaucracy in the research field. It also offers a more joined-up approach to ensuring that research progresses through the innovation cycle and into the marketplace, so that innovation does not stall. These measures will foster innovation in SMEs, which are vital for Europe's growth.

Connecting Europe is an ambitious infrastructure programme covering energy, transport and tele-communications. Although EU-level action is important in these areas, the committee questioned whether such a large budget was really necessary for the programme. We recommend a strategic review to ensure that EU spending is secondary to market investment and that only projects that offer real added value are taken forward. I am sure that the noble Baroness, Lady Young of Hornsey, will speak to some of the other programmes in heading 1, such as ERASMUS for All and Creative Europe. However, as an introductory and personal remark, I say that these are important proposals that are sometimes overlooked owing to their smaller size. These programmes can support growth by promoting lifelong learning and supporting the creative and cultural industries in the EU.

The committee found the proposals for heading 2, "Sustainable Growth", more unsatisfactory. The bulk of this heading is taken up by the common agricultural policy; I remind the House of my personal interest in this area, as a farmer and landowner. The Commission's proposals reduce only slightly the proportion of the MFF being spent on the CAP. Evolutionary change offers the best path to sustained reform, but the committee strongly disagreed with the semi-status quo that we feel is on offer. The new CAP proposals include the greening of Pillar 1 payments. The committee was sceptical about whether the proposals would deliver the intended environmental benefits. Instead, we supported greater funding for Pillar 2, which will target the challenges of biodiversity and climate change. I know the noble Lord, Lord Carter of Coles, will say more on this.

Regarding heading 3, "Citizenship, freedom, security and justice", the committee urged that the EU's growing responsibilities under justice and home affairs should not be ignored. We disagreed with the Government's suggestion that the budget for this heading should not rise above that over the previous financial framework. We proposed instead funding that matched 2013 expenditure in real terms. This would offer support for the EU's increasing activity. The noble Lord, Lord Hannay of Chiswick, will have more to say on this heading, I am sure.

Heading 4, "Global Europe", funds pre-accession instruments and many others, such as the instrument for the promotion of democracy and human rights worldwide. The noble Lord, Lord Teverson, chairman of our sub-committee on external affairs, will lead our discussion on this heading. However, overall the committee supported the funding and increased flexibility that was proposed. We also called for the European External Action Service to have a separate, ring-fenced budget to improve accountability. Perhaps the Minister will tell the Committee whether he thinks this will be possible when negotiations are finalised.

Finally, there is heading 5, "Administration", which is often in the headlines. The Commission proposes to keep spending in the next MFF level with spending during this MFF. The Commission is also proposing revisions to the staff regulations, which dictate 65% of the spending in this heading, although they are not technically part of the MFF. The committee recognised the Commission's efforts to bring the EU's administrative costs more in line with those of member states. However, it agreed with the Government that more should be done to reflect the difficult decisions being taken at national level. I would be grateful if the Minister could update the House on the progress of negotiations over the staff regulations.

I should also mention another aspect of the Commission's proposals that has been prominent in the news: the financing of the EU budget, particularly the proposals for a financial transaction tax. We concluded that no case had been made for an FTT. The proposal is unsuitable because it would fall disproportionately on a minority of member states, such as the UK, and because it cannot be linked to any genuine EU policy objectives. The committee also questioned whether a VAT-based own resource was appropriate, either as proposed, or in its current form.

The committee also objected strongly to the proposals to eliminate the UK's permanent abatement and to replace all current correction mechanisms, of which there are many, with lump-sum payments. It cannot be overemphasised that these mechanisms are designed for a purpose: to correct unfairness in member states' net outcomes. For the UK, such imbalance is particularly owing to the CAP. I hope the Minister will confirm that the UK is strongly opposed to these proposed changes.

Two key themes run through these reports: first, all EU spending must support growth and competitiveness. Secondly, today's economic crisis is no excuse for ill considered or profligate spending, but reinforces the need for sound underpinnings for work aimed at recovery. The MFF is still very much under negotiation by the Council. The Danish presidency has prepared a "negotiating box" that will be carried forward by the Cypriot presidency. The first major discussion of the MFF will be at the Council meetings on 28 and 29 June. It is therefore important for the House to debate and give its input on these issues so the Minister and the Government are able to take the House's views into account as negotiations progress. I look forward to the contributions from noble Lords. I hope the Minister will be able to update the House as much as he is able on the Government's position regarding the Danes' negotiating box, the alliances being forged with other member states and the way forward at the next Council meeting. I beg to move.

3.45 pm

Lord Carter of Coles: My Lords, as chairman of the Agriculture, Fisheries, Environment and—now—Energy Sub-Committee of the EU Select Committee, I will focus my remarks on the aspects of the MFF

that relate to agriculture, fisheries and the environment. Since they account for more than 40% of the EU budget, it is a significant matter. I shall also stray into the important areas of research, development and innovation. I declare an interest as a farmer and landowner.

In its consideration of the proposed MFF, the sub-committee was clear that, in the light of current economic challenges, new approaches were required. It is a matter of strong regret that the opportunity to introduce them appears to have been missed. The risk of even greater disruption to the European economy cannot be ignored. Were this to materialise, long-standing budgetary models such as the CAP could become obsolete overnight.

The proposals to reform the common agricultural policy, for which the framework is set by the MFF, fall far short of the commitment to radical change that is needed. We consider that the commissioners missed the opportunity to introduce new approaches. There is a sense that the Commission is sometimes rather like a dog watching television. It can see it but it does not quite get it. We need to see these changes brought forward to reform the whole programme. Simply, we favour a reduction in the overall agricultural budget and, within that smaller budget, a redistribution of funding away from direct payments towards environmental protection and sustainable innovation.

There are three specific areas where we see a need for greater emphasis. The first is that of agricultural research. We are pleased to note the very positive proposal to double the funding to €5.1 billion, which will make a significant difference. However, set in the context of the total Pillar 1 payments—the direct payment of €280 billion in the period—it is still relatively modest.

Secondly, we should like to see much greater emphasis on rural development, the diversification of the rural economy and a much more ambitious transfer of funds from Pillar 1 to Pillar 2. One key aspect of Pillar 2 is the funding of farm advice, which has not been done very well in England recently. On the other hand, it is comforting that other parts of the UK have done better and it will be interesting to hear what the Minister has to say about recent progress, which we hope is being made in that area.

Thirdly, the environmental impact of farming is critical. Historically, this has been very much a Pillar 2 issue and the mechanisms have been used in that context. However, it is proposed to green Pillar 1—which is, I know, a matter of great concern to many of your Lordships—by tying 30% of the direct payments to cross-compliance. We just hope that that ambition is rigorous enough in its introduction when it comes. We are also concerned that the rather centralist view—the "one size fits all" approach that is being proposed by the Commission, particularly for greening—may be better dealt with if the mechanism for these direct payments could be identified at a national or, even better, regional level. This is a matter of some debate in Brussels. The noises that we hear from there indicate that these views are held more widely. The Minister may wish to comment on this matter when he sums up.

Turning to fisheries, your Lordships will recall that the committee has been extremely robust over the years in calling for radical reform of the common fisheries policy. The new European maritime and fisheries fund does not quite do it. Discussions about these reforms are ongoing. We are clear that the new fund must support a reform policy. We are concerned that the proposed fund is too broad and insufficiently targeted. It certainly needs to be more focused on conservation objectives such as discard reduction. We want to see the objectives and the instrument narrowed so that money will not be spent on some of the things it has been in the past, such as infrastructure and fish farming, at the expense of conservation. Sadly, I have to say that in correspondence with the Government we have made little headway with them on this matter. Perhaps the Minister will update us today.

Finally, I offer some comments on the financial instruments for climate change and the environment. We see a future characterised by risk and uncertainty. There are several aspects to that: economic uncertainty, great demographic change and challenge, and of course the risks linked to climate change, which we regard as very significant. For that reason, we support the distinct sub-programme for climate change, which is an innovation of this instrument for the new MFF. We have argued that there is a strong case for an increased budget for this programme in order to address the challenges of biodiversity and climate change. Climate change is an important issue. The €0.9 billion over seven years will go some way towards meeting the challenges but we regard it as insufficient, even though it has received a marginal increase.

The consideration of climate change throughout the EU budget and the issue of mainstreaming are therefore of great importance. One example may be the use of the European Social Fund to boost training in the renewable energies area. It is in the sort of way that I hope the whole EU budget can be used as a tool to make significant steps towards a green economy. There are those who believe that one of the ways through the economic challenge that we face is to build on the expertise of the green economy and develop world-class industries in that area.

In conclusion, I return to agriculture, where I started. A central recommendation of both the reports we are debating today is to support a substantial reduction in the agricultural budget and a much greater focus on innovation. I totally agree with that. However, this is not about impoverishing farmers across Europe. We were recently told by the chairman of the European Parliament's Agriculture Committee, Mr Paolo De Castro, that,

"agriculture is at the centre of an Innovation Union and the new global challenge".

I think what he meant by that was that in order for Europe to prosper in a very important sector, we have to innovate and invest. We cannot work that much harder but we probably have to work a great deal smarter. The question on the final deal for the MFF is whether we are going to let innovation flourish and encourage it, or whether we are going to revert to the old EU policies of suppressing innovation and have seven further sterile years.

3.53 pm

Lord Maclennan of Rogart: My Lords, I currently have the honour to serve on the sub-committee chaired by the noble Lord, Lord Carter of Coles, the fourth sub-committee of the Select Committee upon which I have served. However, I do not propose to follow him on the subjects that he has been talking about today. The report is very timely and we need more time to consider what an appropriate budget for the European Union should be, in very changed circumstances from those in which the Commission began its deliberations.

The current debt crisis could leave us with very different parameters. It seems somewhat artificial to contemplate total budgetary expenditure in such an uncertain situation. Priorities are expressed within the multiannual financial framework with which we can agree or disagree. Broadly, the committee is in agreement with most of the direction, although there is the very major issue of the common agricultural policy, on which I should declare an interest as a partner in a farming enterprise.

One of the conclusions referred to by our chairman, the noble Lord, Lord Boswell—and his presence and remarks are most welcome—was that the duration of the multiannual financial framework is too long. While that is an important view to express at this time, the uncertainties connected with the budget proposals are not conceivably going to be resolved before the end of this period. I strongly support the term of this framework being reduced from seven to five years.

There are other general principles to which we have drawn attention. I would mention the requirement for greater flexibility in spending, as between the different heads, with a controlled mechanism for moving funds towards the spelled-out objectives. With growth and competitiveness scarcely recognised as the principal targets of the Union within the ministerial councils—though I am happy to see that there is some movement in that direction—and against the backdrop of the debt crisis and the threat of contagion from Greece and Spain to other countries, we need to recognise that cohesion is vital. It is satisfactory that the largest head of expenditure is standing at a proposed 36.7% of the budgetary proposals. This is, however, only 1% more than in the current multiannual financial framework. One may wonder legitimately whether that shift of priorities is sufficient to deal with Europe's situation. It is also welcome that among the categories of regions for assistance a new one has been proposed: the transition region. That is a move towards greater flexibility.

The principles of pan-European development and redistribution of finances seem not incompatible with each other. Both are legitimate and as the report indicates we should be moving gradually towards concentrating on poorer states in the long run, but if we are to avoid a fracturing of the European Union we must acknowledge that the stronger nations will have to help other nations to pull themselves up. These interests are inextricably bound together.

The position in Greece cannot be overlooked while we are considering these matters. I was very struck by an article in the *Wall Street Journal* at the weekend by five distinguished economists from academic backgrounds, some of them or most of them out of Greece, who advocated that Greece should be given help by the European Union to,

"achieve immediate structural reforms to radically improve the ease with which business can be conducted, and to reduce tax evasion, eradicate corruption in procurement and liberalize the labor and product markets. It must do all this while also ensuring supervision over Greece by competition authorities, improving efficiency in its justice system and health sector, and opening access to its artificially closed markets in transportation, pharmaceuticals and engineering, among others".

It is to be hoped that with the formation of a Government in Greece, those matters will be addressed as a matter of urgency by the European Union partners. That brings me to something slightly outside of the framework of the report—that we require a forum for considering the debt crisis and matters such as the bank situation that does not simply involve the repetitive meeting of the Council, but continues and sits until these critical matters have been resolved. The process of Heads of Government getting together and lecturing each other from the sidelines or indicating to their domestic communities what they are not prepared to have makes diplomatic negotiation much more difficult. Consequently, I hope that our Government might contemplate suggesting that the eurozone crisis merits a continuity of consideration until resolved, and that we Britons should be involved in that process although not in the eurozone, because the Government have recognised that we are crucially affected by it and have the power to influence the outcomes through not only the decision-making process of the Union but the fact of our being a relatively strong country. We have to alter our institutional approach if we are going to deliver the sort of outcomes required.

I turn, briefly, to some of the particular headings of expenditure referred to in the MFF. On research, the 46% increase over present funding proposed of €80 billion is extremely welcome, not least because it will enable us, if we persist effectively, to improve capacity and the excellence of our work to enable us to increase. On education, the 70% increase proposed from the current MFF to €19 billion is also highly appropriate and crucial for long-term growth. I was distressed to see that the Minister described that increase as "unrealistic".

Personal enthusiasm for the arts makes me welcome the indication that we are to see a 37% increase over the separate existing programmes for creative industries. As we know in this country, they too stimulate growth. Expenditure to acquaint our citizens with what is being done in the European Union is also of great importance, since there is a lack of understanding at large as to the beneficial effects that the EU can have on our place in the global economy.

There is another omission that is the responsibility of the Commission and which needs to be rectified in further meetings: how much of the budget is to be spent on the new European External Action Service and should it be ring-fenced? It would be interesting to know the Government's view of that.

I conclude with a reference to a recommendation on the European Court from my former sub-committee, which was chaired by the noble Lord, Lord Bowness.

Our view, which the whole committee accepted, is that, because of the greatly increased volume of work by the European Court of Justice, we cannot cap at the present level or reduce in any way the funding that is required to enable the Court to tackle these matters. It would have a devastating effect on the operation of the Union if we suffered the sort of delays in obtaining justice that are common in the European Court of Human Rights.

This is an important report and I hope that it will be noticed. I do not have much doubt that it will be. I have heard members of the European Commission referring to House of Lords reports as being among the best reports from the most distinguished think tanks of which they aware in Europe.

4.07 pm

Lord Hannay of Chiswick: My Lords, so far the negotiations over the European Union's multiannual financial framework for the period after 2013 have been pursued in what can described only as a pretty desultory manner. However, that period of treading water is now necessarily coming to an end as the deadline to complete negotiations gets nearer. That means that the report that we are debating today and the Government's response to it are particularly timely. The challenges ahead are formidable and the timing of the denouement of these negotiations could hardly be worse, as the eurozone crisis comes to a head.

The new framework will need to be fully consistent with the objectives of fiscal consolidation to which the member states have collectively subscribed, while seeking to shift EU spending towards value-added programmes that will contribute to an overall European growth strategy such as is likely to be endorsed at next week's meeting of the European Council. The tensions between these two sets of objectives are pretty obvious and we already see them being played out in the much larger context of individual member states' spending plans and priorities. Total concentration on one of these objectives at the expense of the other will lead only to deadlock at the EU level and will be neither politically nor economically viable.

Following the very welcome introduction given by our chairman, the noble Lord, Lord Boswell, I will concentrate the main body of my remarks on the proposals for the EU's future expenditure in the fields of justice and home affairs—it is dealt with in a section of our report that was contributed by the sub-committee that I chaired—before making a few more general comments. On JHA spending, two salient points stand out. Here, the noble Lord, Lord Bowness, and I speak across a divide that is not a real divide. The first is that it is a small proportion of overall EU spending, some 0.9% of the total, if one takes the figures from the 2012 budget, the same 0.9% if one uses the figures in the Commission's 2013 budget, which we all agree are excessive, and yet again some 0.9% if one follows the Commission's proposals for the next framework period. It is not even faintly comparable in any way with the much larger blocks of spending on agriculture, which the noble Lord, Lord Carter, has spoken about, and the structural funds.

The second salient point is that JHA spending has nevertheless been rising pretty rapidly in recent years—from €354 million in 2007 to €1.4 billion in the 2012 budget. However, at least in the view of my committee, this rise is attributable in large part not to slack control but rather to decisions by member states faced by international challenges—such as drug trafficking, serious organised crime, cybercrime and illegal immigration—to do much more collectively than in the past through EU instruments and institutions to combat these challenges. This has led to the establishment of such bodies as Europol and FRONTEX. The strengthening of the latter was identified in the Government's 2010 national security strategy as one of our national priorities. Any reduction in real terms to JHA spending post 2013 would cut into activities that relate to our national security. For that reason, we support the application to the JHA chapter of the overall guideline that the Government have agreed with a number of like-minded member states; namely, that the whole of post-2013 spending remains steady in real terms. However, we would not support a freeze in nominal terms—in effect, a quite sharp reduction—which has, at times, appeared to be the Government's objective. It would be helpful if the Minister could confirm that it is the overall guideline of a post-2013 freeze in real terms that will be our national objective both generally and so far as JHA spending is concerned.

There are also some more detailed concerns, on one of which we have conducted several rounds of correspondence with the Home Office. It relates to the Commission's intention to propose the establishment of a cybercrime centre at Europol. The committee and the Government are at one in supporting this proposal, which represents a welcome shift in the Commission's thinking away from any idea of setting up a new and separate agency, but we believe that the Home Office's position that a new cybercrime centre at Europol should be financed within Europol's existing budget is neither viable nor negotiable. Will the Minister say which part of Europol's existing workload, all of which appears to be of real value to this country, we propose should be cut? In any case, it surely does not make sense to take such a Procrustean approach to individual budget lines. Should we not be working to get more resources for a high priority, such as Europol and a cybercrime centre, from other parts of the budget? That has, after all, been the approach of successive Governments over many years. Going away from it now is only too likely to alienate the other like-minded member states with which we need to work in harmony if we are to get a good outcome. Perhaps the Minister could have another look at this matter. I do not ask for a response on such a detailed matter, but I would be grateful if he would take another look at it.

Turning back to more general views, I shall mention three: the need to work closely with a group of like-minded states that support a freeze in real terms; the duration of the new framework; and the rebate. No doubt there will be tensions within the group of like-minded states about the detailed application of the real-terms freeze. Some will want more of this and less of that than we do. The attitude of the new French Government will also be important and could be problematic, particularly

[Lord Hannay of Chiswick]
on matters relating to agriculture, but it is important that we approach our dealings with these member states with which we have agreed a broad guideline in a spirit of give and take and with a willingness to compromise, otherwise we will soon enough find that the unity of the group will dissolve, and if that happens we will be a good deal less likely to secure our negotiating objectives.

On the question of the duration of the post-2013 framework, I merely echo the points made by the noble Lords, Lord Boswell and Lord Maclennan. The Select Committee has consistently opposed a seven-year period or even—as the Commission suggested one year—a 10-year period and expressed a clear preference for a five-year period, which is the actual treaty obligation. We took that view when the last framework was negotiated. If we had been heeded then, we might be in a better position now. However, we were not. The arguments for a five-year period seem to us even stronger now than before. No member state would dream at this stage and conjuncture of settling expenditure trends so far ahead as seven years; after all, our own Government do not go beyond three years. Nor would it be likely to fix a duration of the mandate to be so different from that of the codecider, which, in the EU's case, is the European Parliament. I hope the Government would see the logic of a five-year settlement and move in that direction if others favour it.

Finally, there is the rebate. No doubt we shall find ourselves on our own on this issue, as we always do. This is, unfortunately, a zero-sum game and there is nothing we can do to change that. However, in defending the continuance of the rebate as a residual, to be based on actual budget outcomes—on which the committee's report gives the Government full support—we need to put forward as persuasive a case as we can. There are not many signs of that being so at present. The fact that the Commission has put forward a lump-sum rebate approach would seem to demonstrate that it has forgotten the lessons of the period between 1980 and 1984, when such an approach was tried, with results that can only be described as aberrant. The fact that the Commission's director-general for the budget could trot out to our committee the old chestnut about the rebate representing a "juste retour" approach, and argue that it does not reflect the greater relative prosperity of the UK and the EU of today compared with that of 1984, would indicate that he is lamentably ignorant of the extent to which the UK's net contribution after the rebate has increased in recent years.

All this points to an urgent need to explain to all concerned the realities of the situation and the deficiencies of any ex-ante, lump-sum approach. The Minister knows very well that we are giving him full support on this issue. However, we have to be a bit more persuasive and take these arguments seriously rather than simply say: "It needs unanimity to change it, so get lost". That may be the underlying reality of the situation, but if we wish to keep our alliance together, we need to be a bit fuller in our explanations of why we believe it to be justified.

As a final point, no Government have an easy hand to play in these complex but important negotiations, least of all our own Government. The unanimity requirement for deciding on a multiannual financial framework provides us with considerable leverage but is also a temptation to an unreasonably rigid approach. If we are to hold together the strong alliance the Prime Minister has constructed around a fiscally responsible outcome, and avoid undermining the EU budget's contribution to any EU-wide growth strategy that is agreed next week, we will need to negotiate with flexibility as well as determination.

4.19 pm

Lord Bowness: My Lords, I thank the noble Lord, Lord Boswell of Aynho, for his comprehensive introduction of these two reports. It is an opportunity for those of us who are members of the European Union Committee to wish him well, in a public forum, as the new chairman of the committee. No doubt he will lead the committee as successfully as did his distinguished predecessor, the noble Lord, Lord Roper, who steered the committee through the production of these reports. As chairman of the then Justice and Institutions Sub-Committee I will make four short points which it made as part of its contribution to these reports, and which despite the changing circumstances remain relevant.

First, we agree that in this area spending for the period 2014 to 2020 should be broadly consistent with the levels of expenditure planned for the end of the current multiannual financial framework. That is constant in real terms. Citizenship, freedom and security make up less than 2% of the total, but for a five-year period it is difficult to judge what the right levels are. The current five-year programme for the area of freedom, security and justice concludes in 2014 and some agencies such as Eurojust and the Fundamental Rights Agency are being given additional responsibilities.

Secondly, because of the importance of this area of activity, savings should be sought elsewhere in the budget if the ceiling on justice and citizenship is to be raised beyond that of 2013.

Thirdly, if there is a choice between justice and citizenship headings, justice should have the priority.

Fourthly, what gives the sub-committee the greatest concern, to which my noble friend Lord Maclennan has already referred, are the resources available to the Court of Justice of the European Union, comprising the European Court of Justice, the General Court—formerly the Court of First Instance—and the European Union Civil Service Tribunal. As the Select Committee's report into the workings of the Court noted, the workload is increasing and additional resources are required if delays are not to build up. We cannot countenance a situation similar to that which prevails in the European Court of Human Rights, where the backlog runs to over 100,000 cases. The cost of the Court comes from the administration budget. It is less than a quarter of 1% of the EU's budget and less than 5% of expenditure on all the institutions of the Union. I am normally cautious about suggesting that budgetary problems can be solved by administrative savings, but in this instance the amounts are so modest even I believe that it may be possible.

The sub-committee's report called for an increase in the number of judges in the General Court, something which may be achieved without treaty change. Latterly, we have supported the suggested use of recently retired judges to assist the civil service tribunal as a cost-effective way of dealing with what may be a temporary need. The court is seeking approval for changes to its working practices, which we support, but which will not in the light of our inquiry of itself solve the problem.

In this area of justice, if we are to have a full and free single market with all that means in terms of inter-member state trade, freedom of movement and European Union citizens living, working and moving in a variety of member states, we must ensure that there are certain common standards and procedures. This is not to threaten our legal system, but to ensure that British citizens enjoy elsewhere in the Union the protection and freedoms to which they are accustomed here. In many ways it is easier in the area of criminal justice, where the Commission has taken a series of incremental steps. It is more difficult in the area of civil justice, where proposals such as those on wills and succession, and matrimonial, property and contract law, create real difficulties for the countries with common-law traditions. To those who may be tempted to say that we should have nothing to do with any of it, I recall that my right honourable friend the Lord Chancellor expressed the view to the sub-committee:

"Assuming that the general objective of the proposal is one with which we are perfectly comfortable, I would prefer to opt in because I think that it gives a greater role and influence at an early stage of the subsequent negotiations and you have a vote in the course of any decisions on drafting, so you can be in a better position to remedy any queries you have about it".

In conclusion, I hope that Her Majesty's Government support those elements in the multiannual financial framework which support European added value, and that this is not governed by a sometimes apparent hostility to all expenditure in the European Union and a current desire to distance ourselves from our partners and the problems in Greece.

My noble friend Lord Maclennan referred to the current uncertainty. In these uncertain days we cannot know what expenditure not yet envisaged may arise. That is highlighted in an article by Bronwen Maddox in today's *Times*, which gives succinct and graphic examples of some of the political dangers of which we should all be aware and which I hope Her Majesty's Government will take into account.

In conclusion, I wish to quote briefly from the article in the *Times* by Bronwen Maddox. It states:

"As the EU struggles to work out how much it is prepared to pay to keep Greece in the currency bloc, or even the Union, it should take into account how Iran (and Russia) are scanning Europe's troubled southeast in search of new allies. It is easy in Britain, where diplomacy is infused with a sense of unambiguous borders, to forget how allegiances across Europe's eastern corner have always been twisted from many strands".

She concluded:

"The EU's expansion eastwards and southwards has been one of the transforming gestures of recent history, embracing countries that appeared to want to define themselves by western ideals of liberal democracy. Clearly, the creation of a single currency among very different economies was folly; Greece played to that generous romance of enlargement, extracting all the capital imaginable from its claim to be the 'birthplace of democracy'.

All that said, the expansion of the EU carried huge symbolic value. It said to those countries, and the world: 'They are on our side, they share the same values'. If Greece falls out of the euro, and if its links with the EU are strained—or break—it would be careless to overlook the possible consequences. A country that straddles the old fault lines of Europe might find reason to look east—and leaders in Tehran, for a start, would try to give it every cause to do so".

4.26 pm

Lord Harrison: My Lords, it is always a great pleasure to follow the noble Lord, Lord Bowness, and to do so here in the Moses Room as we plot a path to the promised land of growth, jobs and prosperity in the European Union through the agency of the reports before us today on the European Union financial framework 2014-20. I am very grateful to our new chairman for introducing it so expeditiously. We wish him well in his new tasks and duties.

The Sub-Committee on Economic and Financial Affairs, which I chair, focused in particular on the issues on cohesion policy set out in Chapter 3 of the report. To aid our scrutiny of the various cohesion fund proposals, and in addition to the work undertaken by the Select Committee as a whole, the sub-committee took evidence in December from the expert Professor John Bachtler, Professor of European Policy Studies at the University of Strathclyde. We are enormously grateful to him for his assistance.

Cohesion policy encompasses European Union action to address economic and social imbalances and to help less favoured regions to compete within the vital single market. Cohesion funds form a substantial proportion of the MFF proposals: €336 billion, or 36.7% of the total, compared to 35.7% in the current MFF. Spending on cohesion policy is currently supported through three structural funds. The European regional development fund—ERDF—finances direct aid for investment in companies, infrastructure, financial instruments and technical assistance measures. The European Social Fund finances projects in the labour market that improve skills, social integration and access to employment opportunities. Both these funds are allocated on a regional basis. The cohesion fund finances developments in transport networks, environmental projects and energy and transport projects with environmental benefits, and is allocated at a national level.

The overall scale is determined by two factors: objectives and eligibility. In terms of objectives, the new cohesion policy architecture retains the overarching objectives of convergence, competitiveness and European territorial co-operation. However, the Commission has proposed a change to eligibility to introduce transition regions as an intermediate category between more developed—competitiveness—regions and less developed—convergence—regions. The cohesion fund will continue to support member states with a gross national income of less than 90% of the EU 27 average. As originally drafted, the Commission proposal was that the ERDF would be available to all three categories, but transition and more developed regions would be required to focus 80% of their ERDF funds on certain areas such as renewable energy and small business competitiveness and innovation. The ESF would be available to all three categories of regions and the Commission proposed

[Lord Harrison]
that at least 25% of the overall cohesion funding must be committed to it, with more in more developed and transition regions. In each member state, the Commission proposed that at least 20% of the total ESF resources should be allocated to promoting social inclusion and combating poverty. I am well aware that there has been some progress in negotiations in relation to these requirements, so perhaps the Minister would be able to provide us with an update on these discussions.

There are two divergent views regarding cohesion policy's aims. Some favour a pan-European development programme, while others see it as an explicitly redistributive tool. The transition regions proposal would allow regions in richer member states to remain eligible for structural funds including, in the UK, such regions as Cornwall, Devon, South Yorkshire and Merseyside. I have a past strong interest as Member of the European Parliament for the second largest authority in Merseyside and I invite colleagues to see the transformation that those European funds have effected in the Merseyside region.

The Government have argued that cohesion funding should be restricted to poorer member states after 2020. However, the Government accept that, for 2014-20, all regions should be receiving funding. The aim of EU cohesion policy is,

"reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions".

The committee concluded that the new transition region should be supported, provided that it allowed for a more appropriate targeting of funding. Indeed, we found that there was a strong argument for cohesion policy being targeted at poorer member states and for it to operate at a pan-European level. Our conclusion was that, while the European Social Fund is of benefit throughout the Union, other funds, such as the European regional development fund, should be further targeted at poorer member states with a view to withdrawing it from better-off member states in the long term.

The Commission has been clear that it views cohesion policy as a primary vehicle for achieving the Europe 2020 objectives, although our previous report on the EU financial framework from 2014 noted the difficulty in turning cohesion policy into an all-purpose instrument for delivering Europe 2020. Professor Bachtler told us that there was a "tension" between treating cohesion policy as a "delivery agent" of Europe 2020 and its "traditional mission" of "reducing regional disparities". However, the Government were of the view that targeting Europe 2020 would still mean progress in reducing regional disparities. The committee recognised the importance of Europe 2020 objectives, many of which dovetail with the traditional mission of cohesion policy. However, we stressed that cohesion policy is not merely a delivery tool for Europe 2020 and warned against its core aim being undermined by an unremitting focus on the Europe 2020 agenda. We concluded that the distinct identity and fundamental objective of cohesion, as enshrined in Article 158 of the Lisbon treaty, must be safeguarded. We also stressed that, as an expression of EU solidarity, cohesion policy is one of the most important elements of the MFF in improving public awareness of European Union action.

One of the key questions that we considered was whether, in the current economic climate, a reduction in cohesion funding would be justified, or whether spending on cohesion policy should be encouraged because of its potential to boost economic growth. Professor Bachtler emphasised the importance of cohesion policy at a time of austerity, when national budgets for regional development might be cut back. Although the Commission was keen to retain cohesion as a well funded policy area—albeit that funding had been held level in cash terms—the Government argued that the cohesion budget "should fall significantly" from the proposed levels.

The committee concluded that the economic context had strengthened its belief that cohesion policy should play a more defined role in helping member states in financial difficulties to address structural weaknesses and competitiveness challenges and that it can act as a necessary counterbalance to the effects of austerity measures. We supported the overall envelope proposed for cohesion policy, since it has an important role to play in improving growth and, in the context of a rigid seven-year framework, it is vital that funding remains available to meet changes in the economic climate.

Cohesion policy has been criticised over the effectiveness of spending and for the complexity of its management and implementation. The Commission has sought to address this through what Professor Bachtler described as,

"more concentration, more co-ordination and greater results orientation".

The Commission has proposed a common strategic framework to improve synergies between the various funds through thematic concentration—the targeting of funds on specific chosen objectives. We agree that the Commission's proposals represent a much needed attempt to improve the impact and effectiveness of European Union funds and to encourage a more strategic framework. We also support the proposed common strategic framework, although we are aware, from recent correspondence with the Government, of concerns over the precise form that it will take. It would be useful if the Minister provided an update on these discussions. We also recognise the case for thematic concentration on a smaller number of priorities, but remain to be convinced that the Commission's proposals ensure sufficient flexibility for regions and local authorities to focus investment on their own development needs. I am aware that amendments have been made to the provisions on thematic concentration. Is the Minister content that these provide the necessary flexibility?

The Commission also proposes conditionalities that would place more restrictions on funding allocations. The Government have expressed support for ex ante conditionality, such as the need for compliance with EU regulations prior to funding. The committee endorsed the Commission's proposals for conditionalities, although we had concerns about the appropriateness of macroeconomic conditionality tools, since withdrawing EU funding from an ailing economy might in some circumstances make matters worse. What is the Minister's response to these concerns, particularly in the context of the continuing euro area crisis?

The Commission also proposes the introduction of a performance reserve, whereby 5% of the cohesion budget will be set aside and allocated to member states and regions whose programmes have met their targets in a mid-term review. The Government expressed concerns as to whether such a reserve would reward wealthier member states at the expense of poorer ones. To what extent does the Minister believe that the Commission has addressed the Government's concerns? For our part, we expressed the view that a performance reserve could be beneficial if implemented correctly. However, we found that the proposed 2019 date for the allocation of funding would be too late to have any meaningful impact and we called for a final review and for the allocation of funds to be brought forward. In that respect, I also agree with colleagues who have already spoken about the proposed seven-year period and the five-year period that the committee has supported. Is it the Minister's understanding that there will be any kind of break within the seven-year period to make a reassessment of the needs of the European Union—for instance, if we needed to instil more growth at that stage, as Europe comes out of its current doldrums?

The committee also heard from the Federal Trust director, Brendan Donnelly, about the wholesale examination of the budget and zero-based budgeting. I know that there has been some sympathy in the Government about this. Mr Donnelly suggested that that might not lead to an increase in the overall budget but might even lead to a decrease. I invite the Minister to talk about that. If you had such a budget, could you then concentrate better on ensuring European Union added value as an element of that?

I ask the Minister about something that has troubled the committee when we have been looking at the budgets so far provided, as we do on an annual basis, in the 2007-13 period. Repeatedly, the Government talk about their aspiration and ambition to make savings in those budgets as they develop. It would be good to have some evidence from 2010-11, for instance, of where savings were actually made in the European budget as a result of the Government pressing the other 26 member states and ensuring that they had allies to do so.

Finally, I invite the Minister to say a little more, within the context of this budget, about how we help small businesses. There are real opportunities to get growth again through small businesses. Will he understand that the essence of helping small businesses is the ambition, which has been expressed by this Government but not always carried out, of ensuring that the single market is developed, completed and made active for those smallest of businesses that wish to ply their wares and services within the European Union as a whole?

4.42 pm

Lord Dykes: My Lords, my response to the melodious and Parnassian beauty of the descriptions of the noble Lord, Lord Harrison, today is to express admiration for his work in the sub-committee, particularly in the area that he was talking about, and to thank him very much. It removes from me the need to go into some of those areas myself, which I shall observe with some enthusiasm and try to be brief. Indeed, unlike previous speakers, I do not have a written text today. If anybody has heard this terrible story before, I apologise in advance. There was a Yorkshire vicar in the pulpit on a Sunday—I will try the accent, but do not laugh—who said, "I am afraid I do not have my usual written sermon today, because I have been so busy during the week. There were two scout camps and the guides were going away as well. I had three funerals to do and four weddings to prepare, so I don't have one of my usual written sermons that you enjoy so much. I am relying exclusively on divine inspiration this evening, but next week you will get a proper sermon again".

In that spirit, I will focus on only one or two things. First, I thank the noble Lord, Lord Boswell, for his report as the new chairman and wish him well for the future. This is an important exercise. One can say without complacency that the Commission's long-term planning for these budgetary constructions worked pretty well in the previous period as well, with some ragged bits and pieces and the continuing British anxiety about the rebate. Whether the rebate was originally intended to last for ever I am not sure. I do not think that that was the case. It is interesting to reflect that, if it now involves everybody in a general recasting of the GNI component of the structures, that may be a totally different thing that the Commission can propose. I hope that it would be accepted.

There is a very small amount of money in this European Union budget, despite the recent years' growth, with €150 billion as the first figure for the new period and €140 billion at the moment, or thereabouts. The actual expenditure is always less than the amounts allocated, year in, year out. So it is quite a virtuous budget with no debts and no borrowings; the receipts have to equal the payments, by law, and there is no exception to that. It is a very good example which certain states in the United States should look at closely. However, it belongs to the whole Union and is a very tiny mechanism in comparison with what the national member Governments do, and we have to be realistic about that. The timing now could mean that the considerations of long-term planning for a five or seven-year period in future can be irrelevant to the immediate crisis in the eurozone and the fact that there is a developing deflation—some would say a quasi-slump—in a good number of the member states, including the ominous signs in Britain after our recent double-dip recession. No one knows exactly—predictions are always difficult, particularly when they concern the future, as one sage observed—how this will pan out.

In the mean time, the budget has been improved in recent years, and that will be built on in future. I believe that about 80% of the outlays are shared with the administration of the member states, so there is a low level of mistakes, according to the Court of Auditors, in comparison with the millions of transactions every week, month and day. The amount of fraud is minuscule, as we know. So the general support for the budget, philosophically and in this Committee's discussion, is reflected by the speakers, who feel that it is a good rather than a bad thing to have, although it is very small indeed. Now it has a greater orientation towards long-term investment and cohesion, perhaps bringing

[Lord Dykes]
the EIB not into the budget itself but into some of the long-term outlays that will be needed for infrastructure spending and improvement. Then the trans-European networks are developing, along with other aspects of transport policy, which allows us to have a much better future. I hope that it will be successfully negotiated by the member states and the Commission.

I wish to comment briefly on what was enunciated by the section in the original report up to 2014 on page 23, from paragraph 57 onwards. For example, paragraph 58 says:

"Greater use of EIB financing and higher contributions from the private sector are desirable",

because the Commission, with the public money available to it from the member states and its own resources, cannot do much more in comparison with what national Governments will do in future to deal with their own economic crises. The particular national economic crises in the member states will probably not spare many, although Austria and Sweden may be examples. Many member states will be confronted by these problems, so we must take great care in future to make sure that we succeed in avoiding the slump over the whole European Union that is threatening to develop.

It is interesting to see, at the beginning of the summary of the second report, at the end of the second paragraph, the admonition that,

"withdrawing funds from an ailing economy only risks making matters worse".

That is the general proposition that may apply to more than just one or two member states.

If the Government can in future—and I wish the Minister well with these complicated negotiations—link the construction of this new period for the MFF to the immediate medium-term problems facing member states, that would be good indeed. In a phantasmagorical moment, one could imagine that if the slump was allowed to develop and continue because austerity programmes were not relaxed at all, as Governments endlessly waited for demand somehow to pick up automatically of its own accord without the necessary injections of new long-term capital, the EU budget might look like the combination of a kind of Tennessee Valley Authority and one or two other of those special measures that Roosevelt brought in to deal with the terrible recession and slump in the United States. It is in that spirit that I hope that this exercise is successful when negotiations are concluded, and I hope that the Minister will reassure us that national Governments are alert to and aware of the dangers that we all face.

4.49 pm

Baroness Young of Hornsey: My Lords, I will cover some of the areas that were formerly allocated to what was Sub-Committee G, dealing with social policies and consumer protection. I start by saying that I very much welcome the opening remarks of the noble Lord, Lord Boswell, especially those in support of ERASMUS and the creative industries. I start with some comments about the ERASMUS section and will quote again the comment from the Minister that was referred to by the noble Lord, Lord Maclennan.

With respect to the ERASMUS for All proposal, which we examined in our inquiry into and report on the modernisation of higher education in Europe, we not only welcomed the Commission's efforts to streamline and simplify the numerous existing programmes in the area but considered that, as lifelong learning is key for long-term growth, this programme merits a larger proportion of funding under the next MFF. Although the Minister told us that the Commission's preferred funding increase was completely unrealistic, most of our other witnesses disagreed.

We also noted that work and study placements abroad produce obvious benefits for individuals in terms of increased confidence, language skills and employability. We considered that the UK's prevailing monoglot culture, among other factors, prevented its students participating in ERASMUS to the same extent as those of other member states. Therefore, additional EU funding for such placements should be welcomed to support increased UK participation in ERASMUS and other mobility programmes. We also welcomed the proposed sub-programme under ERASMUS for All, which will introduce a dedicated funding stream for sport for the first time, which is in line with another of our past reports, concerning the development of grass-roots sport.

On the subject of Creative Europe, again I declare an interest as somebody who works extensively in the cultural and creative industries and support some of the comments of the noble Lord, Lord Maclennan. We considered here that the cultural and creative sector's contribution to the EU is fundamentally important and heard much compelling evidence that the increased budget proposed by the Commission for the Creative Europe programme would stimulate job creation and growth in line with the Europe 2020 strategy.

In the context of domestic funding cuts for these sectors and UK organisations' obvious capacity for attracting EU funding of this nature, we call for the Government to support a proportionately larger budget allocation to this area, which represents only a very small proportion of the total MFF. One component part of Creative Europe is the media programme, which provides funding for television and film productions across the EU and beyond. I am sure some of your Lordships will have enjoyed the fruits of this programme, such as "The Bridge", a very compelling Danish-Swedish drama series that was broadcast on BBC Four and which was funded by the media programme.

I turn now to the cohesion policy, an area that was referred to by a number of noble Lords earlier in this debate, and specifically to the European Social Fund. Both reports being debated today recommend that although the ERDF should be targeted at the poorest member states, the European Social Fund is of benefit throughout the European Union. As we identified in a report on the ESF, and as was clear from our project visits in various parts of London, poverty and unemployment, and the need for new skills, do not respect national boundaries.

The European Social Fund can also make a valuable contribution to realising the Europe 2020 goals, including that of greening the economy, a point that was made earlier by the noble Lord, Lord Carter. It can do so

most effectively by working strategically with the other structural funds, including the rural development and fisheries funds. For example, the fisheries fund could pay for fishermen to leave the industry and the ESF could pay for retraining and diversification. We therefore support the Commission's proposed common strategic framework, whereby member states must plan the deployment of all these funds under one strategic umbrella.

I would like to draw on the lessons of a seminar on the ESF last December, which was one of a number of meetings we held with various stakeholders in the year. Words that kept cropping up at that meeting were "partnership", "flexibility", "simplification" and "local". Of those, flexibility—the ability to respond to local needs—was crucial for those participating. It is where the Commission's proposed thematic concentration, running through the various structural funds, may not work on the ground. We are therefore delighted that its importance is reflected in the most recent report under debate today. We also agree with the report's support for the overall envelope proposed for cohesion funding, and argue that the ESF has a particular role within that envelope as a fund that can make a real contribution to meet the challenges of the current economic climate.

4.55 pm

Lord Williamson of Horton: My Lords, I declare an interest, in that I worked on European affairs in the United Kingdom public service and in the European Commission, and I have pensions from my work. In this debate, I have the role of orphan Annie because I am not a member of the European Union Committee or of any of its sub-committees; perhaps I am even objective.

This comprehensive and high-quality report from the House's EU Committee is at the heart of our policy towards the European Union, and I thank the committee for it. Subject of course to the economic future of the eurozone, there is surely nothing more important than the establishment of a seven-year budget from 2014 to 2020—perhaps it should be a five-year one—and the priorities for EU action over that period. The committee is right to state at the outset that the multiannual financial framework—the MFF—

"will dictate much of what the EU does until the end of this decade".

Here in the Moses Room, we are in the big time.

I shall comment on some but not all of the 73 conclusions and recommendations of the committee; that number alone demonstrates the breadth and importance of the subject, and a similar conclusion can be drawn from the 81 Commission proposals for legislation and communications listed in appendix 5. Before I turn to some of those points, I would like to express general principles that in my view should be central to the Government's approach to the negotiation of the MFF, and I attach great importance to them.

First, the Commission's budget proposals show some restraint. Total payment appropriations under the current seven-year MFF are 0.16% of gross national income, below the ceiling that sets a cap on the EU's own resources. The new proposals for 2014-20 would cost 1% of estimated gross national income and leave a margin of 0.23% below the ceiling. I recognise of course that some expenditure—principally the European Development Fund for the benefit of African, Caribbean and Pacific countries—is off-budget, and all off-budget expenditure requires careful scrutiny.

However, while the Commission shows some restraint, I strongly believe that the Government are right to stress the importance of savings and to press for them. After all, this is not an abstract exercise. We are dealing with public expenditure right up to 2020. Recent events have demonstrated that a major cause of the economic crisis in Europe, apart from incredibly bad judgment of risk in many banks, is the too-high level of public expenditure and the extreme difficulty for some member states to finance it. Some 86% of current EU own resources have arrived directly from GNI-based and VAT-based resources. Restraint on public expenditure and a rigorous approach to justifying it is a solemn duty on Governments and is in the EU's interest. Furthermore, in assessing the priorities, investment and employment-creating expenditure—for example, on infrastructure—should have some priority in the EU's overall interest.

To a considerable degree, our national interest in this seven-year EU budget coincides with that of the EU as a whole. We want savings and strict attention to priorities, both to ensure as far as possible that particular items of expenditure are disproportionately favourable to the UK and because our net contribution has recently risen quite strongly. It is well known that I am rather proud of the UK rebate—I played a small part in negotiating it—which has so far delivered about £68 billion to the UK economy. It is an intrinsic part of the EU budget system and, being subject to unanimity, cannot be changed without our agreement. However, the UK Government agreed to exclude non-agricultural expenditure in new member states from the calculation and this has led to an increase in our net contribution from £3 billion in 2008-09 to £9.2 billion in 2010-11. A hard-headed approach to this change means a tougher negotiating stance on the total EU budget.

On our priorities, I begin with cohesion policy, which is heading 1 in the MFF and is supported by the European regional development fund, the Social Fund and the cohesion fund. In financial terms, this is, as noble Lords have said, an important part of the MFF. In the new proposals, it is 36.7% of the total and is comparable to expenditure on agriculture, food and environmental policy. Evidently, the key issue is to identify the European added value. I favoured regional development when I had some responsibility for European policy, and I still do, but we have to balance it with available public finance. The analysis by the committee is good and I agree with much of it. In particular, I favour the transitional region category, noting on a personal level that it would apply to Devon and Cornwall. It would be sensible to have a performance reserve and some ex ante, but not too bureaucratic, conditionality. Like the Government, I do not favour macroeconomic conditionality.

Agriculture, the food supply and the environment are subjects that I used to know a lot about. Of course, the old CAP has long since vanished. It was a market-based policy with little or no direct payments to farmers.

[Lord Williamson of Horton]

The support prices were set at too-high levels leading to high expenditure on disposing of public intervention stocks and on export subsidies called "refunds". We have replaced it with a policy that is largely based on direct payments to farmers, which is where the budget costs arise. The question we now have to consider is whether the objective of a viable agricultural industry and a secure and diverse food supply for our people can be obtained with a slightly lower level of direct payments. Some environmental conditionality is already present, which is good. I am not in favour of the Commission's proposal to add further environmental conditions to 30% of direct payments, which would certainly be more complex and would have doubtful added value. I support the committee's view that some transfer of resources from Pillar 1 to Pillar 2—that is to say innovation, research and knowledge transfer—should be an objective.

Finally, in view of the time constraints, I will make three bullet points. First, the European Development Fund, which is the biggest element off-budget, should be brought within the multilateral financial framework and, separately, the cost of the European External Action Service should be identified and ring-fenced. Secondly, the case for an EU-wide financial transaction tax has not been made. The last thing we want is more taxes. Thirdly, the committee states that,

"a VAT-based own resource is not appropriate for funding the EU budget",

and that it might be removed entirely. It also states:

"This need not necessarily prejudice the UK abatement, although we acknowledge that determining a new base for calculating the abatement might require a difficult negotiation".

The committee's overall report is truly excellent, but this point seems a trifle naive. I am with the Government when they are quoted in paragraph 233 as having fundamental objections to the own-resource system, notably because the Commission's proposal,

"would remove the permanency of the UK's current abatement mechanism".

The new own-resource decision would require unanimity, so I say to the Government: stick to your fundamental objectives.

There is only one ministerial statement that I currently always carry in my wallet. It is a statement by the noble Lord, Lord Sassoon:

"We are very concerned about those growing contributions, and we are working hard to moderate them".—[*Official Report*, 8/11/10; col. 1.]

5.05 pm

Lord Giddens: My Lords, I congratulate noble Lords involved in producing these two reports. I also congratulate the noble Lord, Lord Boswell, on his new role and wish him well.

Apropos of nothing, I note that previous EU debates in which I have spoken have tended to be very male dominated. That is also true of this debate. For some reason we have 14 noble Lords speaking but only one noble Baroness; why this should be so, I am not clear.

The EU today is a strange contradictory entity. On the one hand, it has its traditional structure still functioning with long time horizons and with the Commission as its policy engine—the background, if you like, to these two reports. In this version, the EU moves in a closeted, bureaucratic way. I shall call this EU1. On the other hand, there is the EU, dominated by the eurozone, as a firefighting mechanism enmeshed in almost daily crises and having to make rapid responses to them. I shall call this EU2.

As we know, EU2 has a de facto president, Angela Merkel, even though she has no formal legitimacy. In EU2 the Commission, and even to some extent the Council, have receded into the background. They are not arenas where significant decisions are initiated, just confirmed. In EU2 vast amounts of money are being channelled around Europe to shore up states and to protect banks. These sums of money are massively greater than the orthodox EU budget. Far from the,

"smart, sustainable and inclusive growth",

talked about in the Europe 2020 literature, in EU2—in other words, in the real Europe of the moment as opposed to the paper Europe of plans for the future—there is no growth at all. Europe is essentially mainly mired in recession.

The question at the moment, I suggest, is how to bring these two Europes together. The second of the two reports is much more conscious of this fundamental issue than is the first and reflects the essentially continuing nature of the crisis between the time at which the first and second reports were produced. The second report rightly observes that,

"the euro area crisis has not stimulated … radical thinking",

about the immense challenges the EU now faces. I think that this is true.

In the light of this, I ask the Minister to comment on three primary issues. First, Mrs Merkel rightly and necessarily wants far greater fiscal integration in Europe. This is where the real Europe—EU2—is moving. As far as I can see this will not be possible without a budget for the eurozone countries, and most of the colleagues with whom I have discussed this agree with me. That budget will not be the same as the budget being discussed in these documents. When the Government say that they will oppose any new taxes, does this apply to taxes specifically established within the eurozone as part of a new fiscal integrated system?

Secondly, Europe 2020 has to become Europe 2012. The report refers to:

"An industrial policy for the globalisation era",

and to:

"An agenda for new skills and jobs".

This cannot be just a leisured anticipation of the future—in other words, the sort of paper Europe that we have always had in the past with very slow incremental change—but has to have bite in the here and now.

The politicians of EU2 are trying to drive through, almost overnight, reforms that should have been made over a decade or more. The fundamental issue of how to reconcile austerity with growth remains hugely problematic. What do the Government make of President Hollande's proposal for an injection of €120 billion into the eurozone economy as a stimulus? I understand from the French newspapers that this would be primarily

based on project bonds, which are touched on in these reports, and would be massively greater than anything that would come within the orthodox EU budget.

Thirdly, if it survives as a recognisable entity—and I hope that it does—EU1 has to resemble EU2 far more closely. The EU has to be more innovative and, as others have said, much more flexible and less bureaucratic. The mountains of bureaucratic literature that come to you when you are on an EU committee in this House are amazing. I am on the same one as the noble Lord, Lord Carter, who chairs it brilliantly, but we get enormous amounts of this. I do not think that this is possible in the EU's new environment. It must act quickly. It is not just a matter of the moment, responding to crisis. This is an immensely fast moving world, so the EU must be reconstructed if it is going to be effective. It must be much more fast moving.

The second report has interesting proposals of its own to make and considers some proposals from the Commission. What is the Government's view of how these goals are best achieved? How can the EU become much more adaptable and fast moving for the future? It cannot survive unless it does so. You cannot just revert to EU1, away from EU2. If it is to survive the EU has to be dramatically more adaptable.

In conclusion, even in the horrible crisis in which the EU is enmeshed, as a pro-European I would not want to give up the European dream. Even against the backdrop of this crisis or perhaps using it as a mechanism for necessary change, I would like to see the EU creating a model for growth different from that of the United States and from China's and integrating it with the European social model. American growth is based on cheap credit, cheap energy and endless mobility. This is surely not a way for the future. The Chinese model for growth is environmentally far too destructive to be profitably copied elsewhere. In Europe a different model of growth can be still be pioneered which would be environmentally as well as economically sustainable.

5.13 pm

Lord Teverson: My Lords, I will echo one or two of the points made my noble friend Lord Dykes. Although we are sometimes very critical of EU finances we should remind ourselves that we have a ceiling of around 1% of GDP—I think that it is 1.23% at the moment. We have to have a balanced budget. We look seven years ahead and maybe five would be better. We have a strong and frustratingly active audit process that seems to give the rest of the organisation a bad name, but it is very thorough. If many member states copied that model, or perhaps even if we did in some areas, we might not be where are at the moment.

My own committee, now called the External Affairs Sub-Committee—a name easier to understand than it used to be—was pleased with most of the way that heading 4 on external affairs was looked at. We agreed with the Government in seeing this as an area where Europe was particularly important; in that cliché, it added value on a global scale. There were important roles that it was fulfilling.

An area which has generally been seen as an EU success in the past—certainly over the past two decades—is its exercise of soft power, driving and motivating the instinct of other European states which want to shed the shackles of central economies or dictatorial regimes and to join the body politic of Europe and the European Union. It thereby reinforces the commitment to both social democracy in terms of economy, liberal democracy, politics and trade, and to an open and outward-looking global view. It has been very successful in that area. Under this process, some €70 billion is expected to be spent on the external affairs area, which is a relatively modest part of the almost €1 trillion which is being talked about for this seven-year period. That €70 billion is spent on development policy and all the things that have to be done in helping pre-accession candidate nations move towards membership. As we learnt in some of the recent accessions, we have to ensure that things such as energy, border control, civil administration, corruption and organised crime are set right before new member states join. It is spent on partnership programmes, particularly in the east but also in the Mediterranean—our own are close to home—through to humanitarian aid and all the stability initiatives, development and nuclear safety.

One area of interest, although not a large area of the budget, was a particular instrument for Greenland. That seemed quite strange at the time, but I am sure that under Arctic policy, Greenland is going to become even more important.

The European budget, through different mechanisms, tends to pay for civil missions of CSDP, although not on the whole the military planning procedures. It pays for civilian missions as well. That is part of the EU outside its borders.

Where did we have some criticism? I am grateful to those who have mentioned the European External Action Service. That did not come under our purview because it is in administration. The External Action Service is relatively new; it came out of the Lisbon treaty. It is a major conduit through which the EU relates to the rest of the world. Its remit runs from trade through to all sorts of other issues, and high priority matters for the European Union. Yet its budget within this process is hidden within administration. Where it was in the accounting perhaps did not matter so much, but we felt strongly that, as an effectively separate institution, it ought to be separated out and we ought to be able to appraise it.

We were also quite surprised that there seemed to be what we would know as contingency lines throughout heading 4. Although we understand that flexibility is important in this area, the Commission and the External Action Service rightly point out that we cannot predict the number of natural disasters, for which Europe contributes important humanitarian assistance to the rest of the world, or what they will be over the coming one, two or three years. We do not know where political issues, like helping Libya get back to stability, will arise from year to year. The flexibility in there is right, but the contingency areas perhaps add a little too much fuzziness to how the budget is assembled.

The other area that has been mentioned by noble Lords is the European Development Fund, which is not the total development budget of the European Union but that which is used within what I think of as the African, Caribbean and Pacific countries. That lies

[Lord Teverson]
outside this framework. Clearly, to a business or any other organisation, that makes no sense whatever. Unfortunately, I am told that the calculations show that if it fell within the framework, it would not help the UK's budget contribution, which is a shame. However, I am sure that there ought to be some way around that. We need to bring that area in and include it as part of the overall external policy.

As the External Affairs Sub-Committee, we were happy that this went in the right direction and that Europe's role in the broader world was recognised as being important. We are at one with the Government in understanding that, although it must happen in a way that is cost-effective. Certainly, over the period, the total spending of the External Action Service should not grow, despite some of the start-up costs.

I shall make one or two further comments as an individual Member of this House, as opposed to as chairman of the sub-committee. First, on regional policy, I am lucky to come from a part of the United Kingdom that benefits greatly from convergence funding, although we should like not to be in that position. Unfortunately, it looks as though Cornwall and the Isles of Scilly will again qualify for convergence funding in the next period that we will look at. It is important that regions graduate out of this area of state-welfare benefit drip. It is a shame that that has not happened, perhaps because of the way that the economy works at the moment. However, I feel strongly that, in the longer term, we should not move to excluding certain developed states from convergence funding or cohesion funding.

Why is that? The European Union—particularly the Commission, which is in charge of these programmes—tends to be far more objective than national Governments over who should receive these funds. I am certain that if my part of the world had not fallen within the European Commission's definition of a NUTS 2 region—of GDP per inhabitant being less than 75% of the EU average—it would never have received the aid that it needs to become a thriving economy in the future. That objectivity is important and it should not depend on which member state your region happens to be in. Spreading the rest of the cohesion funding very thinly, even over transitional areas, is wrong. Transition should be of a sort whereby you move from being a convergence area to being a normal area and are helped over a period.

I hope my noble friend Lord Carter will forgive me but I have always been very sceptical about international fisheries agreements. They are far better than they used to be; they are now called fisheries partnership agreements and there are 16 of them. On the whole, they are an excuse to get rid of European fleets from someone else's waters, where states that are even less able to protect their waters than we are have been completely fished out. The money goes towards helping those fishing communities to look after themselves, but it often does not get much further than the national capitals. While I am sure that the system is much better than it used to be, I am still very sceptical about it.

Turning to climate change, this programme ends in 2020. We have three very strong targets for carbon reduction, energy efficiency and renewable energy. Therefore, it is quite coherent that we should have a strong programme there.

Although it not an area in which I have ever been much involved, one of the greatest added-value areas of Europe ought to be its research capability, which seems to be going down in our national economies. If there is one way in which the Commission's goals for our competitiveness, world position and employment can be fulfilled over this seven-year period, it is by having a much stronger research base. I should dearly like to see a significant proportion of this budget go to that area, to make Europe competitive in the very different world that will arrive by 2020, when this programme ends.

5.25 pm

Lord Kakkar: My Lords, I join other noble Lords in congratulating the noble Lord, Lord Boswell of Aynho, on his thoughtful introduction of this report and I pass to your Lordships the regrets of the noble Baroness, Lady O'Cathain, who is chairman of Sub-Committee B on the internal market and would have liked to be here, but cannot. As the recent addition to that sub-committee, I have come in her place to draw your Lordships' attention to some of the important issues with regard to scrutiny of the part of the multiannual financial framework relating to infrastructure and innovation. In so doing, I remind noble Lords of my entry in the register of interests as professor of surgery at University College, London, an institution that is in receipt of funds from the framework 7 programme for innovation in biomedical sciences research, and as an applicant to that funding scheme.

The Connecting Europe Facility is the proposal in this MFF to bring together the funding streams related to infrastructure spending on transport, telecommunications and energy. These are all important areas, and Sub-Committee B recognised in its scrutiny that appropriate investment in this type of infrastructure could have important benefits by driving growth, improving infrastructure and meeting the objectives of European added value. If properly focused on what independent nations are unable to do but what the European Union could do more effectively by working together, this type of activity could potentially be very important.

In addition, the focus on European added value through properly transparently described and funded programmes of infrastructure investment would allow the opportunity to develop criteria that properly assessed European added value at the outset and ensured that projects could be tracked to demonstrate that added value, which is vital to convince the people of our country that this type of investment through their contributions to the European Union is effective and cost-effective.

Equally, this area of investment could be used to leverage private sector investment in major infrastructure projects, if properly directed. The proposal that the Commission play some important and enhanced role in the supervision of these projects was also potentially

welcome, with the caveat that national competences must not be overridden in areas where member nations could perform tasks more effectively.

There were some concerns. The proposal in the current MFF is that funding in this area be increased fourfold over previous infrastructure investments in the areas of transport, energy and telecommunications. This was considered somewhat unrealistic. The emphasis must be on investment and a budget commensurate with that investment that focus on areas of infrastructure development that are truly European added value. As the sub-committee scrutinised proposals in this area, there was some concern that that may not be the case. With this unrealistic proposal for a large increase in expenditure, it is very important for attention to be focused on those areas of added value where nations would be unable to make the appropriate infrastructure investments.

Equally, there was concern that previous budgets have focused more on transport infrastructure and that moving forward in this MFF there should be particular emphasis on energy and telecommunications. There were some concerns about the detail of the various instruments included in this proposal. With regard to the transport instrument, for instance, the Government have recognised that there are concerns about the proposed core corridors and the potentially unwarranted mandatory infrastructure investment that could cost our country and other European nations substantially and inappropriately. The sub-committee is aware of the important advances that the Government have made in negotiations on these matters to ensure that that will no longer be the case, but it remains concerned to hear more from the Government about instruments in the telecommunications and energy areas. What progress has been made to reduce the substantially increased budget to a more realistic level? Are there areas of concern over some features of the transport instrument and mandatory infrastructure investment?

The point was also made in the sub-committee that the proposal that the Commission has a more important role in the supervision of this type of infrastructure investment should not in any way infringe national competences in these areas. This is a vital issue that would need to be emphasised during the period of this budget.

The second area I turn to is Horizon 2020, which is the innovation instrument dealt with in the MFF. The sub-committee agreed that this was a vital area, and we have heard many noble Lords in this important debate emphasise the importance of investment innovation in research and technology to drive economic growth and ensure that Europe more broadly is competitive in the coming years as we see increasing global competition from countries such as the United States, China and others, where investment in research and development continues to play a vital role in public and private investment policy.

On Horizon 2020, we have heard that there is a proposed substantial increase in the budget on research spending, but the Government consider it unrealistic given the current overall financial constraints. The sub-committee was of the view that there should be an increased emphasis on investment in innovation expenditure but within a smaller budget. So there is a very clear view that innovation should rise up the spending priorities of the European Union, should overtake areas such as the common agricultural policy and become the heart of spending proposals from the EU. That would ensure that investment in innovation translates into innovation being applied to small and medium-sized enterprises so that they can promote economic growth and create jobs.

If the proposed budget increase for innovation will not be achieved in this MFF round, it is certainly suggested that the focus should again be on areas where there is European added value. This is to drive forward the European Research Council and research excellence in Europe to ensure that co-operation in research and fostering research networks is achieved as a primary focus of the investment of those valuable funds to drive research.

5.32 pm

Lord Liddle: My Lords, I declare an interest as chair of the think tank Policy Network, which has received some funding from the European Parliament budget.

This has been an excellent debate, typical of the quality of the work of the European Union Committee of this House. On behalf of the Opposition, I welcome the noble Lord, Lord Boswell, to his new role as chair, which I am sure he will carry out with distinction as his predecessor, the noble Lord, Lord Roper, did. He must have had a very satisfied feeling, as this debate proceeded, about the group of heavy-hitting Members he has on his committee. They and the noble Lords who chair the various sub-committees have shown today a wide range of knowledge and experience of the EU's business. It is a balanced and objective analysis, with recommendations, and I am sure that the report of this debate will be widely read in the European institutions and by those concerned with Europe's work.

Having said that, I regret that the committee did not issue a bolder clarion call for radical reform of the EU budget. I make no secret of the fact that I am a very passionate pro-European, but I do not think that pro-Europeans should pull their punches in any way about the need for radical budget reform. If ever there was a case for it, surely the crisis that the eurozone has now entered is a justification.

I remember at the last budget settlement in 2005 that one of the things solemnly agreed by the European Council was that there would be a thorough mid-term review of the common agricultural policy in the period of that financial framework. It never happened. I was in the Commission at the time and remember the arguments that were put forward: "Oh, we don't want to do a review now, what we'll do is have a really thorough intellectual examination of what needs to be done"—this was in 2008—"and will come up with radical proposals for the next seven-year period". However, when we get to the radical proposals published by the Commission in June 2011, I am afraid they can only be described as a damp squib. It is not just the Commission's fault but it is to an extent, because it has

[LORD LIDDLE]
a duty under the treaties to speak for the European interest. The Commission should never have allowed itself to get into the mood of complacency that the member states were only too happy to be in. The Commission should have challenged them, but on the budget, it has not. As a result, it makes the task of making the case for Europe more difficult.

I agree with the noble Lord, Lord Teverson, that the European Union has very strict procedures for audit, in many ways better than many of its member states. However, the fact is that there is a widespread perception of waste and bureaucracy in that 6% administration budget. The United Kingdom should be pressing for an independent review, not just of the Commission but of the Parliament and Council budgets. The Council tends to hang on to its own budget and say that no one can look at it. We need an independent review of all the institutions and their budgets and whether they could be more efficiently spent.

The other problem with the budget is that it is such a collection of vested interests. It is the problem of an acquis of vested interests, which is extremely difficult to change. As reformers within the European Union, we have to think how, either through time-limiting certain programmes or pieces of legislation, we can make it easier to get things changed. What is the Government's policy for making that kind of change possible? Change in the EU's policy programmes is much needed.

The noble Lord, Lord Williamson, is right that the common agricultural policy is radically different from the policy that was launched in the 1960s, but it still needs an awful lot of reform. The payments that are made to rich farmers in northern France and parts of Britain and that often go to commercial companies are an abuse, and we ought to be capping them. I ask the Minister: is it his policy that payments to rich farmers should be capped or is it not?

Secondly, some of the Mediterranean subsidies that are given to tobacco famers in Greece, for instance, are an absolute disgrace. If we want to help Greece, the last thing that we should be doing is helping its tobacco farmers. We should help Greece to train the unskilled workforce that means that it has a real problem in competitiveness.

On the structural funds, I am a passionate supporter of regional policy. However, an independent review by Barker set out very clearly what needed to change in the structural policies. We need to get away from the doctrine of the juste retour. We need to focus on growth priorities and be clear about what they are. We need more conditionality. These things are happening to an extent, but not nearly enough.

My position, which is certainly the Labour position as well, is that it is impossible to argue for any increase in the EU budget until much more radical reform takes place. I accept the intellectual argument that a successful monetary union may require a bigger budget to make it work, but it will be impossible to argue that unless the existing budget is reformed. There is a case for some of the programmes being expanded. If there were reform, that is what should happen. We know that there are proposals to increase the research budget and expenditure on infrastructure and to extend ERASMUS. These are all very worthy objectives, which will help Europe's competitiveness. However, I seek an assurance from the Minister. If additional money is made available under the growth plan that will come to the Council next week, will Britain be a participant in the extra money that will be available? Will we benefit from some of it as well the eurozone, or are we abstaining once again from full participation in the Union's development?

Therefore, some areas could be expanded if only there was reform, but the reform nettle has yet to be grasped. The growth agenda to which President Hollande is so attached is an opportunity to grasp the reform agenda, but I wonder what strategy the UK Government have for being bolder in this respect. It is very difficult to get reform. I welcome the alliances that the Government have built so far, but in the past, they have tended to crack under pressure. As I have mentioned, there are vested interests everywhere in the EU budget. The European Parliament rightly has co-decision powers in the budgetary area. What is the strategy?

I read an interesting analysis from the Centre for European Reform by John Peet, the eminent *Economist* correspondent, and Stephen Tindale. They argued for a tripartite initiative by Britain, France and Germany, in which each member state was prepared to put their red lines on the table and try to work out a radical plan for change. Are the Government prepared to think in those terms, or are we essentially stuck with the status quo?

As my noble friend Lord Giddens said, a Europe 2 is emerging. We are in the middle of a crisis. We cannot just let the opportunity of the European budget pass us by. If Europe is to gain legitimacy, there must be radical reform of its budget.

5.45 pm

The Commercial Secretary to the Treasury (Lord Sassoon): My Lords, this afternoon's debate has been very interesting and I welcome the committee's views and the report into the next multiannual financial framework, the MFF. I would also like to thank the committee for all its work.

The Government will publish their final response to the report at the end of this month, so the debate is timely but, as I am sure those who have spoken this afternoon would expect, I will reflect on some of the more detailed points and ask noble Lords to wait for the formal response. I will answer as many of the points raised as I can, but let me principally set out what the Government believe is most important with respect to the MFF.

As the EU Committee is well aware, the Government are taking tough positions in Europe on the MFF. Negotiations are continuing towards the European Council where a presidency negotiating box will be discussed. This sets out the parameters of the MFF negotiation, moving us on from the Commission's original proposal in June last year. I have been asked about details of the strands of negotiation, on a number of which there is little to say. In answer to the specific question from the noble Lord, Lord Boswell of Aynho, we are seeking significant reductions and

reforms, including cuts from regulations. Negotiations on those specifically are going reasonably well, alongside the MFF negotiations. We are confident that we are making progress, but it is not decision time yet.

The ongoing instability in the euro area is vindication of this Government's efforts to impose strict financial discipline on our domestic budget. We have made tough choices at home and it is now vital that EU member states show that same resolve. At a time when member states across Europe are tightening their belts, the European Commission must lead from the front to ensure that the same discipline is seen in the EU. What are they doing instead? They have called for increases in expenditure which are frankly incredible. The Commission's proposal earlier this year to increase the annual budget by 6.8% for 2013 was completely unreasonable. The UK is committed to taking action to curb irresponsible increases in the budget, for 2013 and the next multiannual financial framework, and we will continue to work with like-minded member states to that end.

The noble Lord, Lord Harrison, asked what the evidence is for what we have achieved in the last two years. I remind noble Lords that the original Commission proposal for the 2011 budget was an increase of 5.8% and it came in at 2.9% after tough negotiations. In 2012 the original Commission proposal of 4.9% was reduced to 2.02%. The UK has been at the heart of the negotiations in Council to block increases and that is where we will continue to be. The Commission's proposals for the next multiannual financial framework go even further, seeking to increase its revenue and spending. It wants new taxes to boost the Brussels budget as well as absurd spending increase. This is simply not acceptable on either front. Instead of consolidation, the Commission proposed expansion. Tough multiannual financial framework ceilings represent the best opportunity to restrain EU annual budgets and member states have recognised this link.

At the European Council in October 2010, member states agreed that,

"the forthcoming Multi-annual Financial Framework reflect the consolidation efforts being made by Member States to bring deficit and debt onto a more sustainable path".

What has happened? Rather than follow this path, the Commission has bowed to pressure from the European Parliament to increase the budget. This returns us to the extravagance and reckless expenditure that sowed the seeds of the global economic crisis. The 11% increase proposed for the next financial framework is therefore incompatible with the tough decisions being taken in the United Kingdom and in countries across Europe. We cannot and will not support it.

In December 2010, the Prime Minister and colleagues from other member states, including France and Germany, set an upper limit for the next framework in their open letter to President Barroso. They stated clearly that,

"payment appropriations should increase, at most, by no more than inflation".

This view has been acknowledged by the EU Committee. In answer to the specific question from the noble Lord, Lord Hannay of Chiswick, I confirm that it remains the Government's position. The Commission claims to have done as we have asked, but let me be clear: it has not. On average, expenditure in each year of the next framework would be about €14 billion higher than it is today. In addition, the Commission has earmarked an extra €18 billion in off-budget expenditure. As the committee noted in its report, this shows an alarming lack of transparency which brings added risks of poor oversight and control.

The Government's overriding priority on expenditure is to restrain the total budget size but, within that context of restraint, the Government want to see taxpayers' money directed towards areas of greatest European added value. The great majority of specific suggestions for directing expenditure that I have heard this afternoon are consistent with that.

Growth and competitiveness, external funding and the climate change components of the budget are priority areas. While our objective is to restrain the size of the budget, we believe that these areas should see a proportionately greater share in the next framework. However, this focus also demands tough choices. The first among them is a point raised by the noble Lord, Lord Boswell of Aynho. Very substantial reductions are required to the direct payments component of the common agricultural policy and to the administration budget.

Before I respond to a few of the many points on specific expenditure, a couple of general points were raised. Other noble Lords, including my noble friend Lord Maclennan of Rogart, raised the question of a five-year framework. We agree with the concerns raised in this area, but our overriding concern in the negotiations has to be to seek restraint. If restraint can be guaranteed in a five or seven-year MFF or some form of review can be built in, we are willing to discuss it, but it has to be subsidiary to our main objective.

In response to requests for increases in expenditure as opposed to relative prioritisation within the budget, whether for good things such as Europol or any number of others, I reiterate that if the Government's opening position were to be to recommend explicit increases in certain areas of the budget before we achieved any corresponding decreases, we would be at risk of seeing ourselves committed to a higher overall budget, which would undermine the Government's top priority here. Of course we will retain flexibility as negotiations progress in how we allocate spending, but I am going to do nothing this afternoon to endorse any absolute areas of increased expenditure. I hope that all noble Lords will understand why that is.

I turn to a few specifics, starting with issues about the common agricultural policy which were raised by the noble Lord, Lord Carter of Coles. We are seeking substantial reductions to the CAP focused on Pillar 1, the direct payments. The Commission proposal does not deliver the reform that we need. Direct payments represent low value for money. The Government are also sceptical about the Commission's proposals on greening in the CAP. The Pillar 2 rural development is better and we want to see it taking a greater share of the total.

In answer to the specific question of the noble Lord, Lord Liddle, I am sure that he was not seeking to walk me into some trap, talking about rich farmers. That is not how I would express it. The UK is opposed

[LORD SASSOON]
to the Commission's proposal to cap direct payments to large farms, which is the right way to see it. The CAP should encourage competitiveness, and capping direct payments would discourage that. I am afraid that I do not believe that there is merit in that capping.

On the European External Action Service, the Government do not support the ring-fencing of expenditure. The key is again—this is my constant refrain—to see restraint over the MFF in respect of the EEAS. Of course we expect the External Action Service to show value for money. We have consistently opposed increases in this specific area.

My noble friend Lord Bowness asked about the need for more judges. Yes, the Government are aware of the large backlog of cases facing the ECJ. We support reforms that would enable the ECJ to operate more efficiently. We hope that ECJ capacity will increase as a result of cost-effective reforms, which are achievable.

The noble Lord, Lord Harrison, asked about support for transitional regions and other structural and cohesion funds. The overall levels of the structural and cohesion funds should fall in real terms. The SCFs in rich member states should be cut significantly, and a greater share should be seen to go to poorer member states. The Government do not believe that the transition regions as proposed are affordable. Yes, the UK's opposition to the transition category would reduce our share of receipts, but remember that two-thirds of this loss would be offset by the way in which it flows through the calculation of the abatement, a subject to which I will return.

The noble Baroness, Lady Young of Hornsey, mentioned ERASMUS, and ERASMUS for All can certainly add value. Again, the increase proposed is unacceptable. The Government can only accept an increased share within the envelope of a real-term freeze. Within that, among other things, the Government support the inclusion of a reference to grass-roots sport. Yes, of course we recognise the important contribution which cultural and creative sectors make to job creation and growth but, again, with the same caveats that I will not repeat.

In broadly similar territory, the noble Lord, Lord Kakkar, raised the question of the Connecting Europe Facility. He was quite right to draw attention to the 400% increase proposed in that area. Negotiations do not include specific numbers, but it is clear that substantial reductions will be needed from what is proposed.

Those were some issues on the budget—but, as noble Lords have pointed out, it is not the only priority. The MFF represents the only true opportunity for the EU to introduce a new system of own resources, the system that funds the EU budget. I share the strength of view of the noble Lord, Lord Liddle, on these issues. I hope that the noble Lord is absolutely clear that we will defend our rebate. I assure the noble Lord, Lord Williamson of Horton, that we will not trade with the abatement as has happened in the past. We will resist any change to the abatement; our abatement remains absolutely justified. The structure of EU spending means that we get less per capita than any other member state. Without the abatement, the UK's net contribution would be the largest across the EU and twice as large as contributions made by France and Italy.

Ideas for new taxes have also been touched on this afternoon. Again, noble Lords will not be surprised to hear that the Government strongly oppose any new taxes to fund the EU budget. We attach considerable importance to the principle of tax sovereignty; we oppose any new taxes or changes to the existing system that increase the UK's contributions or pose a threat to our long-term position—including, specifically, any financial transaction tax to fund the EU budget. We cannot accept a budget that asks for more and asks for a greater share from taxpayers and the UK.

In answer to the points made by the noble Lord, Lord Giddens, if the eurozone moves towards greater fiscal integration and imposes taxes on some joint basis within the eurozone, that will be for the eurozone. Our main concern in that context will be to see that nothing that is done affects the single market and how that is driven forward. The noble Lord also raised the question of project bonds. As I said on other occasions, yes, we will look sympathetically at detailed proposals if and when they come forward.

The MFF represents the opportunity for a far-reaching review of the spending framework. We must focus on combining stability with flexibility and building on the work going on across Europe to improve spending frameworks. We are faced with a liability of unspent commitments, which will soon be worth the equivalent of two annual EU budgets. Again, this is incredible. Of this, the Commission has said that almost €70 billion is "higher than expected". This is extraordinary. This mountain of unspent commitments has, in the Commission's own words, created a "snowball" effect on payment levels. We need real, practical solutions to address this liability. So far, the Commission has rejected every suggestion from member states.

The basic credibility of EU spending depends on orderly accounting. We have touched on it many times in your Lordships' House, but nevertheless it is still astonishing and disappointing that the European Court of Auditors has not granted a positive opinion on the EU's accounts for 17 consecutive years. This system must focus on the level of cash payments—actual spending—that the MFF will allow. Instead, the Commission continues to focus on commitments and on planned spend. Payments determine the cost to the taxpayer. The Prime Minister made this clear in his letter in 2010.

The Government took tough decisions at home and will continue to encourage our European counterparts, member states and the Commission to take the difficult decisions to cut deficits and tackle the root causes of the ongoing crisis. The current Commission proposal for the MFF is completely incompatible with the decisions being taken in finance ministries across Europe, with the realities felt by taxpayers across Europe and even with the views of President Barroso, who in June last year argued that:

"Many Member States need to show more ambition when it comes to fiscal consolidation".

The MFF must deliver real fiscal consolidation. This cannot be achieved with substantial increases in the

budget, new taxes to fund the EU budget or unreasonable changes to the UK's abatement. This will be a tough negotiation but the Government are prepared to meet that challenge. We will be working tirelessly towards a deal, but it has to be a deal on the UK's terms and has to be informed by the excellent work of this committee and the many points that have been made in this debate, for which I am very grateful.

6.06 pm

Lord Boswell of Aynho: My Lords, I am very grateful to all those noble Lords who have participated in this debate. I am conscious that the hour presses now, so shall respond only very briefly. The contributions that have been made have reinforced the opinion I have already formed in the first month of work on the EU Select Committee as to the tremendous reservoirs of expertise we have, both in the members and in the staff of our sub-committees and main committee. That has come out very closely and clearly in this debate today, in what is a very technical and at the same time a very important subject. I am grateful for that.

I am also grateful for the Minister's response. All of us are conscious of, and many of us have direct experience of, the sensitivities of going into a negotiation and the need to have the right kinds of signal to do that. I can probably speak for nearly all the members of the committee and sub-committees in saying that we want to see the maximum amount of flexibility and imagination in the negotiations, in terms of the particular options that can be taken and some of the particular interests that have been mentioned today. Even if we may not absolutely coincide with him on the exact framework, many of us would welcome the fact that he has shown a commitment to rigour and so forth. That is not a card to play or throw away at this particular juncture, so we are grateful for the way he has put that and responded. It has contributed to an understanding for which I am very grateful. In that spirit, we wish the negotiations well and I beg to move.

Motion agreed.

Science and Technology Committee: Nuclear Research and Development

Motion to Take Note

6.10 pm

Moved by ***Lord Krebs***

To move that the Grand Committee takes note of the report of the Science and Technology Committee on *Nuclear Research and Development Capabilities* (3rd Report, Session 2010-12, HL Paper 221).

Lord Krebs: My Lords, I start by thanking the members of the Science and Technology Committee, including the co-optees for this report, for their excellent contributions. I also thank our specialist adviser, Professor Robin Grimes of Imperial College, for his wise expert advice. I also thank the Minister for the Government's response to our report, to which I will refer shortly.

This report of the Science and Technology Select Committee is about the credibility of the Government's plans for nuclear power in the future. Nuclear energy currently supplies about 16%—12 gigawatts—of the UK's electricity, which is down from 25% 15 years ago. Nine of the current fleet of 10 nuclear power stations are due to close down in the next 13 years, by 2025. The Government have announced that they will build a new fleet of nuclear power stations to replace those that are going out of commission. The new fleet is to be built by the nuclear industry, and the aim is to build up to 16 gigawatts of power by 2025. These new power stations will have a lifespan of 60 years. We are talking about energy generation during the bulk of the remainder of this century.

Looking further ahead, to 2050 and beyond, it is expected that nuclear power will provide a larger share of our electricity than at present. Various scenarios produced by the Government and by advisers suggest that between 15% and 49% of our electricity will come from nuclear power, but it is likely to be well above the minimum of these scenarios. Why is that? The Government's policy on energy supply has to meet four objectives. The first is security of supply; the second is affordability; the third is to meet our legally binding greenhouse gas targets; and the last, but not the least, is safety.

On the third of these, the Committee on Climate Change, the Government's statutory independent advisory committee—I declare an interest as a member of it—has suggested that, in order to meet our greenhouse gas targets, by 2030 the electricity supply will have to be largely decarbonised. This is likely to be achieved through a portfolio that could include 40% nuclear, 40% renewables and 20% fossil fuels, mostly with carbon capture and storage. In this mix, nuclear energy is a proven, low-cost, low-carbon option. In short, if we are to keep the lights on with a lower carbon footprint, and if we are to be able to pay to keep them on, we are likely to depend to a substantial degree on nuclear power.

This is the starting point for our report, which is not about the arguments for and against nuclear power. We take it as given that nuclear energy will be part of the future mix, and we asked whether the Government have a credible plan to deliver this. Our inquiry concluded that the Government do not have a credible plan. This was the view of all the expert witnesses, including those from the UK and overseas, and including the Government's Chief Scientific Adviser and the chief scientific adviser in the Department of Energy and Climate Change.

We asked whether the UK will, in the decades ahead, have a sufficient supply of expertise, as well as the research and development capabilities, to support an expansion of nuclear energy. We concluded that, although the UK still has strengths in the nuclear field, they are largely the result of past investment. Many of the leading experts will retire in the next decade and, because of a lack of investment and vision by the Government, there is inadequate succession planning. Without a new generation of experts and a new focus on research and development, the UK will

[Lord Krebs]
not be able to act as an intelligent customer for new power stations, as an effective regulator or as a contributor to the development of new nuclear technologies by UK industry. These functions are all necessary, even if the Government were to adopt what might be called an "Argos catalogue" approach of buying nuclear power plants from overseas companies.

Remarkably, in our inquiry, the Government did not even recognise the problem that they face. They presented an extraordinarily complacent view about the future. To quote one senior official in the Department of Energy and Climate Change, the Government's strategy is to "keep a watching brief". I can only speculate that the DECC official, when referring to a "watching brief", was thinking of Euro 2012, Wimbledon and the Olympics. I doubt that the next generation of young scientists and engineers will be attracted by the vision of a "watching brief".

Nor will UK industry be able to capitalise on the estimated £1.7 trillion global market for nuclear technologies in the years ahead. I will give some figures about our investment in R and D. Since the 1980s, the nuclear R and D workforce in this country has declined from about 8,000 to under 2,000, counting both public and private sectors. From the figures we had available, up to 2009, our investment in nuclear R and D was lower than countries such as Australia, which has no nuclear energy programme, half that of the Netherlands and Norway, and one-100th of that of France. We spend a smaller percentage of our energy research budget on nuclear energy than any of the 17 countries for which we had comparative data. Our international partners view our lack of investment with disbelief.

The UK also does not make the best use of facilities it has. At the National Nuclear Laboratory, to which we paid a visit to see this with our own eyes, there are state-of-the-art facilities for handling hot radioactive material that have never been commissioned. They could be an attractive facility for international collaborators, but we are simply not using them.

It appeared to us as though the Government were setting out on a journey to a nuclear energy future without a map of how to get there, without a driver and without anyone to repair the car if it breaks down on the way. What needs to happen? Our report made 14 recommendations. I do not propose to go through all 14, and I am sure that other noble Lords will refer to various aspects of our report. A central recommendation is that the Government needs a nuclear energy strategy and, to underpin this, a research and development road map as well as a body to make sure that the road map is developed and implemented. That body, which we called the nuclear R and D board, should, we argued, have a powerful independent chairman and include experts from all key stakeholder groups. We argued that it should develop the vision and drive that is currently lacking, and it should hold the Government to account. In implementing this, there is no time to waste. If the Government continue to "keep a watching brief", there may be no lights by which to watch the brief.

What have the Government said in their response? I will first give you the good news. The report seems to have acted as a wake-up call. The Minister of State for Universities and Science said that nuclear issues are:

"High on our agenda… after a challenging report from the Science and Technology Committee".

Furthermore, the Government have accepted the majority of our 14 recommendations in full or in principle. No doubt other noble Lords will pick up on other recommendations. We very much welcome this positive response. Crucially, the Government will publish a long-term strategy for nuclear energy, including an industrial vision statement explaining how the research base can support the global economic opportunities in nuclear technology. This strategy is due out in the summer. Judging by our weather, the summer has been postponed this year; I hope that that does not mean that the strategy will also be postponed.

The Government have also established a nuclear R and D advisory board, chaired by the Government Chief Scientific Adviser, whose job is to co-ordinate effort and to create the R and D road map to underpin the nuclear strategy. This road map is due to be published at the end of the year, and I hope that it will have real teeth. It should set out clearly how the Government intend to make appropriate investment in nuclear R and D, how this investment can be harnessed to support product development by UK industry and how the training of the next generation of scientists and engineers will be achieved.

The government response leaves many questions unresolved, and I hope that the Minister will use the opportunity provided by this debate to update us on progress and thereby shine light, perhaps even light generated by nuclear power, on some of these unresolved issues.

I have four questions for the Minister. First, will the R and D advisory board continue, as we recommend, with not only an advisory but an executive role in the future and who will chair it? Will it be established as a non-departmental public body as we recommended? Secondly, will the Government reinstate the UK's membership of the so-called Generation IV International Forum, the body that will shape the next generation of nuclear power stations, or are we to remain in the stands as observers? Thirdly, have the Government decided that they will now commission the currently unused state-of-the-art hot facilities at the National Nuclear Laboratory? Fourthly, do the Government plan to implement our recommendation for the re-establishment of the Nuclear Safety Advisory Committee to provide independent advice and challenge for the Office for Nuclear Regulation and challenges to it? This country rightly has an outstanding international reputation for nuclear safety, evidenced by the fact that our chief nuclear inspector, Dr Mike Weightman, was chosen by the international community to report on the Fukushima incident in 2011. It is crucial for our nuclear future that this outstanding reputation is maintained.

I look forward to the debate and to the Minister's answers to these and other questions. I commend this report to the House. I beg to move.

6.23 pm

Lord Jenkin of Roding: The noble Lord, Lord Krebs, has given a splendid introduction to this debate. I might add that he was an excellent chairman of the committee and mention one particular contribution. One weekend he took home what many of us regarded as not a very good summary of our report and came back with an electrifying one. That substantially laid the foundations for the report's success and its result.

Given the response from the Government, which I shall refer to in a moment, I do not hesitate to say that this has been a very influential report, perhaps more so than some other science and technology reports of recent years. I hope that I am not breaching a confidence when I say that the Minister of Energy asked the noble Lord, Lord Oxburgh, and me, two co-opted members of the committee, to go and see him. He wanted to discuss one or two impacts of the report. The right honourable gentleman confessed to us that the report had drawn attention to some significant gaps in the Government's policies for nuclear energy and, in particular, to the need for more research and development. Certainly, the contrast between what the noble Lord, Lord Krebs, rightly called the complacent evidence given to our inquiry by the Government and the far more positive, constructive tone of their response is truly remarkable and very welcome.

This debate is the occasion for looking forward to what is to come and, like the noble Lord, Lord Krebs, I will have some questions for the Minister. It is still clear that there are challenges. Last Thursday I was privileged to host a reception in the Palace at which the University of Manchester and the Dalton Nuclear Institute celebrated their recent award. I might add that Manchester had the foresight to embark on a new nuclear research and training programme well in advance of the previous Government's change of heart, with the notable speech by the Prime Minister at the Royal Society. Manchester started in 2005, when some of us felt that we were batting away in the dark, banging for a new nuclear programme and not being listened to. The result of the university's far-sighted decision was the establishment of the Dalton Nuclear Institute. Earlier this year, the institute and the university were awarded the Diamond Jubilee Queen's anniversary prize in recognition of their,

"internationally renowned research and skills training for the nuclear industry".

They have every entitlement to be extremely proud of that.

At the reception last week, the director of the institute, Professor Andrew Sherry, who gave some very compelling evidence to our Select Committee, listed what he saw as seven grand challenges over the next decades. I will draw attention to some of these and ask the Government where we are getting to on them. Andrew Sherry's seven grand challenges are: decommissioning and clean-up; geological disposal; current and new-build reactor systems; spent fuel management; plutonium management; safeguards and security; and future nuclear energy systems, especially the generation 4 system, to which the noble Lord, Lord Krebs, referred. That is a formidable agenda by any standards. However, the Government's response to our report, and the accounts that I have heard of the work of the R and D advisory board, are encouraging as far as they go. Of course, we await the strategy paper and the promised road map, both of which are strongly recommended by the Select Committee and accepted by the Government. Many of our own more detailed recommendations have to await those documents, although the signs that they will be favourable are good. However, I am very glad that when he gave his response to the committee's report, the noble Lord, Lord Krebs, indicated that we may well want to return to the issues in the future if we are not satisfied with what we see. This is a hugely important area of government policy and this Select Committee is probably as well qualified as any to press the Government to get on with it.

I would like to ask the Minister about two of the seven challenges. One concerns plutonium management and the other future nuclear energy systems—the fifth and seventh items on the professor's list. As everybody well knows, plutonium stocks are the long-term legacy left behind after decades of uranium-based nuclear generation. They must be dealt with. They can no longer simply be bequeathed to future generations. We have to find a solution. The Government are consulting on this but they have made it clear that their preferred solution is to build a new Mox plant—a mixed oxide plant—because the one at Sellafield has never worked properly, even though the French have had a very successful Mox plant in France. However, it is already clear that while this would progressively consume the plutonium stocks, it would be unlikely ever to pay for itself by the sales of Mox fuel.

There is an alternative solution, which I have discussed with the Minister and officials in his department—the so-called PRISM process being put forward by GE Hitachi. It would burn the plutonium as a fuel and at the same time generate electricity, so it should pay for itself. It is in fact a new generation nuclear reactor. I understand that GE Hitachi has offered guarantees, and it tells me that it is in detailed discussions with the Nuclear Decommissioning Authority. I was reassured a few months ago by officials at DECC that they are treating it very seriously. Can my noble friend tell us anything more about that and about when we might have a decision? I recognise that the Government's preferred decisions is the Mox plant, but there seems to be what might be a more valuable way forward through the GE Hitachi PRISM.

In this context, I welcome the noble Baroness, Lady Worthington, to her position on the Front Bench. I think I am right in saying that this is her first time in Grand Committee. We look forward to hearing her speech. I have had a number of exchanges with the noble Baroness since she joined the House, and she has sought to persuade me that the future for the nuclear industry should be based not on uranium but on thorium. It is a perfectly respectable argument in the right places. It has greater resistance to proliferation and other advantages, but I have also discussed this with experts at the National Nuclear Laboratory, and I am persuaded by the force of their arguments. This country has decades of practical experience with uranium. We have developed our widely recognised expertise in the uranium fuel cycle, and there are likely to be ready

[Lord Jenkin of Roding]
supplies of uranium all over the world, as far as can reasonably be seen. Thorium may be a proper process for a country that is starting up and has no history equivalent to ours, but I have to point out respectfully to the noble Baroness that I do not think it could possibly be appropriate in this country.

The second thing I shall talk about is future nuclear energy systems. Our evidence convinced me and, I think, most members that UK participation in international programmes—the noble Lord, Lord Krebs, has already mentioned the Gen 4 proposals—is essential if we are to present ourselves as having a long-term nuclear future and the credibility, to which the noble Lord referred, that will be needed if we are to work with other countries. For this, we must restore our reputation as world-class experts with a coherent and cohesive R and D programme. We took a lot of evidence about this. We still have great strength in certain fields, notably the fuel cycle field, but without such a programme, the rest will just dissipate and disappear.

How can this be done? One of our proposals was that, quite apart from the overseeing board, to which the noble Lord, Lord Krebs, referred, we need a top, high-level hub around which other research facilities in the country can act as spokes. I have discussed this at some length with the National Nuclear Laboratory and, of course, with the Dalton Nuclear Institute, but there are other institutions. There are ISIS, Diamond Light Source, the universities and so on. We need this hub. In my view, a combination of the National Nuclear Laboratory and, as a university participant, the Dalton Nuclear Institute would provide very welcome technical leadership. As has been said, we have world-class resources. The noble Lord, Lord Krebs, has already referred to the commissioning of the remaining phases of the nuclear laboratory at Sellafield. I, too, went to see them. My noble friend Lord Wade and I went, and they are hugely impressive, but empty. It is an enormous waste to leave them unused and unoccupied when they could help to establish our credibility as having a long-term future.

I ask the Minister what is happening there. Can he give us some understanding that these facilities will be commissioned and perhaps some idea as to how they might be paid for? We had useful evidence that they are very attractive to foreign companies and Governments that would want to do research on highly active materials. They have all the equipment and facilities to do that. However, we need to have this properly organised with an integrated and accessible hub—what the National Nuclear Laboratory described as,

"a focal point and lead organisation to coordinate work on behalf of the Government including international collaboration".

There is much else in the report that we could refer to, but these are two very important issues in a very important report, and I hope the Minister will be able to offer us some way forward. As I said earlier, my impression is that the advisory board is doing well as far as it goes. However, the Government will need to press this forward vigorously and make sure that the hopes that have been aroused by their response to the report will indeed be realised.

6.36 pm

Lord Hunt of Chesterton: My Lords, I welcome this report, which, as the noble Lord, Lord Jenkin, has said, is extremely well written and constructed and should lead to new long-term policies. I also welcome the unusually constructive government response, by which I refer to the generic feature of government responses, which do not always welcome all sorts of recommendations. This is a good step forward. The report is, of course, mainly concerned with nuclear fission power and the UK context, although it does note the evidence of the director of the UK fusion programme and there is also evidence in it from the director of the Atomic Weapons Establishment. I will come back to these questions but will just declare my own interest. In my own meandering career, I have worked on various nuclear issues such as the fast breeder reactor, fission-related problems and fusion technology. I am now a consultant and adviser to Tokamak Solutions, a project with government and private funding that is looking at possibly linking fusion and fission.

As the report says, the UK has very considerable capabilities in the basic sciences and technologies needed for the nuclear industry. In many areas, the UK was a leader and has a great tradition of collaboration between universities and government or industrial laboratories, which I have participated in. One of the features of having this dual approach to development and research, which is, of course, common to all other countries but which has seen a huge decline in the UK, is that it enables projects to start in the applied area. They then go into the universities, which advise them, and they then turn into research projects, funded by research councils, to establish the basic principles and publish the results in the scientific literature.

Some of the areas where the UK did particularly important work was mathematics, such as that relating to the optimisation of nuclear reactors that began in Harwell. The work there has established the basic methods around the world in many areas of technology including fluid flow, structures in nuclear engineering, electrodynamics and safety. Not everyone knows that Dalton was a meteorologist before he became a chemist. Dalton's meteorology, as well as his chemistry, was important for safety.

The other important point I want to emphasise is that the model proposed in this report is essentially one of a board, with one or two centres, and university departments. The noble Lord, Lord Jenkin, has, quite rightly, picked up what I also want to emphasise, which is that having a very significant hub makes a huge difference. There was an educational rumpus in the British system around 1990, when Mrs Thatcher—the noble Baroness, Lady Thatcher—was still Prime Minister, over whether climate change research would have one major centre, collaborating with universities, or all the funds would be distributed among existing laboratories. The controversial decision was taken to have the Hadley Centre, which turned into a world-leading institution. In the past, we have had world-leading centres that have been major hubs. The recommendation is not as strong as it might be in this report. Indeed, this has

been the basis of leadership in the United States, France, Germany—until it withdrew—and Japan. We should remember the lessons of those countries.

In respect of that point, I worked in the Central Electricity Generating Board laboratory, which is now a housing estate, like many of our former laboratories. The privatisation programme in Britain led to a lot of housing estates taking over laboratories but none of the money from those estates ended up in science. It ended up in various places, which we shall talk about.

On the UK activities of this hub programme, it is essential that it does not just advise the Government. On this, I differ from the noble Lord, Lord Jenkin. It must be seen to be a realistic organisation that works with industry. It must have contracts with industry—that is important—or it will not have credibility.

Lord Jenkin of Roding: I am sorry; I did not intend to imply the opposite. The noble Lord is absolutely right.

Lord Hunt of Chesterton: I see. The hub must be very practical and involved in engineering. I am sorry to sound like a broken record but we used to do that in the old CEGB. We were dealing with problems in power stations and designing new power stations, as well as carrying out research. That led to world-class respect.

The other important point is that there is the possibility of our hub or network using the extraordinarily advanced international computational facilities at the Atomic Weapons Establishment and, as I learnt yesterday from the *Financial Times*, the new engineering facilities being built at Rolls-Royce for the Trident programme. These will have extraordinary abilities, which we should involve in our programme.

I have a little anecdote on this. When I was a trainee, I was clambering around on a new railway engine that was being built in Vickers. All our equipment there was stamped, "Nuclear facilities: not to be used for any other purpose". That is the kind of collaboration from which we rather want to move away. The United States has the major nuclear laboratories. It has always combined R and D work on the civil and defence aspects of nuclear energy. I do not see why we should move more in that direction in the UK.

Finally, responsibility for forward strategic planning, which needs to be explicit in the terms of reference of the board and maybe this hub, should include R and D programmes concerned with nuclear waste. This should involve not only geological repositories but new technologies. My noble friend Lady Worthington will doubtless touch on this. It is clear from Russia, China and Korea that it is important to use materials other than uranium, and that, even with uranium, we must find technologies that will use our existing waste as well as new waste. Can we really accept that the UK's nuclear waste will be stored for ever, until the next ice age, about which the noble Lord, Lord Oxburgh, will perhaps tell us? Surely this is the moment when we should have new institutions with very long-range objectives—at least as long-range as those of other countries, which are certainly working on that timescale.

6.44 pm

Lord Oxburgh: My Lords, it is a pleasure to take part in this debate. The committee's chairman has given us an excellent introduction. I, too, commend his chairmanship of the committee and his presentation of our findings today.

The report is primarily about keeping open this country's options for nuclear energy, which depends on having the technical competence to understand, procure, run and regulate future generations of nuclear reactors. This calls for a wide range of scientific and technological expertise and a steady inflow of capable young people into nuclear science and engineering. The rationale for the inquiry was concern that we might be losing that competence. In spite of a worrying degree of complacency displayed by some government officials, our concerns were echoed by industry and other experts.

Our review of nuclear engineering and science in the UK showed that a substantial amount of R and D work was being carried out. However, there were two problems. The work was being carried out by more than a dozen different organisations, each with its own remit, priorities and agenda. Furthermore, there were no formal means by which these bodies could tailor their programmes to complement each other or to form a coherent national civil nuclear programme. These organisations are listed in the report, and I will mention only two. Our National Nuclear Laboratory, to which the Government assign lofty aims and responsibilities, is run at arm's length by DECC, receives virtually no direct government funding and its main programme comprises such short-term, applied projects as it can fund through external commercial contracts. Some of its important and strategic facilities remain unused because no customer needs to use them and universities cannot afford them. It is as if the Government do not mind very much what the NNL does, provided that there is no charge to public funds. This situation is viewed with astonishment by colleagues in other countries, as is the minimal level of public funding for nuclear research over the last 20 years. The striking details are displayed in our report.

The second example is our research councils, which decide what science to support on the basis of competitive bids from universities. If the quality of science proposed in a nuclear bid, although high, is judged to be less good than that in another competitive bid, the work is not funded, regardless of any national importance that it may have. Again, this is not a criticism of research councils, which have to operate this way, but it does mean that special arrangements would have to be made for them to fit into any kind of national programme.

Each of the other UK bodies in nuclear R and D has similarly diverse aims and approaches. Unco-ordinated as they are they are, this eclectic mix of activities does have one characteristic in common: nearly all the money comes directly or indirectly from the Government. It would make sense therefore for the Government to exercise some coherent degree of oversight. But who is to do it? The problem is not eased by what appeared to us to be an unsatisfactory interface between the two departments primarily concerned, BIS and DECC.

[LORD OXBURGH]

There is no person or body within government that has either the competence or responsibility to take an overall view of our civil nuclear capabilities. It is hardly surprising that we are not viewed internationally as a serious player, an impression that is reinforced when the Government decides on cost grounds that we should not participate in important, collaborative programmes international programmes that other countries see as a means of reducing costs.

It is for that reason that our report urges the Government to both develop a nuclear R and D strategy and establish an independent nuclear R and D board to ensure that the strategy is implemented. These two elements of our report are closely linked and depend on each other. The board should have members drawn from industry, from research laboratories and, indeed, from academia.

The Government's reply to our report, as our chairman has said, is encouraging. The reply accepts the idea of a national strategy and a road map, and that is welcome. It has also established a nuclear R and D board, chaired by the government Chief Scientific Adviser to advise on next steps. This is fine as far as it goes. Whereas an advisory body chaired by the government Chief Scientific Adviser may be an appropriate interim step, it would be a serious error to regard it as a long-term solution. The government Chief Scientific Adviser has many responsibilities, and whereas his weight would be useful in dealing with the various independent and disparate bodies I have described, it would be unrealistic to expect of him the ongoing commitment of time and effort that will be needed.

Precisely how our nuclear R and D board is implemented or named does not matter. What we need is a high-level expert and influential body with a chairman who can commit several days a month to the job, supported by a small staff and a modest budget. The board must be able to co-ordinate, promote collaboration and commission work in areas where it recognises strategic gaps, whether in research, development or training. Our inquiry did not anticipate that the cost of funding such work would be high, and one witness suggested that an expenditure of around £20 million a year would be sufficient. This funding would enable the board to complement the work of the research councils, the technology strategy board and others, most likely with contracts placed with the National Nuclear Laboratory or perhaps with universities.

Such a commitment to R and D, along with a coherent road map, would also send a very clear, positive message to the nuclear industry. Much of that industry is international and can choose the most attractive location for its manufacturing facilities. This would be seen as a clear invitation to invest here. The recently announced intention to support the Rolls-Royce naval nuclear propulsion facility is to be welcomed and will certainly attract international interest. It would be strongly reinforced by a clear civil nuclear road map and a credible means of implementing it. The key point is that there must be a clearly identified focus of responsibility for ensuring the health and effectiveness of an agreed civil nuclear R and D programme: the road map. The additional cost would be very small. The job is primarily one of co-ordination and ensuring that the country gets value for the money that it is already spending. The opportunity is not only to secure an essential leg of government energy policy but to open up opportunities for industry at home and abroad.

6.53 pm

Lord Crickhowell: My Lords, during the debate on the gracious Speech, I spoke about this report and described the extraordinary discrepancy between the view, on the one hand, of government officials in DECC and the previous Secretary of State and, on the other, those of almost everyone else, including the Government's own scientific advisers. I quoted our conclusion:

> "A fundamental change in the Government's approach to nuclear R and D is needed now to address the complacency which permeates their vision of how the UK's energy needs will be met in the future".

I went on:

> "Those were strong words and they seem to have detonated like a nuclear explosion within DECC. The Government's response, accepting almost all our recommendations, appears to represent the fundamental change in approach to R and D that we demanded. It also acknowledges, 'that nuclear power stations have a vital part in our energy strategy'".—[*Official Report*, 16/5/12; col. 464.]

I welcomed the change, but said that I remained acutely concerned about the Government's wider approach and about what I fear is still a possibility, an acute energy security crisis.

Many of my concerns remain. I believe that every member of the committee was deeply disturbed, indeed shocked, by the flaws in the approach of the department over this important area of its responsibilities that were exposed during our evidence sessions. Comforting although it is to have our criticisms and recommendations so comprehensively accepted, confidence was shaken and it will take a good deal of effort for it to be fully restored. What is important now is to see the commitments made in the Government's response turned into reality.

The publication of the long-term strategy document in the summer, the creation of an advisory board led by the Government's chief scientist and the development of the promised road map will all be significant steps, but a number of our recommendations are taken no further than the promise that they will be considered by the advisory board and as part of discussions on the road map. As the noble Lord, Lord Krebs, has already observed, many questions are unresolved. The Select Committee will need to keep a close eye on events as they unfold.

This is not the moment to range widely over energy policy and the problem issues I referred to in the debate on the gracious Speech. The coming debates on the energy Bill and the proposed hugely complex system of contracts for difference will provide plenty of opportunities for that. I believe that the nation's energy security depends on a substantial nuclear component and will listen closely to the debate about whether that will require up-front price subsidies of the initial high capital costs of nuclear to produce competitive low-cost energy over a 60-year life cycle and whether the Government's complex scheme will provide the certainty and confidence that France's EDF and probably others will demand if they are to go ahead with the planned nuclear programme.

I leave those vital questions for now. I want to take up two points that arise directly from our report. The first is covered by paragraphs 84 to 86 and the former Secretary of State's comments about oil and gas scenarios. Those responsible for energy policy have now to face the reality that gas prices are most unlikely to be at the top end of Mr Huhne's alternative scenarios but are likely to be at the bottom. I shall, I hope, explain as I go on why this is a completely relevant topic to consider in the context of a report on nuclear R and D.

North American gas prices have tumbled due to the successful exploitation of US shale gas reserves. There are vast shale gas reserves around the world, including in Europe and under European waters. They are so vast in China, Mexico and South America that the energy resource geography of the world is likely to be completely transformed. That was the view of Professor Mike Stephenson of the British Geological Survey, who is also the director of the Nottingham Centre for Carbon Capture and Storage, who was speaking at an important seminar I attended yesterday at the Geological Society in Burlington House.

The Government appear to have been playing down the potential for UK shale oil, but the Commons Energy and Climate Change Committee has concluded that a moratorium on extraction in the UK is not justified and the way has been cleared for further exploratory work. That is important because at present we simply do not know how much we have got. The BGS's early estimate for the area being looked at in the north-east is likely to be revised up later this year, and estimates for the rest of the UK onshore will follow. Melvyn Giles, global head of unconventional gas and light oil at Shell, has recently reported that the UK's offshore reserves are "mind-blowingly big". At the moment, extraction costs make offshore reserves completely uncompetitive, but developing extraction technology may well change that. Onshore, it seems highly probable that the rest of the world will over the next few years follow the American lead.

The Select Committee's report was about nuclear R and D; but R and D of one potential energy source cannot, or should not, be carried out in isolation. The reality is that UK shale gas exploration is in its infancy. We do not know how much is down there, onshore or offshore, we do not know what proportion is retrievable and we know very little about the likely cost of extraction. We also have much to learn about the potential environmental impact, given the political need to reassure the public that shale gas can be extracted safely. Almost everything I heard at Burlington House was reassuring, but the truth is that everyone has been caught a little by surprise by the speed of events and there is a need to catch up. Most of the studies produced so far in the US and here lack peer review. There is an urgent need for independent peer-reviewed assessment to identify low risks—the things we do not have to worry about—and those that are high risk that need to be regulated for public safety and to satisfy public opinion. There is a need to collect much more data.

If we are to have a sane energy policy, we need to know much more about these hugely important changes in the world's energy resources and markets as a matter of some urgency. An article in the May edition of the journal of the Foundation for Science and Technology, entitled "The gas supply revolution", by Malcolm Brinded, former executive director of Shell's Upstream International business, provides compelling evidence in support of that argument, whether the primary concern is global warming, energy security or cost.

I believe that DECC should be encouraging a substantial research programme, perhaps jointly with the countries in eastern Europe that have vast reserves but could make good use of our expertise and regulatory experience. The funding councils stand back from such programmes, believing that it is a job for the oil industry, but researchers outside the oil industry have to be more and more involved if we are to get the information that we need. I do not apologise for saying all this on the back of a report on nuclear research. We need to have a properly co-ordinated programme of research that covers the main energy sources. They need to be looked at together. I have no doubt that this is a topic to which the Select Committee will have to return.

I turn to the subject of the UK nuclear industry's potential,

"contribution to jobs, growth and high value exports",

to pick up a quotation from the Government's response. The *Times*, in a leading article on 11 June, observed that we need,

"to identify sectors, such as creative and professional services, health care and pharmaceuticals, the growth of which could make Britain a net exporter".

The committee heard ample evidence that, despite several decades of government neglect, nuclear should be included in that list. I refer to paragraphs 67 and 68 of our report, which contain the TSB's estimate that the global nuclear fission market is worth about £600 billion for new nuclear build and £250 billion for decommissioning, waste treatment and disposal over the next 20 years, with considerable opportunities for UK businesses. Paragraph 68 describes the R and D competition that the TSB has launched for feasibility studies targeted at SMEs, which could become part of a new nuclear supply chain and its likely future round of investment for larger collaborative R and D.

Evidence in paragraphs 72 to 74 suggested that the real opportunity would be,

"'taking a lead now in the development of some of the technologies for future systems' so that the UK had an exportable technology in two, three or four decades time and could take advantage of the '£1.7 trillion of investment worldwide' in these technologies".

Mr Ric Parker of Rolls-Royce told us that,

"there are two clear areas for the UK to play a role in the development of these technologies: the prime investment is in high-integrity manufacturing, monitoring and some of the technical and engineering support for these new facilities".

He also thought that,

"small reactors, of the 200-, 300 megawatt size … could be a major earner for the UK".

Paragraph 5 of the Government's response talked of a commitment to securing the maximum economic benefit to the UK from investment in nuclear power generation. That will require more effective joined-up government, particularly between DECC and BIS, than we detected in the evidence that we received; and

[LORD CRICKHOWELL]
more effective international co-operation, something that has already been mentioned by colleagues, including the reinstatement of the UK's active membership of the Generation IV Forum—our recommendation 5. The encouraging reality is that nuclear is not just a costly necessity but provides a huge opportunity for the growth of a large and profitable international industrial sector. We must seize that opportunity.

7.04 pm

Lord Winston: My Lords, I never thought that I would, in these hallowed places, praise the *Daily Mail*. However, last March, just over a year ago, Michael Hanlon, the scientific correspondent, did a great public service in demonstrating the fact that the Fukushima disaster should not turn us away from nuclear energy. He pointed out on 31 March, just three weeks after the accident, that 20,000 people had died in the flooding but nobody had died as a result of the nuclear explosion. He pointed out too that nuclear workers who were trying to deal with the problem might, with their protective suits, at worst—I am speaking as a biologist—have an extra 1% or 2% chance of developing a cancer as a consequence. He pointed out that, at Chernobyl, far more people were killed as a result of a reaction to the explosion than as a result of the nuclear reaction itself. One of the things that Mr Hanlon pointed out in his various writings on the subject was that politicians—I am not referring particularly to British politicians—really ought to have known better, and that we actually need to be much more aware of a balanced view about nuclear power.

I say all that because one of the things that our report focuses on is the issue of public engagement, and the issue of public understanding of what is involved. This is still an issue today. Only yesterday, there was coverage in the Welsh papers about Wylfa B and how PAWB is congratulating itself that the Minister is now dead in the water with his plans for it, while the Minister—Mr Hendry—was pointing out that he would persist with his plans for that part of the world. People have to understand that nuclear reactors actually release less radioactive material than do coal-fired power stations, and that if we abandoned nuclear completely it would increase the amount of nuclear radiation around us.

I have just come back from the Cheltenham Science Festival. It is an amazing event which lasts five days, where scientists from all over and outside this country come to present their various sciences to the public. What was so dissatisfactory and disappointing was that at this outstanding festival—it is probably the best public engagement in the world at a science festival—in 200 representations, events, lectures and various symposia, there was not a single one on nuclear fission. EDF was present with its tent. As the Minister will know, EDF spends some €350 million a year on R and D in this area, and it spends 8% of that in the UK. At this meeting, EDF said privately that it cannot find enough young people to help it with this research and go into the industry. That links in pretty well with what the noble Lord, Lord Oxburgh, said about our need to link with industry.

Certainly, talking to various young people doing nuclear physics at that meeting in Cheltenham, it was obvious that there are some really outstanding scientists. One of my colleagues, who trained at Imperial College, for example, clearly had an extremely promising career but now cannot find any post-doctoral or further research position to continue her work in nuclear physics. This is a terrible blight on our young generation, as it is when we come to recruiting PhD students. With the extreme tension at the engineering office of the sciences research council and the fact that in real terms we have lost 16% of our budget, it is massively difficult to see how we can really maintain this expertise in which we led the world. Only 40 years ago, we were spending nearly £500 million on research in this area. Under different successive Governments—no one Government are to blame—we ended up spending probably a post-doctoral scientist's research salary and a bit more besides, which is really quite shocking. It is now slightly creeping up, but the pressure is massive and not one that can be undertaken with the constraints that apply to our two research councils most involved in this area. There is also a clear need that if we are really to have the public behind us and with this very important initiative, we have to be seen to be listening to the public much better than we have been doing. Aspects of public engagement have been pretty unsophisticated, and they need to include a recognition that we as scientists have to show our responsibility and concerns about the ethics of what we do and involve social scientists in government to work out how best to do that. This is still a major problem.

Recently in a debate in the Chamber, the noble Lord, Lord Alderdice, argued that we on the Select Committee are not interested in social sciences. I am afraid that he is mistaken. So much of the work that we do is involved in social sciences, and we take it very seriously. Of course, the Engineering and Physical Sciences Research Council has also tried very hard to get involved with things like dialogue and better public engagement and has tried to support it a great deal. But it is really very important that the Government do that. If we do public engagement with the issues involved in nuclear, it is actually a generic area; the skills we would learn from this contentious area apply increasingly to a whole range of technologies as science develops and becomes increasingly important in our society. I hope that the Government can do something towards this and do what is essential to make this a much more acceptable technology, which will I hope be better funded in consequence.

7.12 pm

Lord Broers: My Lords, we are already at a point in this debate when much that must be said has been said. As the noble Lord, Lord Crickhowell, pointed out, the energy world has changed a great deal since the report was published, but I still believe that it is crucial to retain nuclear power as one of the low-cost carbon options in the UK energy strategy, despite the increasing awareness of the vast potential of low-cost shale gas and concern about the failures at Fukushima.

Nuclear power is the most mature of the three major low-carbon options in our strategy and is vastly

better understood in terms of performance, maintenance and cost than offshore wind, let alone carbon capture and storage. However, there is no denying that the possibility worldwide of cheaper natural gas, even if there is not very much of it directly under the UK—although, as the noble Lord, Lord Crickhowell, said, there may be some under the waters adjacent to us—together with, illogically in my mind, the safety concerns resulting from the Fukushima failure that the noble Lord, Lord Winston, has just addressed, have made the nuclear option less attractive, so much so that those who were to supply our new plants have either delayed their commitments, as with EDF, or, in the case of RWE and E.On, withdrawn completely. Of course, there are others who may be willing to build our plants, such as the Chinese and the Russians.

It is, no doubt, because of the change in the general energy supply outlook that the Government decided to introduce contracts for difference to provide a more favourable pricing environment for potential bidders. These CFDs are being viewed by some as a hidden subsidy for nuclear power which, as we all know, the Government have sworn that they would not allow. They argue that the CFDs are available for all low-carbon options, not just nuclear, and that it has always been assumed that it would be necessary to subsidise low-cost carbon alternatives, at least initially. This is not, therefore, in their mind, a subsidy that singles out nuclear. On balance, I agree with that argument and, in any case, I have always felt that the first implementation of any new technology needs some form of financial assistance.

On the basis that this is not the time to abandon plans for maintaining, or even growing, our nuclear base, the recommendations of the Select Committee's report that will restore and update our knowledge base are powerful and should be implemented. I was highly encouraged by the positive response from the Government to many of our recommendations. I join others in complimenting our chairman, the noble Lord, Lord Krebs, for the strong way in which he led the inquiry and the focus he maintained on the importance of re-establishing a competitive, well co-ordinated R and D base for the nuclear industry.

First and foremost, as no doubt many have said and will say, we need a comprehensive R and D strategy, as laid out in our first recommendation, that looks as far ahead as 2050. The output of this strategy will be a road map, which although it is not stated, will have to be reviewed every few years to ensure that it is keeping up with unpredictable developments. Along with many others, I am pleased that our recommendation to set up an advisory board to oversee and co-ordinate this R and D programme was accepted. As we have heard, the board has already met, but we are yet to learn who is going to pay for all this and for how long the payment will be maintained. Our chairman has said, perhaps in another place, that we may have to return to this to ensure that the programme continues.

I spoke in the Queen's Speech debate about the need to increase the resources that we devote to R and D in the broader context of the economy, very much along the lines of the noble Lord, Lord Crickhowell. At present, largely because of the dramatic fall in our manufacturing output, we lag far behind our competitors in R and D spend as a fraction of GDP. The dangers of allowing this to happen are no better illustrated than by our current predicament with nuclear power. We can no longer build nuclear plants ourselves and therefore lack the ability to determine our own future.

Fortunately, in the case of nuclear R and D, the Government agree with our concern and with our wish to restore our nuclear R and D capability so that we can support the new-generation plants and better deal with the already existing and giant problem of disposing of our legacy waste. We need not do this in isolation from the rest of the world. We should, as the noble Lord, Lord Hunt, suggested to me yesterday, collaborate with others, especially the French, who have world-leading capability. In giving evidence to us, Mr Bernard Bigot, chairman of France's Alternative Energies and Atomic Energy Commission, which, incidentally, has 4,500 people working on nuclear energy R and D with a budget of €1.2 billion—the noble Lord, Lord Krebs, referred to the comparison between our 2% effort and theirs—said:

> "So I think you should build expertise in your country and share expertise with others in order to strengthen your capacity".

He made it clear that the French would he happy to collaborate with us.

I finish by asking the Minister to assure us that the Government's commitment to restore our R and D base in nuclear power is firm and that the full potential of nuclear technology for this country will be realised.

7.19 pm

Baroness Hilton of Eggardon: My Lords, I would like to take up the point about public engagement made by my noble friend Lord Winston and the importance of getting people in this country to understand the vital necessity of having more nuclear power capacity.

Twenty years ago, in common with many people in this country, I was opposed to the extension of our capacity for nuclear power. This was largely because of the problems of the disposal of nuclear waste and its persistence in the environment, which have still not been solved. This was reinforced early in my time in the Lords when I was sent as a representative of the Environment Committee to a weekend conference in Iceland on marine wildlife. The main concern of the Icelanders was the radioactive isotopes in their fish, which were traceable to leakages from Sellafield. As a balancing act they hoped that we would agree to their resumed hunting of minke whales. Over the past 20 years, however, I have come to realise that the only effective solution to our short-term energy needs and the overriding importance of mitigating climate change is nuclear power. I therefore support all the recommendations in our report.

One of the great drawbacks of democracy is that it inhibits long-term strategic planning because of the short-term needs of politicians to be re-elected. Nuclear power is essentially an unpopular policy for many of our electorate. It also may require greater investment and mean weaning people off their love for motor cars and dependency on oil. Long-term strategies may also imply government investment and the raising of taxes.

[Baroness Hilton of Eggardon]
Although the Government's formal response to our report is encouraging, when he gave evidence to us the Minister was extraordinarily complacent, relying entirely on fossil fuel technologies such as carbon capture and storage, which is still at an experimental stage, and fracking, which always sounds to me rather indecent—and which also may be more problematic in this country because of the clay content of our soils and because our oil shales are much deeper than those in the United States. Even if successful, both these technologies will ultimately run out of their basic raw materials. Therefore, I hope that the forthcoming strategy that the Government are to produce will be more realistic about the need for nuclear power.

At the moment the Government seem to have no sense of the urgency of our need for research capacity, which has been underfunded for the past 20 years. We have an ageing population of nuclear scientists and astonishingly have withdrawn from the international forum for generation 4 development. Government action is urgently needed now to provide a strategic plan and sufficient investment to ensure the security of this country's energy supply and the long-term aim of mitigating climate change. So far there is little indication of the necessary urgency.

7.22 pm

Baroness Worthington: My Lords, I congratulate and thank the noble Lord, Lord Krebs, and fellow committee members for an excellent report, which seems to have shocked the Government out of their complacency. A number of noble Lords have mentioned that word in relation to the evidence that was given. It seems that the report has engendered a different response and indicated that there is a problem that needs to be addressed. I congratulate the committee on achieving that change.

I will quickly try to summarise a few of the issues raised by noble Lords. The theme that seems to be emerging is that there has been a lack of a long-term strategy. That has been mentioned by a number of noble Lords. There are two clear recommendations on the way to address this. It would be great to hear the Minister comment on those. One is the creation of a hub, where we can our co-ordinate our R and D efforts. The noble Lords, Lord Hunt of Chesterton and Lord Jenkin of Roding, mentioned that particularly. Also, in parallel with the creation of this more coherent strategy, noble Lords are seeking clarity about the status of the advisory body that has been created. Will it be given an executive power, as the noble Lords, Lord Oxburgh and Lord Krebs, have asked?

As the noble Lord, Lord Winston, has said, there seems to be an important public engagement question around nuclear power. I have been doing my own investigations into nuclear power, to which the noble Lord, Lord Jenkin of Roding, has alluded, and it has been a fascinating journey. I have visited many places and have just come back from a trip to the national nuclear laboratory at Oak Ridge in the US. This morning I was in one of the laboratories at Cambridge University that has a great heritage as regards nuclear research. However, all this seems to be slightly frozen in time. Once we were a great nation as regards innovation and pure research into nuclear physics. We have lost that. It is not just us. Other nations, the US included, have gone on to look at other, perhaps more exciting topics, around nuclear fusion or pure particle physics.

How do we get people really excited in the idea that they have a future career in nuclear fission? That is the question. A number of noble Lords have raised this, including my noble friend Lady Hilton of Eggardon. The big imperative here is the tackling of climate change, and the need to move to a low-carbon economy. If we want young people who are interested in that agenda to think "nuclear" in response to that question, we have a challenge ahead of us. It would be interesting to hear from the Government, now that they are out of their complacent mode and into active mode and looking to address this, what plans we have for a much more diverse set of technologies that is discussed in the public discourse around nuclear fission.

My noble friend Lord Hunt of Chesterton mentioned that we have in the past coupled nuclear fission for energy with military purposes, but the spectrum of technologies for nuclear is very broad. At one end it is used for medical isotopes that save people's lives, and at the very far end you have nuclear weapons. Nuclear power sits somewhere in the middle. I wonder if perhaps a hub cannot be created where we are looking at the other end of the spectrum, where we bring medical uses of nuclear and power together. That might help with the public engagement question and create new frontiers. If you want to attract people into this sector, they are not going to be excited by small modifications of existing technology that is more than 40 years old. They need a new scientific frontier in which they feel that they can make their mark and have a career that will lead to all sorts of recommendations, accolades and, ultimately, jobs. What are the new frontiers in nuclear fission? That is an important question that we have to think about. We must not simply see this as a limited set of technologies, as we perhaps have in the past. There are more than 900 different reactor designs that could be conceived of; we seem to be fixated only on a narrow range. In terms of public engagement and bringing people into the sector, those are key questions.

A number of noble Lords have made reference to the Government's proposals for the existing electricity market reforms, the noble Lord, Lord Crickhowell, among them. There is a question over this and it would be good to hear how things are proceeding. We have seen in the headlines since this report was issued a number of changes of state of some of the projects that we were expecting to go forward. Are our plans on track? If not, perhaps we could have some words on how we are going to address that.

The noble Lord, Lord Jenkin of Roding, mentioned our plutonium storage in Sellafield. There are ways of tackling this that go beyond simply repeating the Mox experiments of the past. I will not go into details, but that is a clear need for us. We tend to view, perhaps, plutonium as a liability, but there are technologies out there that could turn it into a very valuable asset. We need to be looking at that, and I hope that it will form part of the strategy.

I hope that I have not glossed over too many of the questions. This is my first time attempting to sum up a debate, and I am very humbled to be here on such an

important debate with such eminent people speaking. I will finish there, if that is okay. I again welcome the report and thank the noble Lord, Lord Krebs, and his colleagues for such an excellent contribution and the effect that it has had in galvanising the Government.

7.28 pm

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Lord Marland): My Lords, I congratulate the noble Baroness on her star performance at the Dispatch Box. Of course, there have been star performances overall. We have a galaxy of scientific brains here. I wore my special tie with stars on it because I knew there would be. Of course, this report is a credit to the House of Lords, on which I congratulate the committee and its chairman, the noble Lord, Lord Krebs—and, of course, for his work on the climate change committee, for which we in our department are so grateful. Of course, as you can imagine, a lot of this is way above my head. I was reflecting on my own school report the other day, and pulled it out to see what it said about my science O-level. It was one simple sentence: "This boy will not be a scientist".

Therefore, it is no surprise that the committee did not call me to give evidence, because I am not sure I could have added much other than some of my limited business experience of a few years. One point that is fundamental to understanding this nuclear issue is that for 27 years we have had no nuclear business. We have had nothing to export and no expertise to grow because there has been no future for the younger generations that have been mentioned to work into. Because there has been no activity in the nuclear world, we have also had the brain drain. I have been quite interested in what this committee would have said had it come up with this report five years ago and am slightly depressed by some things that some noble Lords have said about the Government not doing enough.

I want to mention some of the things that we have done. We have been in power for two years, in which time we have identified and given clearance for eight nuclear sites to go ahead. We have persuaded companies to come back and invest in the United Kingdom. We brought planning back to the Secretary of State so that we can clear the decks for a lot of the planning issues that are there. We have agreed and brought into law provisions, which were drawn in this House, for two new nuclear reactors so that they can be used immediately. We have dealt with the appalling mess, which preceding Governments should be ashamed of, over the decommissioning waste that was left up at Sellafield. I have brought in a plan whereby waste is going to be exported from all of our shockingly badly managed waste pools during this Parliament. We have revolutionised the security of our nuclear power stations and have set a very clear mandate for those investing in nuclear in this country about their security requirements. We have totally overhauled the civil nuclear police force, in a process that has happened very quickly—it is not quite finished yet, but is happening now. We have announced electricity market reform and contracts for difference to set the framework for a clear pathway for investment. On decommissioning, I have persuaded the Treasury, amid the appalling economic climate that we have inherited, to invest £10 billion of new money in our nuclear waste and decommissioning. We have made very significant strides. To touch on a point made by the noble Lord, Lord Jenkin, we have committed and commissioned a business case for a Mox plant, which will solve the huge plutonium pile that we have inherited as a Government.

If that is not enough, think of the backdrop that we have inherited—Fukushima, Switzerland and Germany withdrawing from nuclear as a result, and the appalling balance sheets that E.On and RWE have as a result of Germany withdrawing. I do not need to dwell on it for too long, but we have inherited unprecedented economic conditions that have made investment into anything new by any industries, let alone by Government, extremely vulnerable and volatile. However, it is not all bad. The UK has come out of it as a world leader—not a world leader in the technology but in the way that it reacted to those horrific events at Fukushima. As the noble Lord, Lord Krebs, mentioned, we are indebted to the work of Mike Weightman, who has, in a great credit to our country, been asked to come up with a report for the future of nuclear. We noble Lords have, as a group, responded with great diligence and calmness to all the activity going on, and this report adds to the momentum that we are trying to create.

Because we have now got our inherited nuclear industry into better shape, we have started exporting our skills abroad. It was only last week that I hosted the entire Abu Dhabi nuclear organisation and their security people here. We are now signing a memorandum of understanding and supplying security expertise and waste management expertise to them. We have a draft memorandum of understanding with Saudi Arabia to do the same. Of course, as regards the continued fall-out from Japan, we are right at the forefront of advising on it. It is a question of getting that export focus and the confidence back into our industry. Despite our not being in the vanguard of new nuclear, we still have terrific expertise in this country of which we should be proud.

We readily dismiss the assertion that we are not investing enough in R and D. We have spent £500 million on R and D through the NDA in the past four years. That is not an inconsiderable amount of money. We have invested £20 million on R and D on fission alone in the past four years. Therefore, it is not all bad news. There is a lot of good news. I hope that the committee will give us some credit for that.

I now wish to deal quickly, as I know that the noble Lord, Lord Winston—

Lord Hunt of Chesterton: Is the Minister saying that the figures on this page of the report are misleading?

Lord Marland: I am not sure to which page the noble Lord refers.

Lord Hunt of Chesterton: I am referring to paragraph 19, which gives comparators of government-funded research.

Lord Marland: I am merely giving the figures concerning investment by the NDA in nuclear R and D. I am very happy to supply the noble Lord with a breakdown of the figures on an annual basis, and as regards fission. I am happy to supply the noble Lord with those figures and place them in the Library.

I will not dwell for too long on some of the specific points that were raised in the debate as the Government have responded to the report. The noble Lord, Lord Krebs, has asked for a credible plan. He knows that the credible plan will be developed before the end of the year. He is absolutely right to hold us to task and to say that we should not be complacent and ensure that we have the right advisory board in place that has executive powers to create the momentum that we are determined to develop. The noble Lord mentioned the Generation IV International Forum. Professor MacKay has been asked to come up with his consideration and advice on that. Again, it is not a case of pushing it into the long grass. We will receive his considered reply and I am glad that he found favour with the committee. The NNL reports to me. I will discuss it in a bit more detail in a minute but it is developing a business case for the new facilities. I suspect that that will be positive. As we know, the ONR is considering what the position will be as regards the Nuclear Safety Advisory Committee and establishment. Therefore, I hope that within the next few months we will have a straight edge on that. We have committed to doing that. That was one of the positive things in the report. As I said, the noble Lord, Lord Krebs, is right to hold us to account and make sure that what we have said takes place.

I have mentioned Mox, to which my noble friend Lord Jenkin of Roding referred. We remain very open-minded as regards PRISM. It is not yet a proven technology. It may be so in time but the industry has on many occasions gone down following the introduction of new technologies which have had disastrous consequences, as, indeed, did the previous Mox plant. However, as I am responsible for Mox I take on board what the noble Lord says.

The noble Lord, Lord Hunt of Chesterton, talked about a plan. However, there is a 2050 plan, which is a long enough vision as far as I am concerned. The noble Lord, Lord Oxburgh, spoke about the NNL. The NNL reports to me. We have just reappointed the chairman. I have been working very closely with him and I am disappointed that the impact has not been seen.

The NNL is a profitable organisation, and it should not be dismissed but its biggest client is a government entity—the NDA. The NNL does a fantastic job; its management team is in the right place, whereas three or four years ago it probably was not. It has done a terrific job in the pay negotiations, which have given certainty to their staff for the future, and I have no doubt that there will be an increase in their activity as, wearing my other hat as the Prime Minister's trade ambassador, we seek to promote their activity and skill abroad. My noble friend Lord Crickhowell talks about shale gas. In the past few weeks, at my instigation we have set up the office of shale gas assessment to make sure that we can establish public confidence in shale gas. We all know how difficult it is to do things on land in the UK, and it is very important that we establish public confidence.

The noble Lord rightly refers to the abundance of gas in the world—there is effectively 240 years of gas. As I have told noble Lords before, I have been in Algeria recently where they have discovered as much shale gas as there is in America, which will one hopes have long-term effects on our pricing. We have had a record number of licence applications for exploration off our coasts, so one hopes that we can develop that side of things.

The noble Lord, Lord Winston, talks about Wylfa, which is a problem, as we know and as has been well documented in the press, and we are in active negotiations with several parties. I cannot go into detail but they are positive negotiations and clearly we are determined to find a solution for Wylfa, because it is key and the second phase of our rollout. The noble Lord referred with great knowledge to education. If we can get a viable future for nuclear in this country, the jobs will flood back, and we must be there to take them. The universities—and I greatly appreciate the noble Lord's influence on this—should be there to provide courses for them.

I am grateful to the noble Lord, Lord Broers, for his support and the work that he has done on the committee, and the discussions and input that he had before. The noble Baroness, Lady Hilton, mentioned fission, which is important and not something that we should be complacent about. It is something that should explore, but we should explore every avenue and create the hub to which the noble Baroness, Lady Worthington, referred, as did the noble Lord, Lord Crickhowell. That is why the manufacturing and engineering capacity through the Nuclear Advanced Manufacturing Research Centre could and does act as the hub, but we must put greater importance on it to achieve the vision that we all have. I am looking at my watch because I am mindful, along with the noble Lord, Lord Winston, that we may be 1-0 down by the time we finish.

There is no doubt that we have to play catch-up, and we all understand that. This report helps us to identify the number of issues that we have and, of course, as a Government, we welcome it. It is incumbent on us all in this Room and in successive Governments to work together. The road map being put together by the Dalton Nuclear Institute and NLL, with input from the committee, has to set out our R and D capability and requirements. The Government have then to put their full weight behind it, not tiptoe behind it. It is key to future growth for this country, as has been mentioned by a number of noble Lords, and it is something very simple for us to attain. We will have the structure in place by the end of the year, and we must vest in it the authority that the committee looks for. Research and development is absolutely fundamental to the future, and as a Government we know it.

As I said earlier, we have a great deal to build on and we must not beat ourselves up. We have enormous skills and capabilities in this country in so many walks of life. We are the envy of the world for a lot of things we do. As has been demonstrated by the ONR with

Mike Weightman, we have the expertise; we have Professor Beddington, who has tremendous status in the world, and we have a very good platform from which to develop.

As I said, we have a committed Science and Technology Committee and a Government committed to new nuclear, and I am very pleased to report that we have a company by the name of EDF which only today appointed Bouygues and Laing O'Rourke in a joint venture as a preferred bidder for Hinkley Point C main civil works contract. If that is not a good start, I do not know what is.

7.45 pm

Lord Krebs: My Lords, I have very much enjoyed this debate, and would like to thank all those who have taken part in it. It demonstrates the depth of expertise in this House, which makes such a difference to the quality of debate on important issues such as the future of nuclear energy.

I also thank the Minister very much for his encouraging response. We all accept that the move ahead with a new generation of nuclear power stations and the electricity market reforms are very significant steps forward in the role of nuclear in future energy supply. That in itself underlines the urgency of ensuring that we have an adequate R and D base and skills to procure, regulate and run the new generation of nuclear power stations.

I will not go on in any detail, because the Minister has left me minus one minute to allow the noble Lord, Lord Winston, to get in front of a television. Therefore, I shall delay noble Lords for only a few seconds longer.

I sound just one note of warning about shale gas. Of course, noble Lords are right to reflect that there is a large amount of shale gas in the world—in fact, without carbon capture and storage, enough to fry us all many times over. So shale gas has to go with CCS, which is an unproven technology, whereas nuclear is a tried and tested technology. We must therefore not relinquish our commitment to nuclear because of the hope of shale gas with CCS, unless we are prepared to fry.

I reiterate what has been said by other noble Lords during this debate. We are encouraged by the Government's response, and thank them for that, but wish to keep our eye on things. I am very encouraged that the Minister has emphasised the executive powers and continuation of the R and D board, and we will want to keep a close eye on that to make sure that the important recommendations that we have made are carried through. I thank all those that have taken part.

Motion agreed.

Committee adjourned at 7.48 pm.

Written Statements

Tuesday 19 June 2012

Education: Early Years Qualifications and Training

Statement

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): My honourable friend the Minister of State for Children and Families (Sarah Teather) has made the following Written Ministerial Statement.

I am pleased to announce that Professor Cathy Nutbrown is today publishing the findings of her independent review of training qualifications and careers opportunities for people working in early education and childcare. Copies of her report *Foundations for Quality: Review of Early Education and Childcare Qualifications* will be placed in the House Libraries.

The importance of the early years—as a foundation for life and for future attainment and success—cannot be overestimated. Children's personal, social, emotional, language and physical development are of paramount importance, and without strong foundations in these areas children will struggle as they develop in life, with friends and in school. That is why the Government have taken action to extend access to free, high-quality early education, and to reform and simplify the Early Years Foundation Stage.

It is essential that people working in the early years have the right skills and training to give children the best start in life. One of the most important factors affecting a child's healthy development is the quality of the education and childcare they receive in the earliest years. That is why, in July last year, I set out my intention to commission a review of existing early years qualifications and training. I asked Professor Cathy Nutbrown of Sheffield University to undertake an independent review, to consider how best to strengthen qualifications and career pathways, focusing on the qualities needed to ensure that young children receive the best quality pre-school education.

I asked Professor Nutbrown to consider four main areas:

the content of early years training courses, testing their strength and quality;

how to build on the work to date to develop qualifications to meet the needs of all learners, including young people undertaking full-time college courses and those who currently work in the profession;

how to ensure that entry qualifications are of a high standard and meet the needs of employers, and offer sufficient scope for progression within the sector; and

options for helping new qualifications acquire the equivalent status and currency of the Nursery Nurse Education Board (NNEB) qualification.

Professor Nutbrown is making recommendations in all these areas, and her report makes a strong case for further progress in improving quality and professionalism in the early years workforce.

I am hugely grateful to Professor Nutbrown for conducting this important review and to those who have supported her. I warmly welcome Professor Nutbrown's thoughtful and thorough report, which takes a balanced look at the needs of the sector. The early years are immensely important and this report will be invaluable in helping the Government consider the best way to encourage talented people to work in the sector and improve outcomes for babies and young children in this important stage of their lives. We will read her report with care, and respond in due course as part of our continuing commitment to ensuring that childcare remains high quality and affordable to parents.

EU: Agriculture and Fisheries Council

Statement

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Taylor of Holbeach): My right honourable friend the Secretary of State for Environment, Food and Rural Affairs (Caroline Spelman) has today made the following Statement.

The next Agriculture and Fisheries Council is on Monday 18 June in Luxembourg and is the last under the Danish presidency. My right honourable friend the Minister of State for Agriculture and Food (Jim Paice) will represent the UK. Richard Lochhead MSP and Alun Davies AM will also attend.

The main item on 18 June will be the presentation and discussion of the presidency's report of the reform of the Common Agricultural Policy (CAP). This is expected to highlight areas of emerging agreement, as well as key issues remaining to be addressed under the forthcoming Cypriot presidency.

There will also be an orientation debate on the proposed rural development regulation as part of the CAP reform package. The debate is expected to address the issues of the level of spend under Pillar 2 that will have to be focussed on environmental outcomes and whether funds transferred from Pillar 1 to Pillar 2 need to be subject to national co-financing.

There are two COREPER points down for possible discussion and the adoption of council conclusions: the 2012-15 EU Animal Welfare Strategy and the protection of animals during transport.

Under any other business there are five confirmed items:

an update from the Commission on the implementation of the group housing of sows by 1 January 2013;

report from the presidency on the G20 meeting in Mexico City 17 and 18 May 2012;

presentation from the presidency on animal health aspects of Health Council conclusions on the impact of antimicrobial resistance on the human health and veterinary sector and;

a Commission report on the application of a council regulation on organic production and labelling; and

reports from Poland and Lithuania regarding the situation in the milk and dairy market.

EU: Data Protection

Statement

The Minister of State, Ministry of Justice (Lord McNally): My right honourable friend the Lord Chancellor and Secretary of State for Justice (Kenneth Clarke) has made the following Written Ministerial Statement.

The Government have decided not to exercise their right to opt out of this draft directive under Protocol 19 of the Treaty on the Functioning of the European Union (the Schengen Protocol).

The Government have taken this decision in accordance with the commitment in the coalition agreement, which states that we will approach legislation in the area of criminal justice on a case-by-case basis, with a view to maximising our country's security, protecting Britain's civil liberties and preserving the integrity of our criminal justice system.

The Government believe that our national interests are best served by participating in this directive so that we are party to the common framework governing data sharing for policing and criminal justice across the EU. By participating, we can best build trust across member states for the necessary sharing of data to protect our citizens and make the strongest case possible for this to be done within a framework of appropriate and proportionate rules.

EU: Foreign Affairs Council and General Affairs Council

Statement

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): My honourable friend the Minister of State (David Lidington) has made the following Written Ministerial Statement.

My right honourable friend the Secretary of State for Foreign and Commonwealth Affairs will attend the Foreign Affairs Council (FAC) on 25 June. I will attend the General Affairs Council (GAC) on 26 June. Both meetings will be held in Luxembourg.

Foreign Affairs Council (FAC)

The FAC will be chaired by the High Representative of the European Union for Foreign Affairs and Security Policy, Baroness Ashton of Upholland.

Southern neighbourhood

Ministers are expected to discuss the Commission's report on activities in 2011, and the Roadmap for Future Action. We welcome the communication and recognise the broad range of activity the EU supports in the region. We particularly welcome the increased focus on developing the political relationship through task forces held in Tunisia and Jordan, and the promotion of civil society through the new civil society fund.

Ministers will take stock of the latest situation on the ground in Syria, following the G20 summit in Los Cabos (18 and 19 June), and before a possible Contact Group meeting on Syria. The council is an opportunity to outline our policy, along the lines of the Foreign Secretary's Statement to Parliament on 11 June. We need to support the Annan plan, increase the pressure on the Assad regime, and keep up a push for humanitarian assistance and on accountability. Ministers are likely to adopt conclusions reinforcing our messages.

On Egypt, Ministers will take stock of recent events, including the 14 June decisions by the Supreme Constitutional Court and the 16-17 June presidential elections. The council conclusions are likely to reaffirm EU support for the political transition, and keep pressure on the authorities to maintain the momentum of tackling the pressing economic and human rights concerns.

Pakistan

High Representative Ashton is expected to report back from her recent visit to Pakistan. The subsequent discussion will be an opportunity for the Foreign Affairs Council to set out the EU's support for Pakistan's forthcoming elections and the EU's commitment to improve market access for Pakistan.

Bosnia and Herzegovina

We expect council conclusions to welcome the political progress achieved so far in 2012, and reaffirm the EU's strong support for Bosnia and Herzegovina's EU perspective. The conclusions are likely to reinforce the message that Bosnian leaders must urgently make a credible effort towards bringing their constitution into compliance with the European Convention on Human Rights, thereby enabling their stabilisation and association agreement to be brought into force as soon as possible. We also expect there to be a reference to key priorities that local leaders should aim to address before making a credible membership application. We expect the council to call for a swift and sustainable resolution to the current political uncertainty in Bosnia and Herzegovina.

EU Human rights strategy

We expect a discussion on the proposed EU human rights strategy, which consists of a strategic framework (a political declaration by the council on the EU's direction on human rights) and an action plan. There may also be discussion of an EU Special Representative on Human Rights, on which a draft mandate has been circulated amongst member states. There may be council conclusions.

Freedom of religion

Ministers may discuss freedom of religion or belief, following an increase in violence directed towards religious communities in Nigeria. We are active in working to defend this fundamental freedom and encourage the EU to continue to give full attention to promoting freedom of religion or belief in its bilateral and multilateral relations.

Iran

Following the limited progress in three rounds of talks between the E3+3 and Iran, there will be an opportunity for Ministers to ensure the EU maximises pressure on Iran, including reviewing the oil embargo and protection and indemnity insurance ban, ahead of implementation on 1 July.

General Affairs Council (GAC)

The meeting will be the last under the Danish presidency, and will be chaired by Denmark's Minister for European Affairs Nicolai Wammen. There are three main items on the agenda: the multiannual financial

framework (MFF), cohesion policy and preparation for the 28 June European Council. There will also be a discussion on whether to open accession negotiations with Montenegro.

Multiannual financial framework

As with previous meetings of the GAC, my main focus for these discussions will be for the negotiating box to reflect the UK's objective of delivering a restrained EU Budget, limited to a real-terms freeze. Within a restrained budget, a greater share should be directed to priority areas such as external action, research and climate change. I will also defend the rebate and argue against any new EU taxes. The presidency intends the negotiating box to establish parameters for the discussions after their presidency and for MFF discussion at the June European Council.

Cohesion policy

The presidency will seek agreement of a partial general approach on several issues: on concentrating future programmes on fewer objectives; on the rules for financial instruments; on the performance framework; and on proposals on revenue generating projects. We will need to look horizontally at the specific regulations for the funds covered by the common provisions regulations, including those for the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund to ensure consistency between them and to maximise the opportunities for harmonising the rules to reduce burdens for final recipients and authorities.

June European Council

Over lunch Ministers will discuss the priorities for the June European Council with President Herman van Rompuy. This conversation will continue into the afternoon, following the council's approval of the country specific recommendations when the plenary session reconvenes. The June European Council agenda is broad, covering growth, trade, the MFF, energy, enlargement, justice and home affairs and foreign policy. We expect the focus to be largely on economic issues in the Eurozone.

Montenegro's EU accession

As agreed at the December 2011 European Council, the GAC will also discuss whether to open accession negotiations with Montenegro. The Commission's May 2012 report on Montenegro's progress implementing its reforms again concluded that Montenegro continues to make good progress and that accession negotiations should be opened. The UK supports this recommendation.

Financial Services Authority: Annual Report

Statement

The Commercial Secretary to the Treasury (Lord Sassoon): My honourable friend the Financial Secretary to the Treasury (Mark Hoban) has today made the following Written Ministerial Statement.

The annual report 2011-12 of the Financial Services Authority (FSA) has today been laid before Parliament.

The report forms a key part of the accountability mechanism for the Financial Services Authority under the Financial Services and Markets Act 2000 and assesses the performance of the Financial Services Authority over the past 12 months against its statutory objectives.

National Minimum Wage: Seafarers

Statement

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Baroness Wilcox): My honourable friend the Minister for Employment Relations, Consumers and Postal Affairs (Norman Lamb) has today made the following Statement.

I have today published an updated policy statement on enforcement of the national minimum wage (NMW). The Statement confirms that the Government will enforce the NMW on behalf of seafarers who ordinarily work in the UK and sets out our approach to determining whether this is the case.

I have arranged for copies of the updated policy statement to be placed in the Libraries of both Houses.

Social Security Advisory Committee

Statement

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud): Later today, I will publish the outcome of the review of the Social Security Advisory Committee (SSAC). I am pleased to announce that the Government support the continuation of the committee in its current form. The Department for Work and Pensions has completed a robust examination of the committee's functions, delivery arrangements and governance structure. The review was carried out in line with the Cabinet Office's key principles for reviews of non-departmental public bodies (NDPB). The SSAC is a cost-effective advisory NDPB whose functions are integral to improving the quality of policy-making and of secondary legislation in the Department for Work and Pensions. I will also place a copy of the review report in the House Library later today.

Terrorism Prevention and Investigation Measures Act 2011

Statement

The Minister of State, Home Office (Lord Henley): My right honourable friend the Secretary of State for the Home Department (Theresa May) has today made the following Written Ministerial Statement.

Section 19(1) of the Terrorism Prevention and Investigation Measures Act 2011 (the Act) requires the Secretary of State to report to Parliament as soon as reasonably practicable after the end of every relevant three-month period on the exercise of her TPIM powers under the Act during that period.

The level of information provided will always be subject to slight variations based on operational advice.

TPIM notices in force (as of 31 May 2012)	9
TPIM notices in respect of British citizens (as of 31 May 2012)	9
Variations made to measures specified in TPIM notices	21
Applications to vary measures specified in TPIM notices refused	19

During the reporting period: no TPIM notices were imposed; no TPIM notices were extended; no TPIM notices were revoked; and no TPIM notices were revived.

A TPIM Review Group (TRG) keeps every TPIM notice under regular and formal review. The TPIM Review Group met twice during this reporting period.

One individual was charged in relation to an offence under Section 23 of the Act (contravening a measure specified in a TPIM notice without reasonable excuse) during the period.

Section 16 of the 2011 Act provides rights of appeal against decisions by the Secretary of State in relation to decisions taken under the Act. Four appeals were lodged under Section 16 during the reporting period.

One judgment has been handed down by the High Court in relation to a TPIM notice. On 27 March 2012, the High Court handed down the first judgment in relation to the review of a TPIM notice under Section 9 of the Act. In Secretary of State for the Home Department v BM [2012] EWHC 714 (admin) the High Court upheld the TPIM notice and the control order which preceded it.

Most full judgments are available at http://www.bailii.org/.

Waterways

Statement

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Taylor of Holbeach): My honourable friend the Minister for Natural Environment and Fisheries has today made the following Statement which, as was requested by the Secondary Legislation Scrutiny Committee, places copies of the draft British Waterways Board Transfer Scheme and the draft Waterways Infrastructure Trust in the Library of the House.

In advance of the forthcoming debate on the draft British Waterways Board (Transfer of Functions) Order 2012, I am placing in the Libraries of the House a copy of the draft British Waterways Board Transfer Scheme 2012 and a copy of the draft Waterways Infrastructure Trust.

If Parliament approves the Transfer of Functions Order, it will, when made, transfer the statutory functions of the British Waterways Board in England and Wales to the Canal and River Trust. The transfer scheme will come into force in conjunction with that order and will be made under Section 23 of the Public Bodies Act 2011. It will divide and transfer the property, rights and liabilities of the British Waterways Board between the Canal and River Trust, the Canal and River Trust Community Interest Company—Canal and River Trading CIC—and the British Waterways Board, as it continues to operate in Scotland.

As a default provision, except where provided for elsewhere in the transfer scheme, all property, rights and liabilities of the British Waterways Board will transfer to the Canal and River Trust. This is to ensure that the British Waterways Board, when operating solely in Scotland, is not unexpectedly burdened with liabilities. Schedules 1-3 list the division of property between the recipients.

The British Waterways Board, operating solely in Scotland, will receive all of the property, rights and liabilities relating to the activities of the British Waterways Board in Scotland as well as a portion of the British Waterways Board's cross-border contracts. The division of assets between the Canal and River Trust and the British Waterways Board, when operating solely in Scotland, was agreed by the UK Government and the Scottish Government through a disaggregation process. The draft transfer scheme was also made available to the Scottish Parliament during their consideration of the Transfer Order. The Scottish Parliament gave its consent to the draft Transfer Order on 9 May 2012.

The transfer scheme will divide the commercial property assets between the Canal and River Trust (in England and Wales) and the British Waterways Board, operating solely in Scotland, and will provide for their respective transfer.

In England and Wales, the transfer scheme will transfer the heritage infrastructure to the Canal and River Trust to be held as permanent endowment in a specially created trust, the Waterways Infrastructure Trust. We intend to settle the Waterways Infrastructure Trust on the Canal and River Trust as sole trustee. I am also placing in the Library a copy of the draft Trust Settlement, which will be executed in due course as part of the overall transfer process.

The Canal and River Trust will be charged with safeguarding the infrastructure of the waterways on behalf of the nation. The canals, towpaths, locks and other parts of the waterways are to be looked after for the benefit of future generations and the Waterways Infrastructure Trust will ensure this happens.

The Waterways Infrastructure Trust ensures that all of infrastructure property (as defined in the trust) is held as a permanent functional endowment. This means that the Canal and River Trust will not be able to sell any part of the infrastructure property without gaining the Secretary of State's and in some cases the Charity Commission's prior consent. Before granting such consent, the Secretary of State will hold a public consultation.

The Trust Settlement also requires the Canal and River Trust to grant free pedestrian access to the towpath (except in certain very tightly defined circumstances and again with the prior consent of the Secretary of State, following public consultation).

Under the transfer scheme, certain assets will be moved directly to the Canal and River Trading Community Interest Company, a wholly owned subsidiary of the Canal and River Trust. The Community Interest Company will receive the property, rights and liabilities for its trading activities which, under charity law, have to be kept in a separate vehicle from the charity itself.

Written Answers

Tuesday 19 June 2012

Animal Welfare Act 2006

Question

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

To ask Her Majesty's Government how many prosecutions have been brought under Section 4 of the Animal Welfare Act 2006; and how many of those have resulted in a conviction. [HL295]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Taylor of Holbeach): I have placed the requested information in the Library of the House.

Asylum Seekers

Question

Asked by ***Baroness Lister of Burtersett***

To ask Her Majesty's Government how many individuals, including dependants, were in receipt of Section 95 asylum support in each of the past five years, broken down by age. [HL698]

The Minister of State, Home Office (Lord Henley): The following table shows the number of asylum seekers in receipt of Section 95 support. Information broken down by age is not available.

Asylum seekers in receipt of Section 95 support, as at end of year	
2007	43,052
2008	31,339
2009	28,518
2010	22,039
2011	20,894

Section 95 support: Support may be provided under Section 95 of the Immigration and Asylum Act 1999 to destitute asylum seekers until their asylum claim is finally determined.

Section 95 support can be provided as both accommodation and subsistence, or accommodation or subsistence only. Data from 2010 onwards are provisional figures.

The data include dependants in receipt of support.

The data excludes unaccompanied asylum seeking children supported by local authorities.

The number of asylum seekers granted Section 95 support is published on a quarterly basis and can be found in Table as.17q, available in Asylum Excel Tables Volume five. The latest publication covering the first quarter of 2012 is available from the Library of the House and from the Home Office Research Development and Statistics website at http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-q1-2012.

Aviation: British Airways

Question

Asked by ***Lord Eames***

To ask Her Majesty's Government what representations they have made to British Airways regarding maintaining the direct air link between Belfast City Airport and Heathrow Airport.[HL739]

Earl Attlee: In recent weeks the Secretary of State for Northern Ireland has regularly discussed this issue with the chief executive of International Airlines Group (IAG) and stressed the importance of maintaining links from Northern Ireland into Heathrow. Her Majesty's Government therefore welcome the commitment given by Mr Walsh in May that British Airways is "committed to the route and will continue to operate it beyond the end of the current summer schedule with the same number of daily flights".

Banks: Iceland

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government , further to the Written Answer by Lord Sassoon on 28 May (*WA 96*), whether they will extrapolate and accumulate (1) the amounts that have been repaid to 31 March 2011 by the administrators of each of the failed Icelandic banks, (2) the amount outstanding from each bank, and (3) the amount of any related impairments recognised to date and the reasons therefore; and when HM Treasury annual reports and accounts for 2011-12 will be available. [HL791]

The Commercial Secretary to the Treasury (Lord Sassoon): HM Treasury's annual report and accounts will provide a full update on the financial position of the loans relating to the failed Icelandic banks. In particular, for each loan, the accounts will show any additions and repayments during 2011-12, amortisation and any adjustments to the level of impairment. A narrative will be included in the accounts on each loan and this will detail significant movements and the amount outstanding on a cash basis, before impairment and amortisation. This will be similar to notes 33 to 36 in the 2010-11 annual report and accounts.

HM Treasury's annual report and accounts 2011-12 are currently being audited by the National Audit Office. We intend to publish the accounts before the Summer Recess.

Energy: Petrol Retailers

Questions

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what assessment they have made of the effect of the percentage share of fuel sold to motorists by supermarkets on the petrol retail industry as a whole. [HL808]

To ask Her Majesty's Government what is their assessment of the number of independent petrol retailers currently operating and the estimated number in (1) five, (2) 10, and (3) 20 years' time. [HL811]

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Lord Marland): In May 2012 the petroleum retail market comprised 8,677 sites across the UK, according to Experian Catalist data. The 1,268 supermarket sites represented 38.7% market share by volume of product sold. Independent petrol retailers owned 5,194 sites representing 32.4% of the market by volume of product sold.

The petrol retail industry is characterised by low retail margins and intense levels of competition. Estimates have not been made of the number of independent petrol retailers likely to be operating in the future market.

Finance: Gilts

Question

Asked by ***Lord Higgins***

To ask Her Majesty's Government what has been the impact of the purchase by the Bank of England of gilt-edged securities as part of its quantitative easing programme on the size of the national debt. [HL828]

Lord Wallace of Saltaire: The information requested falls within the responsibility of the UK Statistics Authority. I have asked the authority to reply.

Letter from Stephen Penneck, Director General for ONS, to Lord Higgins, dated June 2012.

As the Director General of ONS, I have been asked to reply to your recent Parliamentary Question asking what has been the impact of the purchase by the Bank of England of gilt-edged securities as part of its quantitative easing programme on the size of the national debt. [HL828]

Quantitative Easing is the term commonly used to describe the purchase of gilts from the market by the Bank of England's Asset Purchase Facility Fund (BEAPFF), financed by the creation of central bank reserves (see http://www.bankofengland.co.uk/markets/apf/index.htm for more information).

The national debt is a term commonly used to refer to any measure of public debt, although it has a precise meaning as the total gross liabilities of the National Loans Fund. The BEAPFF has no impact on the liabilities of the National Loans Fund, so it is assumed your question relates to the more widely used measures of public debt.

The most common UK measures of public debt are those published monthly in the "Public Sector Finances" statistical bulletin, produced jointly by ONS and HMT (http://www.ons.gov.uk/ons/taxonomy/index.html?nscl=Public+Sector+Finance). These measures are known as the Public Sector Net Debt (PSND) and the Public Sector Net Debt excluding the temporary effects of the government financial interventions (PSND ex), the latter is the measure used by HM Treasury and the Office for Budgetary Responsibility. A third measure of public debt is that used by the European Union; commonly known as the Maastricht debt, it is defined as the gross liabilities of general government, that is it excludes public controlled corporations (http://www.ons.gov.uk/ons/taxonomy/index.html?nscl=General+Government+Debt+and+Deficit). All three debt measures are based upon National Accounts principles set out in the European System of Accounts 1995 (ESA95).

In National Accounts, the Bank of England is classified as a public financial corporation, and is in the public sector but it is not part of general government. Therefore, the BEAPFF does not contribute to the Maastricht debt but does contribute to the PSND. The BEAPFF is excluded from the PSND ex, as it is considered a temporary effect of the financial interventions, and therefore there is no impact on PSND ex. It will impact on PSND ex at the point when the scheme closes and any gains or losses from the scheme are known.

The gilts purchased by the BEAPFF are treated as assets of the Bank of England, and the central bank reserves that are created to pay for them as its liabilities. The gilts purchased remain as government liabilities. The BEAPFF gilt purchases do have a small (in the context of the overall total) impact on PSND even though the value of assets purchased are matched by the liabilities created to pay for them. One reason for this impact is that the gilts are purchased by the Bank of England at the prevailing market price, but by convention are recorded in the PSND at their nominal price. The second reason is that interest payments flow from government to the BEAPFF and are therefore transfers within the public sector (whereas previously they left the public sector altogether).

As reported by the Bank of England, the BEAPFF scheme by May 2012 had bought gilts of a nominal value of £284,945 million and in doing so created reserve liabilities of £324,753 million (http://www.bankofengland.co.uk/markets/Pages/apf/gilts/results.aspx). The difference in market and nominal prices of £39,808 million increases PSND by this amount when compared to what the PSND would have been if the BEAPFF had not existed. However, by purchasing the gilts, interest payments of approximately £22,200 million, which would have previously left the public sector, are retained, driving down PSND. Therefore, the net impact from the BEAPFF on the PSND, as at May 2012 stands at a debt increase of approximately £17,600 million.

The recording in Public Sector Finances of the BEAPFF is explained in greater detail in Chapter 27 of the ONS report "Public Sector Interventions in the Financial Crisis" (http://www.ons.gov.uk/ons/rel/psa/financial-crisis-and-statistical-classification/public-sector-interventions-in-the-financial-crisis/public-sector-interventions-in-the-financial-crisis-.pdf) and in the ONS article "Public Sector Finances excluding Financial Interventions" (http://www.ons.gov.uk/ons/rel/psa/public-sector-finances/including-finance-lease-liabilities-in-public-sector-net-debt--pfi-and-other/public-sector-finances-excluding-financial-interventions.pdf).

Gulf War Illnesses

Question

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

To ask Her Majesty's Government whether they have made any recent reassessment of the safety of vaccines administered to service personnel deployed in the first Gulf War; and whether they are taking action to review the use of the Official Secrets Acts in relation to the treatment of veterans of the conflict. [HL664]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): No. In 1998 the Ministry of Defence sponsored a Vaccines Interactions Research Programme into the possible health effects of the combination of vaccines and tablets given to service personnel to protect them against the threat of biological and chemical warfare during the 1990-1991 Gulf conflict. The overwhelming evidence from the programme is that the combination of vaccines and tablets that was offered to UK forces at the time of the 1990-91 Gulf conflict would not have had adverse health effects.

We do not believe that there is any need to review the Official Secrets Act—our policy with all Gulf War illness-related questions is one of openness, and much information has been released to veterans of the war and other interested parties.

Health: In-vitro Diagnostic Tests

Question

Asked by ***The Countess of Mar***

To ask Her Majesty's Government which regulatory authority in the United Kingdom has the authority and responsibility for pre-market evaluation and approval of Lyme borreliosis test kits; and, if there is not one, how they ensure that the manufacturers' performance claims are met or exceeded and that test accuracy is clearly communicated to clinicians. [HL686]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): In vitro diagnostic test kits such as this have to be CE marked by the manufacturer according to the requirements of the European Commission In Vitro Diagnostic Devices Directive 98/79/EC before they can be placed on the market. This requires the manufacturer to demonstrate that the device is safe and fit for its intended purpose, including that the performance claims made can be met and that the instructions for use which have to be provided detail the test accuracy.

Manufacturers of these devices are able to self-declare conformity to the requirements laid in the directive in order to CE mark their products and place them on the market. Member states' competent authorities, such as the Medicines and Healthcare products Regulatory Agency in the United Kingdom, have a mainly post-market surveillance role which, if there is evidence that the test does not perform as intended by the manufacturer or that the instructions for use provided are inadequate, would include taking action to bring the test into compliance or, if necessary, to remove the test from the market.

House of Lords: Media

Question

Asked by ***Lord Laird***

To ask the Chairman of Committees whether there are proposals to place restrictions on members of the media who ask the House of Lords for information on more than 12 occasions a week; whether questions by members of the media are monitored and counted; and, if so, by whom. [HL677]

The Chairman of Committees (Lord Sewel): There are no such proposals.

General media enquiries are dealt with and monitored by the Press Office. Written requests for information are dealt with in accordance with the requirements of the Freedom of Information Act 2000, and all non-routine requests are formally monitored by the Freedom of Information Officer. Requests for information received from members of the media, as opposed to the general public, are not separately identified.

Immigration

Question

Asked by ***Lord Lester of Herne Hill***

To ask Her Majesty's Government whether they plan to give effect to the Court of Appeal's recommendation, in its judgment in Lamichhane v Secretary of State for the Home Department on 7 March, on the need for a clear codification of statute law on immigration rights, restrictions, administrative procedures and appeals. [HL636]

The Minister of State, Home Office (Lord Henley): The Government's priorities for immigration are to limit the number of non-EEA economic migrants entering the UK and to strengthen border control. We recognise the benefits of making the immigration system simpler and we are pursuing this through the simplification of our Immigration Rules and processes and by moving to a rules-based approach wherever possible, such as in our new family migration policy.

Immigration: Detention

Question

Asked by ***Lord Avebury***

To ask Her Majesty's Government whether they will revise the UK Border Agency's Enforcement Instructions and Guidance to ensure that decisions to initiate and maintain detention include an assessment of the likelihood of deportation being carried out within a period of detention that is lawful and reasonable. [HL631]

The Minister of State, Home Office (Lord Henley): Chapter 55 of the UK Border Agency's Enforcement Instructions and Guidance already makes clear that detention may only continue for a period that is reasonable in all the circumstances for the specific purpose for which it was authorised. The guidance also makes clear that, if before the expiry of the reasonable period it becomes apparent that the purpose of the power, for example removal or deportation, cannot be effected within that reasonable period, the power to detain should not be exercised. Furthermore, the guidance confirms that detention can only lawfully be exercised where there is a realistic prospect of removal or deportation within a reasonable period.

In cases involving foreign national offenders, due to the need to protect the public, where the deportation criteria are met, the normal presumption in favour of temporary admission or temporary release, rather than detention, should be weighed against the risk of the individual reoffending or absconding. If detention is considered appropriate, this is subject to the proviso that there is the prospect of removal within a reasonable timescale.

Nuclear Security

Questions

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

To ask Her Majesty's Government what is their assessment of the adequacy of the current regime for insuring nuclear risk in the United Kingdom in maintaining a fair market, especially for new entrants. [HL660]

To ask Her Majesty's Government what assessment they have made of capacity in the United Kingdom nuclear risk insurance market and the possible impact on the nuclear new build programme. [HL661]

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Lord Marland): The Nuclear Installations Act 1965 imposes liability on the operators of nuclear installations to pay compensation to third parties who suffer injury or damage in the event of a nuclear incident. The 1965 Act also requires licensed operators to cover their third-party liabilities "by insurance or by some other means" so that sufficient funds are available at all times to meet duly established claims. The Government do not prescribe how operators fulfil this requirement for cover but it is necessary for the solutions to be approved by the Secretary of State for DECC with the consent of HM Treasury to ensure the adequacy of the cover. Operators, both current and those in the future, therefore have a discretion as to how they cover their liabilities (whether by insurance or some other form of financial security) and from whom they purchase such cover (this could include existing providers of cover and any new entrants).

At present operators are able to cover the full extent of their liabilities under the 1965 Act and this requirement for cover is largely met by purchasing such commercial insurance.

The 1965 Act is being amended to implement the changes made to the Paris Convention on nuclear third-party liability and the Brussels Supplementary Convention. The revised conventions upgrade the third-party liability regime and provide, in the event of a nuclear incident, an increased amount of compensation for a larger number of claimants in respect of a broader range of damage than is currently the case. There is a possibility that the existing nuclear insurance providers may not be able to provide cover for all the new liabilities at the start of the new regime.

These issues were considered in the Government's consultation on the implementation of the Paris and Brussels changes and its subsequent response—see especially chapter 9: http://www.decc.gov.uk/en/content/cms/consultations/paris_brussels/paris_brussels.aspx.

The Government commissioned a report on the availability of nuclear insurance as part of their response to the consultation (http://www.decc.gov.uk/assets/decc/Consultations/paris-brussels-convention-changes/4877-indecs-report--decc-nuclear-liabilities--report.pdf). The report concluded that:

most of the liabilities under the new regime will be able to be covered through insurance or other financial security options by the market as soon as the revised legislation comes into force;

however, given the nature of the insurance industry it is likely that some elements of the liabilities may not be covered from the outset of the new regime and that it may be desirable for government to provide cover for a short period (between 2 and 3 years after the regime comes into force); and

there is an opportunity for new entrants to provide nuclear insurance and that the wider insurance market is at various stages of developing products to cover the liabilities.

Olympic Games 2012: Torch

Question

Asked by ***Lord Wigley***

To ask Her Majesty's Government what was the cost of the Metropolitan Police's involvement in the journey of the Olympic torch around the United Kingdom in 2012; and from what budget provision the cost was met. [HL774]

The Minister of State, Home Office (Lord Henley): The final cost of policing the torch relay will not be known until after the event is concluded, but the Home Office is providing funding from its Olympic safety and security budget to the Metropolitan Police Service (MPS) for its role in the journey of the Olympic torch around the UK. This includes funding for those staff in the MPS's full-time planning and command roles and the additional costs for the policing team while on the road with the relay. The wider policing costs associated with the torch relay are being picked up through normal local policing budgets by the local forces concerned.

Ports: Liverpool Cruise Terminal

Question

Asked by ***Lord Storey***

To ask Her Majesty's Government to which budgets the £8.8 million grant repayment by Liverpool City Council in assuaging competition concerns to turnaround cruise operations at the City of Liverpool Cruise Terminal will be allocated. [HL765]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): The funds to be repaid by Liverpool City Council originated from the North West Development Agency and the single regeneration budget. It is expected that when those funds are returned they will be allocated to the national economic regeneration budget managed by BIS and also to DCLG's regeneration programme budget.

Prisoners: Voting

Question

Asked by ***Lord Lester of Herne Hill***

To ask Her Majesty's Government whether Armenia, Bulgaria, Estonia, Georgia, Hungary, Russia and the United Kingdom automatically deprive all convicted prisoners serving prison sentences of the right to vote. [HL575]

Lord Wallace of Saltaire: The countries cited by the noble Lord are those listed by the judgment of the Grand Chamber of the European Court of Human Rights in the case of Scoppola v Italy (No. 3) as those which automatically deprive all convicted prisoners serving prison sentences of the right to vote.

Questions for Written Answer

Questions

Asked by ***Lord Laird***

To ask the Chairman of Committees whether the Procedure Committee's recommendation to the House that Questions for Written Answer be restricted to 12 per Member each week took into account the issue of whether the Government's Answers to Questions for Written Answer are acceptable and do not cause the same Questions to be tabled again; if it did, who monitors the Answers; and if such a process is not in place, whether the committee will give it consideration. [HL676]

The Chairman of Committees (Lord Sewel): The Procedure Committee did not consider this issue, and has no plans to do so.

The Ministerial Code states that "It is of paramount importance that Ministers give accurate and truthful information to Parliament". It also states that "Ministers should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest". These general principles are developed in the Cabinet Office guidance to officials on drafting Answers to Parliamentary Questions, which is published online at http://www.cabinetoffice.gov.uk/resource-library/guidance-drafting-answers-parliamentary-questions.

Responsibility for monitoring adherence to the Ministerial Code rests with the Government, subject to the general principle of accountability to Parliament. The timeliness of Written Answers is already routinely monitored by the Leader of the House's office; if the noble Lord has concerns regarding the quality of a specific Answer or set of Answers, he may wish to raise them either with the Minister concerned or with the Leader of the House.

Asked by ***Lord Laird***

To ask the Chairman of Committees whether, at the request of a Member, a Question asked of a government department in letter form by a Member, together with its Answer, can be printed in the *Official Report*. [HL678]

The Chairman of Committees: No.

Roads: Traffic Signs

Question

Asked by ***Baroness Thomas of Winchester***

To ask Her Majesty's Government whether they will change the guidance on signage about parking for blue badge holders in red route parking bays to make such signs more easily understood from a moving vehicle. [HL683]

Earl Attlee: Upright signs for red route parking bays follow established design rules and are intended to be understood by drivers of moving vehicles. Our guidance on these signs (which are authorised by the Secretary of State) is contained in Section 10 of Chapter 3 of the Traffic Signs Manual. I am not aware of any concerns about comprehension of these signs.

Transport: Fuel

Question

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what assessment they have made of the safety procedures for the transportation of petrol around the United Kingdom. [HL810]

Earl Attlee: The carriage of all dangerous goods classified as dangerous in transport, including hydrocarbon fuels, is regulated at the international level and is then transposed according to the transport mode into UK law. Her Majesty's Government are satisfied that this legislation, which is subject to review and revision every two years, facilitates the safe carriage of all dangerous goods in a way that prevents leakage and protects the public, environment and economy.

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