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PARLIAMENTARY DEBATES
(HANSARD)

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THE
PARLIAMENTARY DEBATES
(HANSARD)

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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
COMMENCING ON THE EIGHTEENTH DAY OF MAY IN THE
FIFTY-NINTH YEAR OF THE REIGN OF

HER MAJESTY QUEEN ELIZABETH II

FIFTH SERIES **VOLUME DCCXXXVIII**

SECOND VOLUME OF SESSION 2012-13

House of Lords

Monday, 25 June 2012.

2.30 pm

Prayers—read by the Lord Bishop of Birmingham.

Introduction: The Lord Bishop of Worcester

2.37 pm

John Geoffrey, Lord Bishop of Worcester, was introduced and took the oath, supported by the Archbishop of Canterbury and the Bishop of Birmingham, and signed an undertaking to abide by the Code of Conduct.

Transport: Isles of Scilly Ferry Link

Question

2.41 pm

Asked by ***Lord Berkeley***

To ask Her Majesty's Government what action they are taking to create a lifeline passenger ferry link to the Isles of Scilly in line with the Scottish Government's ferries policy.

Earl Attlee: My Lords, I am aware that passenger transport services to and from the mainland are regarded by residents of the Isles of Scilly as a lifeline. Ferry services, unlike most of those to the Scottish Islands, are able to operate commercially without subsidy and have done so for many years.

Lord Berkeley: I am grateful to the Minister for that Answer. Perhaps he is not aware that Cornwall has the lowest GDP in the UK and has been awarded continuing convergence funding, and that it also has the fourth lowest average wage in the UK as well as very expensive housing.

His Answer is correct but the ferry only runs for seven months every year and the return fare is £90. This compares with Islay in Scotland where there are several ferries a day all the year round and the return fare is £12.50. Will he not take forward the report from the Council of the Isles of Scilly proposing an affordable lifeline service every day of the year and as a start allow the Council of the Isles of Scilly to use some of the ERDF money that is still outstanding for some key extensions before the deadline runs out?

Earl Attlee: My Lords, I am aware of the economic difficulties in Cornwall. As regards the comparison with the Scottish situation, it is difficult to make valid direct comparisons when the circumstances vary and the service is rather more complicated.

It is important to remember that transport links to the Scilly Isles are provided on a commercial basis, whether by sea or by air. Cornwall Council rules itself out of leading the smaller-scale infrastructure schemes so development work has been undertaken by the Council of the Isles of Scilly and Penzance town council. These involve improving provision for freight handling, extending the quay at St Mary's and dredging at Penzance to accommodate a deeper-hulled vessel. The noble Lord is quite right that the ERDF funds are time-limited.

Lord Bradshaw: Will the noble Earl consider the fact that the present ship engaged in the seven months of the year service will not be replaced on a commercial basis because the helicopter and the ship are running on borrowed time? Will he give serious consideration to extending the PSO arrangements in Scotland to the Scilly Isles? They are part of our economy but they will be more or less cut off when the existing ships and infrastructure fail.

Earl Attlee: My Lords, we are not currently minded to consider a PSO because there is no need to do so as the ferry service is currently run on a commercial basis. The steamship company has recently announced that it will invest in the ship to maintain it in operational use until at least 2018 and we are not aware of any major structural defects that will necessarily prevent seaworthiness beyond that time.

Baroness Dean of Thornton-le-Fylde: My Lords, does the Minister accept that the statement of commercial viability is a thin veneer that masks the real poverty levels in the Scilly Isles? As my noble friend said, Cornwall has one of the lowest GDPs in the country. The fact that the ferry runs for seven months of the year is due to the tourist trade. However, behind that is the local community, which lives in poverty and depends on the mainland for its economy and health services. Will the Minister please review the statement that he has just made to the House?

Earl Attlee: My Lords, I cannot agree to review the statement that I made to the House because it is considered government policy. I accept that there are difficulties in the Isles of Scilly, particularly the dependence on the tourist trade.

Lord Faulkner of Worcester: Is the Minister aware of the great concern in both the Isles of Scilly and Cornwall over the long-term viability of the helicopter service that presently serves the islands in addition to the ferry? I understand that it is about to move from Penzance to Newquay but there is concern over whether it will survive in the long term. Does the Minister's briefing cover that matter?

Earl Attlee: My Lords, my briefing covers that. There are two air services. There is a fixed-wing aircraft, which goes from St Mary's to a few destinations on the mainland, and there is the helicopter service, which is by definition much more flexible in where it can land. There is an issue over the condition of the runway at St Mary's; it will not last for ever.

Lord West of Spithead: My Lords, does the Minister agree that the unrelenting application of free market principles to our merchant marine, which has resulted in it having its smallest ever numbers of officers and men, is very damaging, bearing in mind that it is the fourth service and absolutely necessary strategically for global operations? Are the Government doing anything whatever to support the merchant marine?

Earl Attlee: My Lords, the noble Lord, Lord Faulkner of Worcester, wondered how far my brief would stretch. Unfortunately, it does not stretch as far as the condition of the Merchant Navy.

Lord Davies of Oldham: My Lords, surely the Minister has already recognised that the viability of the service depends on the tourist trade and that the people who live on the Scilly Isles—on very low incomes—are paying the tourist price for the vessels, namely £90. As my noble friend indicated, that is more than four times the amount that you would expect to pay to make a similar journey in Scotland. Is it not time that the Government looked at this very seriously? There are clear potential threats to the existing services, which in any case do not meet the islanders' need.

Earl Attlee: My Lords, I am confident that there will be a service in the short term. The noble Lord asked about the cost of a ticket for the ferry. I understand that a day return is £35 and a period return costs £85 to £95. However a Scilly Isles resident's return is £20.50, so they do get a discount.

Women: Training and Upskilling

Question

2.48 pm

Asked by ***Baroness Prosser***

To ask Her Majesty's Government what are their plans with regard to training and upskilling women workers.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Baroness Wilcox): My Lords, we want to build a stronger, more prosperous nation and to help women who are on career breaks or upskilling, who wish to return to work or to improve, to make a full contribution to our economic future. We recognise that the skill needs and barriers to opportunity vary widely for each individual, with women often having a more fragmented career path. That is why we are reforming the skills system to make it responsive to the needs of different groups and to ensure that we draw on the talents and skills of all.

Baroness Prosser: I thank the Minister for that reply. Between 2006 and 2012, the Women in Work Sector Pathways initiative provided, via the sector skills councils, training for almost 25,000 women, with employers' contributions in cash and kind far outstripping those of the Government. Will the Minister tell the House what measures will be taken to ensure that women get a fair share of available training under the new employers' investment fund, how this is to be measured and what strictures will be laid on employers to encourage them to include women?

Baroness Wilcox: The noble Baroness, Lady Prosser, chaired the Women and Work Commission, the Women's National Commission and is now deputy chair of the Equality and Human Rights Commission, so to answer a question from her required a bit of study on my part. She was kind enough to let me have sight of her supplementary question. The Women and Work Sector Pathways Initiative was indeed very successful. That is why funding has been made available to sector skills councils to build on that legacy. In addition, the United Kingdom Commission for Employment and Skills has today said that it is willing to consider bids specifically to take forward the work of the Pathways Initiative. We want employers to take greater ownership of a skills system that provides better opportunities for women, so one of the criteria for the bids is their sustainability in upskilling women.

Baroness Harris of Richmond: My Lords, can my noble friend tell us how many women are undertaking engineering degrees? If she cannot give us that figure today, perhaps she would leave a note in the Library, as this is an important area for women to be involved in.

Baroness Wilcox: My noble friend Lady Harris is very kind in allowing me to say that I do not have the data with me. I will send a list to her and a copy in the office. I know that 56% of women are now in full-time work, which is useful to know, and the number of women employed rose by 23,000 this quarter. Sadly, I cannot give her the data sets today. We are working

hard to make sure that the apprenticeships women take up—and more than half the apprentices in this country are women—are much higher skilled and very often jobs which would have gone to men without even a second thought. So we are on the job.

Baroness Howe of Idlicote: My Lords, as well as this important side of training women for relevant jobs—retraining them in many cases—would the Minister also ensure that adequate attention is given to young girls? They should be made aware of the needs of the nation and the fact that these are often in completely different areas than the ones that are their favourites today.

Baroness Wilcox: I am delighted to answer that question. We are starting in schools; we have an all-age careers service, which will come into schools to talk to girls much earlier than we have done in the past, to give them much more idea of what is available. We have more than 200,000 different apprenticeships available now, including in nuclear decommissioning and all sorts of wondrous things that girls can learn. So, yes, it is an excellent idea.

Baroness Wall of New Barnet: Does the noble Baroness acknowledge, in the way she responded to my noble friend, the value placed on the sector skills councils in producing these 25,000 women going through the course? What she said sounds like good news, but in the context of the remarks by the noble Baroness on the Liberal Democrat Benches, it is also important to realise that many of the sector skills councils will no longer be involved. There are four sector skills councils left. All are really good and will ensure that engineering has a high profile for women, including Semta, Cogent and others. Any effort that the Minister can make on behalf of the whole process will be really welcome.

Baroness Wilcox: I agree completely with what the noble Baroness has said, and I will continue to make sure that we watch what is going on. I visited a building site recently where women who had been long-term unemployed were training as electricians. I was very taken with a mother and daughter who decided to make a team, because they realised that most electricians were male and put all the plugs in the wrong places. They were going to set up their own business, because they think it would be rather good to have a woman electrician coming to a woman's flat or house at night, and making sure that the hairdryer is going to be plugged in at the right place.

Lord Cormack: My Lords, while I congratulate my noble friend and applaud her aspirations and achievements, is it really necessary to downgrade the English language in order to upskill these women?

Baroness Wilcox: There is no doubt that the world is moving on and we just have to learn new words such as upskilling.

Baroness Turner of Camden: My Lords, is the Minister aware that some years ago when I was a member of the EOC we ran the successful WISE campaign—Women Into Science and Engineering. It involved visits to schools and employers, and so on, and was highly successful. Is there not a case for running a similar campaign now?

Baroness Wilcox: I, too, remember WISE. I also remember the noble Baroness on these Benches who was one of the first woman engineers in the country and she was very keen on WISE. It is sad that it has gone but we like to think that the things we are doing now are being taken across the board to ensure that girls get the opportunity to do everything available to them.

Baroness Armstrong of Hill Top: Is the Minister aware that many women who want to get into the type of jobs she is talking about may not have done well at school and therefore may need to do basic further education training and access courses? Does she think that the imposition of loans and fees at the further education level will encourage such women?

Baroness Wilcox: Further education is a special area, about which we are very concerned. We are very keen to make sure that there are all-age apprenticeships and, from 2013, we will introduce further education loans so that people will not be restricted from taking up new opportunities because they are unable to take part.

Government: Procurement

Question

2.56 pm

Asked By ***Lord Haskel***

To ask Her Majesty's Government what steps they are taking to encourage the use of new technology in the United Kingdom through Government procurement.

Baroness Verma: My Lords, the Government are removing procurement barriers facing innovative companies and SMEs and creating an environment in which they can thrive. We are investing more in the small business research initiative, creating a level playing field for open-source solutions and making the procurement process as a whole faster and simpler. In particular, the G-Cloud framework provides a simple, fast and transparent route into government for the suppliers of new technologies.

Lord Haskel: My Lords, those aspirations are all very well but are the incentives in place for public-sector buyers to carry them out? The Office of Government Commerce tells me that there are 40,000 points of procurement. Why should it take the risk of an innovation failing? After all, it is more likely to get a pat on the back for saving money in these circumstances than for encouraging innovation. How will the Government change this culture?

Baroness Verma: My Lords, I am disappointed at the noble Lord's cynicism. Since we took office, central government's direct spend with small companies—particularly the SME sector, which the noble Lord is interested in—has doubled from £3 billion to £6 billion. We are achieving this by publishing tenders and contracts

[Baroness Verma]
through the contracts finder website which eliminates many of the difficulties that small and medium-sized businesses were facing. The noble Lord should be aware that more people can access information online now than could previously.

Lord Walton of Detchant: Is the noble Baroness aware that the Medical Technology Group—which represents the interests of both large companies and SMEs in the medical technology field—is very concerned that many of the most important and vital new developments in medical technology are not being fully exploited within the National Health Service? Will she ensure that the concerns of the Medical Technology Group are brought to the attention of NICE so that these developments can be exploited fully?

Baroness Verma: I take the noble Lord's views on board and will take them back to the department. I also hope I can reassure him that we are working closely with the health service and through the services provided by the online G-Cloud strategies that we have formulated to shorten the gaps he envisages.

Lord Rennard: My Lords, will the Minister tell the House the Government's policies in relation to the development of the computer code or software they pay for and whether it should be made more freely available for others to use and extend? Does she accept that allowing this could sometimes prevent the public sector wasting money by paying more than once to develop the same software and that it would also be incredibly helpful to the private and voluntary sectors?

Baroness Verma: The noble Lord is absolutely right to raise that point. As part of the Chancellor's Autumn Statement last year government departments agreed to release a substantial package of data including material relating to many of the major departments. Most people will also be able to access data rather freely through our Open Data Institute, which we hope to have fully launched by September.

Lord Howarth of Newport: My Lords, what proportion of the Government's expenditure on science and technology is accounted for by Ministry of Defence procurement? Is the Minister satisfied that that allocation of resources is well judged to encourage the most productive take-up of new technology in the United Kingdom?

Baroness Verma: The noble Lord raises a specific point which I think I need to take back with me as I would not want to quote a wrong figure on the Floor of the House. I will take it back and come back to him.

Lord Hughes of Woodside: My Lords, did the Minister see the horrendous reports at the weekend about health service patients waiting months and months for medication because of procurement difficulties? Will she ask the relevant Minister to come to this House to give a full explanation of something that really should not happen?

Baroness Verma: My Lords, I do not speak on behalf of my noble friends. The question has been noted and I am sure that the relevant Minister will take it up.

Lord West of Spithead: My Lords, I do not know whether the Minister is aware that the Royal United Services Institute recently did a study in which it discovered that if things that are designed and built in this country are then purchased, 34% of the money will go straight back to the Treasury. Will the Treasury therefore look at this report? Clearly, if things designed and built in this country are a third cheaper straightaway, and forgetting all the other reasons why one would want to buy high-tech things that are made here, it would be a bit of a nonsense to buy those things off-the-shelf from overseas.

Baroness Verma: I think that the noble Lord has answered his own question. I am sure that the Treasury is not aware of all reports but, again, I will raise this one with it.

The Earl of Erroll: Is the Minister aware that smaller innovative companies often have great difficulty joining in on some government IT projects because of the stranglehold that the large systems integrators have on them? Many of the regulations make sure that smaller companies cannot join in and bid for these projects, and many of the frameworks even exclude them from doing so.

Baroness Verma: Absolutely—the noble Earl identifies a serious problem. We have formulated the G-Cloud strategy so that smaller businesses can contract out as well as tender for contracts alongside the large companies. The PQQ requirement has also been ended where contracts are for less than £100,000. We are asking for much less information from smaller companies so that they do not stumble at the first block.

Baroness Hayter of Kentish Town: My Lords, the financial crisis has made the regional imbalance worse because manufacturing has actually suffered more than the financial sector. What are the Government doing, as the nation's largest purchaser of goods and services, to help rebalance the economy between north and south?

Baroness Verma: My Lords, the economy is a major issue whether it is in the north or the south. The Government are making sure that whatever is available is accessible to people either up in the north or down in the south so that nobody misses out on the opportunity to bid for public contracts. As the noble Baroness will be aware, many bids on contracts now come from smaller companies as well as from across the country.

Education: Special Educational Needs

Question

3.03 pm

Asked By ***Lord Touhig***

To ask Her Majesty's Government what steps they will take to ensure that young people with special educational needs are appropriately supported to enter further education, higher education, training, apprenticeships and employment.

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): My Lords, *Support and Aspiration: A New Approach to Special Educational Needs and Disability—Progress and Next Steps* sets out our aspirations to help young people in England with special educational needs to make a successful transition to adulthood. The new education, health and care plans will require services to work together to agree a plan which reflects the young person's needs and their future ambitions covering education, health, employment and independence. We have also developed supported internships as a way of providing meaningful work opportunities for young people, which we will be trialling from September.

Lord Touhig: I thank the Minister for that Answer. Is he aware that Work Choice, the scheme intended to help the disabled into employment, has had very little success in helping people with autism to find a job, while the Work Programme itself seems to find great difficulty in placing anyone with autism in employment at all? Given that the noble Lord, Lord Freud, has said that the Government will double the number of people with autism in employment from 15% to 30%, will the Minister tell the House when the Government will publish a programme to achieve that?

Lord Hill of Oareford: My Lords, first, I very much agree with the noble Lord, Lord Touhig, about the importance of doing everything that we can to address the problem of how we help young people with autism into work. The previous Labour Government published a strategy on that in 2009, which the current Government are working with and trying to build on. As the noble Lord says, my noble friend Lord Freud is working in this area. He recently set up an employer round table, where guidance was published for employers to help them with recruiting young people with autism. That is clearly work that we have to carry on. I do not have an immediate and easy answer because, as the noble Lord knows better than I do, this is a long-rooted and difficult problem. But I can say that the Government are committed to doing what we can to work with a range of organisations to address the problem.

Lord Addington: Does my noble friend agree that when dealing with the less commonly occurring disability groups there will need to be a driving sector for unusual problems? Has my noble friend got an example of where this has been successfully achieved—for instance, with the Department of Health being able to drive what happens in the Department for Work and Pensions or the Department for Education and Skills?

Lord Hill of Oareford: I think the point that underlies my noble friend's question is the importance of finding good practice and sharing it, and trying to make sure that the historic divisions and silos between different parts of Whitehall are overcome. I cannot find an immediate example, although he may have one that he can share with me. But we need to find ways in which to overcome those silos—and that is, of course, the principle that underlies the proposals of my right honourable friend Sarah Teather on reforming the whole special educational needs system.

Lord Flight: My Lords, does the Minister agree that the new technical colleges led by the noble Lord, Lord Baker, are already playing an invaluable role for children whom our schools have failed? They may not have special educational needs, but they have come out of schools inadequately educated. Will the Minister comment as to the commitment to extend the new technical college programme going forward?

Lord Hill of Oareford: That takes us a little away from autism, and it is the case that we need to think about the particular help that we put in place to help children with special educational needs and learning disabilities all the way up to the age of 25. I would not like to lose sight of that, as that is what lies behind the Question.

As for the university technical colleges, the Government have increased the number significantly. We have a number now going forward. We inherited one from the previous Labour Government, and I have been happy to build on that. Now, some 34 have been approved and are moving towards opening.

Lord Ramsbotham: My Lords, can the Minister confirm that support will also be given to those with special educational needs who are in the hands of the criminal justice system?

Lord Hill of Oareford: Yes, my Lords. I know that that is a subject that the noble Lord, Lord Ramsbotham, feels very strongly about. He and I have had the chance to discuss that issue, and we need to do what we can to address those needs. It is obviously the case that special educational needs and behavioural issues often lie behind the reason why those young people are in those institutions in the first place.

Baroness Jones of Whitchurch: My Lords, we very much support the principle in the SEN Green Paper that a simplified plan involving social care, education, health and benefit providers would make it easier for young people to access the support they need to flourish in the employment market. But given the complexities involved in these proposals, can the Minister confirm that the current pathfinder pilots, which are only just getting under way, will be completed and evaluated before introducing the very radical changes in primary legislation that will be needed to make the proposals happen?

Lord Hill of Oareford: I am grateful to the noble Baroness for the support that she has given to the idea that lies behind our SEN reforms, which is to try to bring these services more closely together. As regards the evaluation of the pathfinder pilots, 20 are under way and we will be publishing regular quarterly reports. I think that the first one is out today and I will make sure that the noble Baroness has a copy. A more formal interim report will be published in the autumn, which will help shape the pre-legislative scrutiny of the Bill that is also scheduled for the autumn. The lessons that we learn from the pathfinders will help shape that legislation. We will all need to scrutinise that very carefully.

Baroness Gardner of Parkes: Is the Minister aware that people training to be dental chairside assistants are allowed to sit the relevant exam only three times? I met one such person recently who has failed the written exam twice and has now discovered that she is dyslexic. She says that to get special assistance she will have to produce many hundreds of pounds, and that if she does not get that assistance and does not pass the exam the next time she will not be allowed to continue in employment although the dentist who employs her is completely satisfied with everything that she has done. She has passed all the other sections of the exam except the written part. What help is available to people like her?

Lord Hill of Oareford: I afraid that I am not aware of that case, but perhaps I could have a word with my noble friend afterwards and look into that on her behalf.

Crime and Courts Bill [HL]

Committee (3rd Day)

3.11 pm

Relevant documents: 2nd Report from the Delegated Powers Committee, 2nd Report from the Constitution Committee.

Clauses 13 and 14 agreed.

Clause 15: Abolition of SOCA and NPIA

Amendment 64

Moved by ***Baroness Smith of Basildon***

64: Clause 15, page 11, line 25, leave out subsection (2)

Baroness Smith of Basildon: My Lords, this is mainly a probing amendment although not entirely given the complexity and variety of some of the issues involved and the fact that some of the functions of the National Policing Improvement Agency are being transferred before the Bill completes its passage. This short amendment covers a major issue and through it I seek to understand why the Government are proposing this course of action, what benefits arise from abolishing the National Policing Improvement Agency and dividing its functions up between various different agencies and organisations, and what problems need to be addressed in so doing. Even though a number of the functions have already been transferred in that some have gone to SOCA and will go to the NCA and others will go to the Home Office and to the new IT company, the Government need to provide their justification for believing that this is the best way forward. I still feel slightly puzzled by some of the decisions that have been taken around the National Policing Improvement Agency. They show a tendency on the part of the Government to shoot first and ask questions later. That has become a bit of a theme with the Government. We saw it with the health Bill, where actions were taken before the legislation had gone through Parliament, and we are seeing the same thing with this Bill.

The functions of the NPIA are crucial. When reading the history of these proposals, I was somewhat surprised to learn that so little detail had been made available when decisions were being taken. That was the case almost through to the very end of decisions being taken. I have still been unable to get absolute clarity on what is happening to the various functions of the National Police Improvement Agency, so I struggle to find out why decisions are taken when there is so little detail, and so little follow-up is available. On the functions of the NPIA, the organisation itself commented that it was established in part in response to a perception that,

"existing arrangements for delivering support to police forces and implementing national initiatives—in response to demands from disparate bodies—were inefficient, often mutually contradictory and inconsistent".

Therefore a number of objectives were assigned to the NPIA:

"The identification, development and promulgation of good practice in policing; the provision to listed police forces of expert advice about, and expert assistance in connection with, operational and other policing matters; the identification and assessment of: opportunities for and threats to police forces … and the making of recommendations to the Secretary of State in the light of its assessment … the international sharing of understanding of policing issues"—

which again, has been very important to the police—

"the provision of support to listed police forces in connection with information technology, the procurement of goods, other property and services, and training and other personnel matters"—

and it ends with a catch-all:

"the doing of all such other things as are incidental or conducive to the attainment of any of the objects described above".

However, in practice, it has brought a large number of responsibilities together: information services, including the fingerprint identification database; Airwave; automatic number plate recognition; the police national computer; police information infrastructure; the police national network; and the National DNA Database. There are also operational policing services such as the Missing Persons Bureau, the Crime Operational Support Unit and the Central Witness Bureau, as well as issues on people and development services: exams and assessment; the National Senior Careers Advisory Service and the Police Advisory Board. That is just a sample of the whole range of absolutely crucial and important functions undertaken by this organisation. It seems to me that the National Police Improvement Agency has successfully managed critical national infrastructure services. It pioneered the police national database and delivered value-for-money savings through its procurement services.

Why, then, did it have to go? What was the rationale behind it, that the Government thought that this organisation had to be abolished and started to dismantle it before the legislation has even gone through Parliament? As I looked through comments that Ministers have made, the Government said in 2010 that they would axe the NPIA as part of "streamlining the national landscape", and that,

"now is the right time to phase out the NPIA, reviewing its role and how this translates into a streamlined national landscape".

I am not sure that I understand what that means, because it seems that we will have fewer police bodies undertaking these functions, and yet we are seeing the

creation of new bodies. It would be helpful if the Minister could correct me if I am wrong on this, but it appears that the functions will be allocated across four different bodies, three of which are completely new agencies: the National Crime Agency, NewCo—the new ICT company, the police professional body, and the Home Office. That is what I mean by shoot first and ask questions later.

I looked at the Select Committee evidence. It noted in its conclusions published in September 2011 that,

"from the little that is already known about the likely distribution of the National Policing Improvement Agency's functions, phasing it out is unlikely to lead to fewer bodies in the national policing landscape, as Ministers had hoped. In this sense, the landscape will not be more streamlined as a result of its closure. However, there remains a possibility that the landscape—and thus, more importantly, the police service itself—may operate more effectively once those functions have been redistributed."—

and the committee said that it explores this later in the report.

Involving more organisations to carry out the functions than did so originally is not streamlining. Perhaps it was about saving money. Was there a plan to save money and is that why the organisation was to be axed? I looked at the Government's case for saving money and I found that to be flawed also. There is no doubt that the National Police Improvement Agency could be streamlined and made more efficient and effective—and it undertook that role itself. The NPIA has delivered £1 billion in savings for the police through ICT and procurement transformation; it has itself changed in the past two years and found £100 million of savings; and it has reduced its head count by 36%. Given the cuts that have already taken place and the way that the spoils are being divvied up, it is hard to understand—and there has to be uncertainty and legitimate concern over—the effect that the proposal will have on the future delivery of services. It would be helpful if the noble Lord, when he responds, can give some information and say why he is, I assume, assured that there will be no dilution of service or of quality of service.

One area that gives cause for concern is that roughly half the NPIA's employees are destined for the new police professional body, which will also take on a large number of the NPIA's existing functions. What is the justification for axing the agency? There is the cost involved and the potential loss of expertise that that brings with it. About 250 jobs, including posts involved in cost-effectiveness, are due to go, and the National Senior Careers Advisory Service is, I understand, due to be scrapped. There will not be that same kind of advisory service for the police that exists within the NPIA. The service is moving to NewCo, the new police ICT company, whose budget will be cut by £60 million by 2014-15. That creates enormous uncertainty for some of the critical infrastructure services that are provided.

I am sure that the Minister is aware that that has eroded morale within the NPIA. There is a huge morale issue. The staff have done their best and have gone out of their way to make cuts and savings and to create efficiencies; but the organisation is being abolished and some of the staff still do not know where they are going to go. I worry about the specialist staff who are being lost. There is also the great danger that this preoccupation with reorganisation and structural change has taken the focus away from delivering further technical innovations that have helped to reduce costs in the first place.

There is also the issue of timing. I checked what Ministers have said previously about whether the transfer of services will be completed in time. The Home Secretary said that the transfer of functions of the NPIA will be complete by the end of 2012—although originally she said that it would take place by spring 2012. I double-checked and a number of times back in June, the Minister for Police and Criminal Justice said that he believed in consulting "very carefully" with professionals, and that,

"we will shortly be announcing the broad direction of travel"—

even back in June 2011 he was still talking just about the broad direction of travel—

"in terms of where the functions that lie within the NPIA should land, and then further detail will be worked upon and consulted after that".

The Minister was pressed on what "shortly" meant, and he said, "Before the Recess". This is still ongoing. I now struggle to know how the new arrangements will be set up by the end of this year. Perhaps the noble Lord can give us some assurances on that, and say whether he believes that the timescale is currently on track.

I looked at what has happened regarding the police professional body, which will perform many of the crucial functions to be taken from the NPIA. No chief executive, no chair and no shadow board have been appointed. The Government have not provided the detail that is needed on how the new body is to be structured. I have to say to the noble Lord that if the Government fail to meet their self-imposed deadline—they chose it; it was not imposed from on high—there could be huge consequences for the service in loss of expertise, delay to service benefits, and the potential for the transitional costs of moving from the NPIA to the NCA, the police professional body, the Home Office or other new companies to be much more expensive if there is any further delay.

I would like the Minister, during today's debate, to answer a number of questions which arise out of the clause, which would abolish the organisation. First, we need a justification for, an understanding of, the Government's reasons for axing the NPIA. I appreciate the argument about savings, but I think that has been knocked back, because the NPIA has made its own savings. I understand the Government's intention to streamline the landscape, as they put it, but I have already shown that the landscape has not been streamlined; in fact, it has grown. There must be some other justification or explanation for why the Government want to take this action. Also, is there an estimate of the savings that will be made by scrapping the NPIA? I do not include the savings that have been made already by the NPIA, or those in the pipeline, but only those made by the changes proposed in the Bill.

One thing I have struggled with—which I mentioned at Second Reading, and to which I hope the Minister can respond—is where all the functions are going. I have been trying to work out a master plan to show which functions go to this or that organisation. It seems that there may be some functions which fall through the colander. Can the Minister provide some

[Baroness Smith of Basildon]
kind of master plan, or at least tell us which of the functions of the NPIA will be scrapped as a result of its abolition? It is quite a confusing picture for anyone trying to track where functions are going, and what are the cost implications.

A number of police forces have raised the issue of whether there will be any additional funding burdens on local police forces as a result of the transfer of NPIA functions, in particular those functions that will not go to the police professional body, such as training and careers advice. If those have to be taken on by local police forces, that will incur a cost at a time when their budgets are being cut by 20%, far greater than the Chief Inspector of Constabulary recommended. There is a lot of concern among police forces that they will be asked to make up for some of these cuts and changes, and will not be able to do so.

Another point is the loss of expertise. What actions are the Government taking to prevent the loss of expertise as a result of this restructuring? What efforts have been made? Which posts have not been identified? Which posts have been identified as needed to retain skills? In this kind of restructuring it is always the case that people in skilled posts, who have been there a long time, may seek the opportunity to take early retirement, particularly if their future is uncertain. What efforts have been made to retain them and their skills?

Within the new professional policing body—which is not properly set up yet, and there are still some concerns about that—I gather there will be, within that body, another body called the chief constable's council. We need to understand how that is going to work. How will it improve on the delivery of the existing services currently provided by the NPIA? Will there be some loss of quality, or is it not expected to undertake the range of functions that the NPIA undertakes? All those are crucial functions.

The final question is, how will the Government ensure that the 2012 deadline is met? Will there be another deadline and then another, as we have seen before? I struggle to understand how that deadline can be met, given that so little work has been done already.

As I said at the start, this is a small amendment, but it opens up many questions. It is an enormous cause for concern if the Government have not worked out the plans for what is happening. I would like the noble Lord to reassure me on some of those questions, including one I have not yet mentioned: the premises and the estate, and what will be undertaken with those. It would be helpful to have some answers as we move forward with the discussion on this. I beg to move.

Lord Harris of Haringey: My Lords, my noble friend talked about the Government shooting first and asking questions later. It seems that the decision to abolish the NPIA stemmed from the Government's desire to be seen to be abolishing quangos of various sorts, irrespective of considering whether the quango was being effective. I do not say that the National Policing Improvement Agency was working as well as it might have, but that does not mean that our first step should be to abolish it. That is the approach of, "If it ain't broke, take it to pieces anyway".

3.30 pm

I would like the Minister to be absolutely clear with the House, before we move on, about what will happen. I will not go through all the different functions of the NPIA but will focus simply on the technology role that the NPIA currently fulfils. I understand that existing major national policing infrastructure contracts are not going anywhere other than to the Home Office. They will pass to Home Office civil servants, for whom I have the greatest respect. They are renowned for their ability to negotiate and manage large technology contracts. They are renowned for their ability effectively to retender those contracts when they come to an end so as to deliver the best value for the public purse. I am sure that the noble Lord will be able to convince us that the change will be definitely for the better and that the management of these contracts in-house by civil servants will be the best way to deliver best value for the taxpayer.

I am confident of that because at the same time, a new technology company will be set up. When we were first told that this company would be set up, we were told that it would be necessary to pay a professional a sum possibly of the order of £500,000 a year to run it effectively. I assume that there has not been a sudden decision by the Home Secretary that civil servants in the Home Office should be paid something in the order of £500,000 a year. Therefore, these very important infrastructure contracts will be passed to the management of Home Office civil servants, but without the professional expertise that is thought necessary for other technology contracts. Again, I look forward to the Minister's explanation of why this is a sensible way to manage these high-value contracts.

The new technology company that will be set up—I listened to a very interesting presentation on it from Mr Bill Crothers, the architect in the Home Office and now the Cabinet Office of these proposals—will be a new entity that will place contracts with technology companies to provide IT services to the police. At the moment, it has no staff, no expertise and no revenue—but somehow it will place all these contracts for new technology for the police service. It will also negotiate the best terms in the absence of knowing whether any police force in the country will buy the technology. The Government have said that they do not want to see police forces mandated to use the services that will be provided through the new technology company. How will the new company negotiate the best terms with private companies if it does not have any staff and cannot give any indication of the size of the market for which they will provide a service? It will not be able to provide them with any indication of the size of the market because it will not be able to say, "Actually, all the police forces in the country will be mandated to use this, so you will be providing for 200,000 police officers" or whatever, because police forces will not be mandated to use the service. It will not even be able to say that any particular police service will use the new technology because none will have bought into it. How will the new technology company be able to negotiate the keen terms that we are promised, particularly when it will not have any revenue to do so? You only get the revenue at the point at which you place the contracts, so how is this negotiation

process going to operate? I am sure that the noble Lord has detailed explanations in his briefing notes outlining how this is going to happen and why it will work under any conceivable set of circumstances.

The question that ultimately has to be answered is why this will be better and why we are doing it on this timescale. My noble friend Lady Smith highlighted the slightly moving deadline for the abolition of the National Policing Improvement Agency. We are now being told that the end of this calendar year is a firm deadline so that all these new arrangements, such as the new national police professional body and so on, will be in place. Indeed, steps are already being taken to create the new IT company—an organisation which will not have any staff or anything it can use to negotiate with the commercial sector that provides these services, but which will somehow deliver better prices than the existing NPIA can ensure. This is already being set up in shadow form. The Government have agreed that representatives of the Association of Police Authorities should be the driving force for this new company. I am a vice-president of the association and therefore have great confidence in the ability of police authority chairs to lead this organisation. However, the Government were intent in previous legislation—the passage of which through your Lordships' House the noble Lord managed to miss taking part in—that the very same police authorities should not be responsible for the delivery of policing or oversight of policing in the future. It is exactly the same people who are now in charge of creating this company.

I do not know anything about the psychology of those who will be elected as police and crime commissioners in November. I suspect that many of them, particularly the Labour ones, will be extremely independent-minded and extremely trenchant in how they pursue their duties. However, it is difficult to see how these incoming, newly elected police and crime commissioners can say, "This strange technology body, set up by a bunch of people from the police authorities that we are supposed to be replacing and better than, is somehow going to deliver a better service than we can negotiate ourselves". I want to understand the thinking about timing. Why rush ahead and create the new technology body before the police and crime commissioners—who are supposed to be the ultimate beneficiaries in terms of the revenue savings it will allegedly, magically produce; and without it mandating, being able to negotiate or having any expertise—are elected?

As this is obviously one of those areas of government policy that a great deal of effort and thought has gone into, I am sure that the Minister will be able to satisfy us. I look forward to his explanation of why this is palpably a better system and how it will work smoothly.

Baroness Armstrong of Hill Top: My Lords, I want to speak about a particular aspect of the work of the National Policing Improvement Agency: training. I confess that I also speak from a very specific point of view as Harperley Hall—the NPIA's newest building, as well as most recently refurbished building, for training—is within two miles of my home. I was the constituency Member of Parliament for much of Harperley's existence and my father was the MP before that when Harperley Hall served Durham constabulary. I therefore know Harperley very well.

I would not expect the Government to maintain a facility simply because it is in the north-east, where we have real challenges in terms of employment, particularly of highly skilled workers. Harperley is an absolutely beautiful place in the most beautiful place in the country—the foothills of Weardale, although I know that that, too, is irrelevant to today's debate. However, it is attractive to those who go there because it provides a chance to concentrate on the training and the tasks in hand.

Harperley Hall now concentrates on forensic training, and I am sure that the Government will want to ensure that every force in the country has nothing but the highest quality forensic training. How will the Government ensure that in the new structure? Forensic training constantly moves forward and improves, and while I am not going to attack what happened to the Forensic Science Service, because my own party set that in train while in government, it is true that at the moment there is some anxiety, at least about the performance of some of the players. What lessons have the Government learnt from the changes made to the provision of forensic science services? How many cases over the past couple of years have struggled in the courts because of mistakes? We all know about the problems around the tragic death of the MI5 officer when people thought they had DNA evidence, but in fact it had been contaminated. Is that the only case or are there others? Have the Government learnt from that and will they seek better assurances on quality control for forensic training?

I have had the privilege of attending several awards ceremonies for different forces throughout the country. I recall going to one held at Durham University for Harperley Hall a year after the 7/7 bombings. The knowledge and understanding of forensics was absolutely critical to that investigation, and people who had graduated from Harperley Hall had been very much part of it. I am convinced that the Government think that this is important, so how are they going to maintain the quality in forensics training that they currently enjoy if places such as Harperley Hall are not going to continue? How will the Government ensure that what Harperley Hall does so well is maintained? At the moment, it trains people from virtually all the forces in the country, as well as taking on important work internationally by training other forces. That establishes good contacts between police forensic experts in this country and others around the world. Those contacts, let alone the knowledge that is shared, become critical in monitoring, examining and controlling terrorist activities. It is important to keep those contacts going, and I think that a national service helps towards that.

Who will undertake the research and development that drives improvements and developments in forensic science and thus in forensic training? That is a very important point. We have seen forensics change incredibly in my lifetime, certainly in the past 20 years, and training, of course, has to keep up with that. I have had the privilege of seeing some of this at Harperley

[Baroness Armstrong of Hill Top]
and it is always great fun for folk such as me, who are real amateurs, to see what magic the forensic people are delivering, but I always know, even when I am enjoying it, that it is much more serious than that, because it is a critical weapon in tracking down offenders of all natures. We must not lose that facility.

3.45 pm

I know that forces are now collaborating on shared forensic services. Are the Government confident that there is an overarching strategic approach to that, so that it is not simply a cost-cutting exercise, but an exercise that will add value and deal with the more strategic issues that I know the Minister knows are part of the development of forensics?

I echo my noble friend Lady Smith in needing to be reassured about the governance of new bodies. I think governance is very important for reassuring the public that we are really interested in policing for them and with them. The development of forensics sometimes takes place outside that and we have to make sure that governance connects the public to what is going on in forensics and forensics training, but it is also very important that the NPIA workforce have an idea of what is going to happen; whether they are still going to be there and whether the work that they have built up is still going to be valued in the new structures. It is not just governance that is really important; it is what the new structures are going to be. I hope that the Government can share with us their views on what the new structures governing forensics training will be.

As people have said, the NPIA is due to end at the end of this year. I am not sure that the Bill will have Royal Assent by then—maybe it will, maybe it will not. Are the Government bringing in transitional arrangements, so that people can be reassured, both the public and those people responsible for the work? If you lose morale, people do not perform as well and that could be very dangerous for us, particularly with what is coming up in the next few weeks. It is important, as my noble friend said, that we get reassurance that the Government have an estates strategy, or at least have a timetable for knowing what its estates strategy will be.

I cannot emphasise too strongly the confidence I have in the people who work at Harperley. They are a tremendous bunch of people and they have done terrific work there. I hope that the Minister will be able to reassure me—and through me, them—that there is a future for Harperley and a future for forensics training in this country, and that they will continue to be able to do what they do for this country in working with forces overseas. I am sure that the Minister has not been there: it is not too far for him to go from home. I hope that he will find time over the summer to visit Harperley.

The Minister of State, Home Office (Lord Henley): I assure the noble Baroness that I visit Durham with great regularity; it is not far from home and I am always delighted to visit any police force anywhere in the country, but even keener to visit police forces in the north of England. I will make a point, sometime over the summer, if I can arrange it, to do just that.

Baroness Armstrong of Hill Top: I thank the Minister for that. It is of course not a police force establishment these days but an NPIA establishment. I just hope that it will find a future within the new structure. I sincerely plead for Harperley Hall not simply because it is in the north-east but because it does excellent work on behalf of this country which has saved lives and improved the quality of forensics work both here and across the world. I do not believe that as a country we can afford to lose that. I hope that the Government have some warm words for us this afternoon.

Lord Blair of Boughton: I agree with the conclusions of the noble Baroness, Lady Smith, and the noble Lord, Lord Harris, that the abolition of the NPIA is hasty, ill thought out and potentially extremely damaging. I want to build on a question put by the noble Baroness, Lady Armstrong, about training. What is the future plan for Bramshill House? There it sits, a grade 1 listed building, a place at which I was present when one of the Minister's friends, Kenneth Clarke, was Home Secretary. He arrived late for a meeting, having just been appointed, to say that he was sorry he was late but he had stopped in the driveway to ring the Prime Minister to tell him that he had found a very suitable residence for the Home Secretary.

Bramshill provides two things of vital importance. First, it provides the strategic training for the most senior officers of the police service. Secondly, it is a centre of excellence for international and European police training. Are there plans for what will happen to Bramshill when the NPIA is abolished?

Baroness Butler-Sloss: I endorse what the noble Lord, Lord Blair of Boughton, just said. I had the great privilege of being invited to Bramshill on several occasions to speak to different groups of police about family issues. The time I particularly remember was being left with the most senior group being trained, who I understood were destined for high office. I was introduced in two sentences and the door was shut, and I was facing about 50 men—as it happened the group was made up entirely of men—many of whom were not from United Kingdom police forces. Having somehow or other got my way through that, I learnt, when going to lunch, how enormously valuable it is for the police forces round the world to have the opportunity to go to Bramshill. It is a wonderful institution and I hope, as the noble Lord, Lord Blair said, that it will be given the greatest possible respect and encouragement to remain doing what it does so well at the moment.

Lord Henley: I will start at the end of the debate and deal with questions relating to both Bramshill and Harperley Hall. I ought to declare an interest in relation to Bramshill House. A branch of the Henley family lived there many years ago. That was not my own branch but a branch to which I am connected. It might be that they built it and lived there for a couple of hundred years. Later on it became a police college. I must declare that interest. As the noble Baroness, Lady Armstrong of Hill Top, knows, I also have—as she does—a hereditary interest in Durham. My family

comes from there. As I said, if possible I will visit Harperley Hall and see what it does. I agree with her that its work is very important.

I want to get over the message that no decision has been made on either of these sites, particularly on Bramshill, but that we will be making a decision fairly soon. I should stress—all noble Lords should be aware—that Bramshill is a very expensive property. It costs something of the order of £5 million a year merely to maintain it. That is before one has thought about its actual function as a police training college. I also understand how important it is to the entire police service. I was a Minister many years ago in the MoD at about the time that we were thinking of disposing of Greenwich. I understood the importance of that to the Navy. I understand that Bramshill plays a similar role for the police service so any decisions on that will obviously be difficult to make. I hope that all noble Lords will accept that they will have to be made in due course. My right honourable friend the Home Secretary will update both Houses in due course with her thoughts on these matters.

I want to try to answer the various questions on the abolition of the National Policing Improvement Agency that were put by the noble Baroness, Lady Smith, and echoed by other noble Lords. She wanted to know about our rationale. She wanted an estimate of the savings and to know where the functions are going, whether the abolition will increase the funding burden on other police forces, whether it would lead to a loss of expertise, what the police professional body is going to do, what is its likely shape and what is the timing.

The most important thing is to get over the rationale behind the changes. I hope that in doing so I will answer some of the questions that have been put by other noble Lords. I was grateful that the noble Lord, Lord Harris of Haringey, in posing his group of questions on this, which were slightly different from those of the noble Baroness, although they come to the same point, accepted that the agency is not working as well as it might—I think those were his words—so this is not a decision that we want to get wrong.

All our reforms of the policing landscape must be underpinned by clarity of responsibility and appropriate governance arrangements to support an effective and efficient law enforcement response. We accept that the National Policing Improvement Agency has done much to bring about welcome changes to policing but now, in the context of these reforms, is the time to review its role and contribution. The closure of NPIA is a crucial element in a wider programme of reform that is reshaping the way that our policing is delivered and supported to provide a service better equipped to meet the challenges of the future.

Since the agency was established in 2007, its mission has grown considerably. It has operated and managed the development of the police service's most critical national services, provided specialist operational services to police forces, helped to improve policing practice and developed national learning, leadership and people strategy products. We believe that that is a broad agenda for one agency to deliver and that the agency has collected too diverse a range of functions and responsibilities to retain strategic coherence. Put very simply, we think it has grown like Topsy. Despite some achievements, the agency's mission is now too unfocused to deliver efficiently and effectively the level of professionalism that we need to see in policing. In these challenging times, we cannot afford to support organisations that are unfocused or unclear about their priorities and accountabilities. To support our wider policing reforms, we need focus and attention at the national level in priority areas. Closure of the agency provides a timely opportunity to ensure that key functions are given greater priority in successor bodies.

If I wanted, I could go through the areas where all the different bits are going and say which bits are going to the National Crime Agency, which are going to the Home Office and which will go to the new professional policing body. I do not know whether it would assist the Committee if I went through all those in detail or whether it would be easier to write a letter in due course and put a copy in the Library.

4 pm

I appreciate that the noble Baroness, Lady Smith, has previously expressed concerns regarding the reallocation of NPIA functions. I want to reassure the House that we have not rushed into the closure of the NPIA or the reallocation of its functions. There has been considerable thought and careful and detailed discussions with both the police service and other key stakeholders which have taken place to ensure that these critical decisions are made appropriately. We are working with the police service, with the NPIA and other policing and criminal justice partners to ensure that public safety is maintained.

My right honourable friend has already set out plans to transfer many of the agency's functions. The noble Baroness suggested that both Houses had not been told much about it and I repeat an assurance that we put out two Written Ministerial Statements—one at the end of last year and one in March this year, I forget which—setting out what we would be doing. We will continue to work with all those bodies to make sure that everyone, including both Houses, knows what is going on.

A number of those functions has already been moved into SOCA—the Serious Organised Crime Agency—in anticipation of it forming part of the National Crime Agency once it is established. Some functions will transfer to the Home Office and the majority of the agency's functions will transfer to either a new police protection body or a new police information communications technology company.

Technology and information are two of the most important weapons used by the police in their fight against crime. I note what the noble Lord, Lord Harris, had to say about these matters but currently there is a failure to fully exploit the full potential of economies of scale that could come when the 43 forces are spending £1.2 billion, which is the figure for 2010, on information communications technology. Poor deals, often with the same suppliers, are signed by different forces and changing this way of business could bring tangible benefits to forces and reduce the cost to taxpayers.

[Lord Henley]

I rather regret the tone of the questions of the noble Lord, Lord Harris, about some of these matters. He was very careful in his use of words but seemed to imply that Home Office civil servants were not capable of delivering in this area. I think that tone is regrettable but we are still looking at the long-term options for some of the technology and other matters in terms of that transfer in this area. I shall give way to the noble Lord.

Lord Harris of Haringey: I am sorry at the reluctance that comes into the noble Lord's voice every time I stand up. I am grateful to him for the courtesy with which he gives way on every occasion. If it was the view of Government that for the new IT company to function effectively it had to have in its leadership a chief executive who was paid at a commercial rate to attract the degree of expertise necessary, which might be of the order of £500,000 a year, to negotiate those contracts better than existing police services do and presumably better than the NPIA is thought to do at the moment, how will that not be the same argument that applies for these infrastructure contracts which will go to the Home Office? I am assuming that the Home Office will not be able to pay those sorts of sums to attract the technical expertise which is thought necessary for the other contracts.

Lord Henley: The two matters are not related; the Home Office has the appropriate expertise to deal with these matters. I was regretting the tone of voice that the noble Lord carefully used to make it clear that he did not think that there was the appropriate expertise in the Home Office to deal with these matters. We believe that that expertise does exist.

I was about to deal with the issue of the new information communications technology company which will be owned and controlled by police and crime commissioners. It will be led and funded by its customers, who will determine the services it provides. It will be responsive to local operational needs, offering forces a route to better value for money and innovation in the delivery of police information technology services. The company will ensure a more efficient approach to police information and communications technology provision and aggregate demand to exploit the purchasing power of the police service to get a good deal for the taxpayer.

The police professional body will directly support police officers at all ranks and police staff to equip the service with the skills it needs to deliver effective crime-fighting in a challenging and what must be a leaner and more accountable environment. The body will ultimately be independent of the Home Office. It will have a powerful mandate to enable the service to implement the standards that it sets for training, development, skills and qualifications. Its core mission will be to support the fight against crime and safeguard the public by ensuring professionalism in policing.

The noble Baroness, Lady Smith, was also keen to discuss timing and allegations that we had not met our targets. I appreciate that this frequently happens and that there can be slippage. I have known this throughout my career. There have been a number of times when one has announced that something will come out later in the spring and "later in the spring" has turned out to be July. However, we are on track to transfer the functions of the NPIA by the end of 2012. We began a phased transition of functions last year, with the non-ICT procurement moving to the Home Office. In April 2012, the following functions moved to SOCA: the Central Witness Bureau, the National Missing Persons Bureau, serious crime analysis, the Specialist Operations Centre and crime operational support. Obviously, more needs to be done and there are challenges, but I am more than happy that we will reach the target and do that by the end of the year. If we have any further problems, no doubt we will be the first to let the House know.

The noble Baroness was worried that the transition from the NPIA risked a loss of expertise. Giving staff certainty about their future is key to retaining their expertise, of which we are very proud. That is why we have been making announcements about this for some time and will continue to do so. Again, we are on track to complete those functions by the end of 2012. As a result, the majority of the NPIA's staff will transfer to its various successor bodies by December 2012. Any reduction in staffing levels will arise from the already agreed budget reductions, which were part of the 2010 spending review.

Having looked at timing, rationale and other matters, I hope I have answered most of the questions that the noble Baroness and others asked. Obviously, we will have to say more later, particularly about the future of Bramshill and Harperley and the police professional body. Announcements will be made at the appropriate time. I hope that the noble Baroness will now accept that the abolition of the NPIA is a necessary part of the changes that we are making and of the Bill. Now is not necessarily the time to revisit what has, in effect, been a long-standing commitment, ever since the first announcement by my right honourable friend. Given the advanced state of wind-down of the agency and the transfer of its functions, now is the time to press on with our reforms, instead of looking back. Therefore, I hope that the noble Baroness will feel able to withdraw her amendment.

Baroness Smith of Basildon: My Lords, I am grateful to the Minister for taking the time to go through many of the points and concerns I raised. Despite his efforts, he has not alleviated all those concerns. He called the closure of the NPIA a timely opportunity. It is an opportunity the Government created because they wanted to close the NPIA. I can certainly take on board some of his points. I can understand wanting to streamline the agency and the functions that he thought were better placed with other organisations. My amendments never suggested that there should be no change, but given the change that the NPIA itself had made, full abolition seems unnecessary. I am still not satisfied that the way in which it has been undertaken has not been piecemeal, as and when the Government think a part of it can be moved somewhere else. The Minister will have understood the concerns from around the House on this, not just on these Benches. I wonder whether he has read Lewis Carroll's *Alice in Wonderland*? It may have been some time ago, but I will refresh his

memory. There is a trial scene and the comment is made: "Sentence first—verdict afterwards". That is what has happened with the NPIA. The Government decided that the NPIA was to go and then had to work out where all the functions went. They are still doing this. Yes, it was big for one agency; it grew like Topsy, because new functions came along that were best undertaken there; there was room for improvement and change; but the baby has gone with the bathwater.

On timing, the noble Lord says that all these arrangements will be in place, I note originally, by spring 2012. He may have been relying on typical British weather, but it still does not feel like spring 2012 even now. They are now expected at the end of the year. I expect we may see a further spring—perhaps snow again—before these bodies are in place. The police professional body has no chief executive, no chairman and no board. As we heard from my noble friend Lord Harris of Haringey, the new IT company does not have all the processes or financial arrangements in place to enable a smooth transfer. This is an issue that we will have to return to, in order to fully understand and be assured that all the "t"s have been crossed and the "i"s have been dotted. When I looked at the new landscape of policing and what the Government said back in 2010 and 2011, it seems that the goalposts have moved. All we had then was a broad outline. Now we have some detail, but the flesh is not on the bones. I would understand if the Minister said the timescale cannot be met and we are re-examining it. He has not said that, so we will return to it on Report and look at some of the functions and how they will be carried out. For now, I beg leave to withdraw my amendment.

Amendment 64 withdrawn.

Clause 15 agreed.

House resumed.

G20 Summit

Statement

4.13 pm

The Chancellor of the Duchy of Lancaster (Lord Strathclyde): My Lords, it may now be a convenient moment for me to repeat a Statement that has just been made by the Prime Minister in another place on the G20 conference that took place last week. The Statement is as follows:

"The G20 needed to address the five big threats to the global economy. First, the problems in the eurozone; secondly, the mountain of debt and persistence of imbalances in the world economy; thirdly, the lack of growth; fourthly, the rise of protectionism; and, fifthly, the failure to regulate our banks properly. Let me take each in turn. First, the eurozone. Britain is not in the eurozone and we are not going to join, but when 40% of our trade is with the eurozone, its future affects our future. It is in our national interest for the eurozone to resolve its difficulties. As a full member of the European Union and a significant net contributor to its budget, it is not only vital, but also quite right that we speak plainly about what needs to happen.

In the short term, we need rapid action by the core of the eurozone, including the European Central Bank, to restore financial stability and confidence to the countries on the periphery of the eurozone as they undergo their vital structural reforms. This needs to be reinforced in the medium term by improvements to the governance of the eurozone that recognise the remorseless logic of being in a currency union.

This clearly was not a eurozone summit: it was a G20 summit. None the less, at this summit, the eurozone countries made some steps towards both. First, they agreed to take all necessary policy measures to safeguard the integrity and stability of the eurozone, including breaking the link between sovereign debt problems and bank instability.

Secondly, they committed to take further steps towards fiscal and economic integration, including through a banking union. Britain does not want to stand in the way of these measures towards closer integration of the eurozone but we will not be part of them. We did not join the eurozone precisely because we did not want to give up the kind of sovereignty over our national economy that is essential to making a currency union work. We have been clear that whatever long-term decisions are made about the governance of the eurozone, the rules that govern the single market must always protect the interests of all its 27 members. This is a red line for Britain: it is vital to our national interests. The eurozone now needs to get on with implementing the agreements reached at the G20. I will be working at the European Council this week to make sure that the eurozone takes these steps in a way which protects the UK's interests.

To deal with the wider risks of contagion to the global economy, the G20 also welcomed the commitments to increase the resources available to the IMF by more than $450 billion. It is a basic principle of the IMF that the help it offers is for countries not for currencies. Indeed, almost all the IMF's 50 programmes are for countries outside the eurozone. No country has ever lost money lending to the IMF. Britain's contribution is a loan on which interest is payable and it will be used only if troubled economies meet strict conditions to get their economies back on track.

Thirdly, on debt and imbalances, as at the G8, there was absolute agreement that deficit reduction and growth are not alternatives. You need the first in order to get the second. The G20 also reaffirmed its commitment to reduce global imbalances with deficit countries strengthening their public finances and surplus countries taking further actions to increase demand and move towards greater exchange rate flexibility.

We welcomed in particular China's commitment to allow market forces to play a larger role in determining movements in its exchange rate, and to continue reform and increase transparency in its exchange rate policy. This is an important advance for the G20 in dealing with global imbalances—one of the underlying causes of the crisis in 2008.

In a debt-driven crisis where many countries lack the fiscal space to stimulate their economies, the most powerful tools for growth that we have are monetary activism and structural reform. The G20 agreed that monetary policy should continue to support the economic

[Lord Strathclyde]
recovery and every G20 country has put on the table specific structural reform commitments to strengthen global demand, foster job creation and increase growth potential.

The Los Cabos growth and jobs action plan includes mechanisms to hold G20 members accountable for delivering on the reform commitments made. Vitally for Britain, this includes completing the European single market. The G20 did not just focus on growth in the largest economies; it also reaffirmed its vital commitment to supporting private-sector-led growth in the poorest countries as the best way of helping people to lift themselves out of poverty. Britain led a significant breakthrough on two of the biggest barriers to a successful private sector in developing countries.

We drove forwards the G20's anti-corruption plan, including securing agreement on important new principles which will deny entry to all G20 countries by corrupt officials or those who corrupt them. On the inability of farmers to access the technology that makes their farming viable, Britain made a substantial contribution to the Ag Results initiative which will harness the creativity of the private sector to help put new technology in the hands of the world's poorest farmers. We will be building on this further at our special event on hunger at the Olympics in London in August.

Fourthly, on trade, we expressed our deep concern about rising instances of protectionism around the world. The President of Argentina had a number of arguments during this summit—not just with me—and it was made very clear to her that recent behaviour by Argentina on both investment and trade protectionism was not acceptable. At this G20, free trade again won the day. We extended our commitment to avoid any new protectionist measures until the end of 2014 and agreed to roll back new protectionist measures that have arisen, including new export restrictions. Most significant of all, the US and the EU reached a ground-breaking political agreement to move forward with a deep but credible trade agreement with a clear and agreed timetable. The EU-US High Level Working Group will now produce recommendations for taking this forward by the end of this year. The EU and the US make up half of the world's GDP, so completing a deal here could provide an enormous boost to growth across the world—meaning jobs and growth for Britain.

Fifthly, on financial regulation, this G20 maintained the political impetus behind the reform of regulation across the global economy. We endorsed the strengthening of the Financial Stability Board in holding all G20 countries to account for delivering on their commitments: something specifically recommended by the UK report on global governance at the Cannes Summit last year. We also agreed to push forward with completing the implementation of Basel III.

Finally, in the margins of this summit, I had useful discussions on some of our key foreign policy priorities. On Syria, where the regime continues to pound civilian areas with mortars, attack helicopters and snipers, the EU is today, as a result of UK efforts, extending sanctions to ban any EU companies from insuring ships taking arms to Syria. We will continue work with our international partners, including through the United Nations, to stop the appalling slaughter and to help forge a political transition to a democratic future, which protects the rights of all its communities.

On the Falkland Islands, I took the opportunity to emphasise the importance of the planned referendum to President Kirchner. The islanders have to put up with endless attempts at endless summits to put a question mark over their future. They want to determine that future themselves. No one should be in any doubt that, as far as the British Government are concerned, it is the Falkland Islanders who will determine the sovereignty of the islands and their view will be respected by this House, by this country and by the world".

I commend this Statement to the House.

4.22 pm

Baroness Royall of Blaisdon: My Lords, I thank the noble Lord, the Leader of the House, for repeating a Statement given in the other place by the Prime Minister on the recent G20 meeting. Unusually, I did not see a copy of the Statement in advance. I am not complaining, but it does make life rather difficult.

I will start with the foreign policy issues. On the Falklands, there is support from this side of the House for the absolute need to protect the principle of self-determination of the islanders. On Syria, there is deep concern on all sides of the House about the continued failure of the Annan plan to deliver a cessation of violence, and there is cross-party consensus on the appalling nature of the Assad regime and the need for the toughest sanctions against Syria. We welcome today's extension of EU sanctions but given the urgent need for an immediate end to the dreadful and escalating hostilities, does the noble Lord the Leader of the House agree that it is now vital that the wider international community unites around the need for the toughest sanctions against Syria?

The Prime Minister said in his press conference that:

"President Putin has been explicit that he is not locked into Assad remaining in charge in Syria".

If correct, this clearly represents an important step forward. However, Foreign Minister Lavrov said afterwards in a statement that these comments did not "correspond with reality". Can the Leader of the House clarify the position?

I now turn to the main business of the summit—the economy. With our country in double-dip recession, with world growth slowing and with the eurozone crisis, if ever there was a time for the international community to come together and act, this was it. All we got from this summit was more of the same: drift and inaction in the face of a global crisis. The Prime Minister claimed afterwards that the summit had made "important progress" on a number of issues,

"on the Eurozone, on the lack of global growth and on the rise of protectionism".

This sounded familiar. Then we realised why—because the Prime Minister said exactly the same after the last summit, in Cannes last November.

The Prime Minister now says:

"In terms of the slide towards protectionism, I think that has been halted".

Can the Leader of the House confirm that the Prime Minister told us precisely the same thing in November? That summit was a success because action had been taken to,

"stop the slide to protectionism".

That was a great triumph—the slide that had been stopped last November has been halted again.

On global growth, the Cannes summit communiqué said that,

"should global economic conditions materially worsen",

countries should,

"agree to take discretionary measures to support domestic demand".

Well, global conditions have worsened and therefore, being true to that communiqué, this G20 should have been a coming together of world leaders to work for a co-ordinated plan for jobs and growth. And what did we get? The communiqué just repeated the same words:

"Should economic conditions deteriorate significantly further, those countries with sufficient fiscal space stand ready to coordinate and implement discretionary fiscal actions to support domestic demand".

No change, no action.

On the eurozone, I note that the Statement says:

"As full members of the European Union, and a significant net contributor to its budget it is vital that we speak plainly about what needs to happen".

I think that our partners would have listened to us more if the Prime Minister had not decided to use the veto that never was in December. Actions for short-term political gain have long-term consequences.

The Prime Minister said that while this was not a European Council meeting, progress was made with,

"significant agreements. Now the eurozone countries need to get on and implement them".

But is not the reality that there is no agreement on the main issues of substance, such as how to recapitalise Spanish banks; how the European Central Bank can stand behind member countries; how to prevent the escalation of problems in bond markets; or how to boost the size of the firewall fund to make it work? Instead, we had more of the same.

For people here at home, the economic reality is that things are getting worse, not better, and there is nothing in this summit's conclusions to make any difference to that. And there is a simple reason why there was nothing for Britain at this summit: because we have a Prime Minister, and a Government, who simply argue for more of the same. What a contrast with France, where the president is passionate about growth, understanding that it is a prerequisite for dealing with deficits. Austerity is not working; with Britain in a double-dip recession, one of only two G20 countries in that position, can the Leader of the House tell us whether at the G20 the Government were actually arguing for anything different from what they were arguing for last November? From today's Statement, it does not look as though they were.

Can the Leader of the House confirm that at the time of the Cannes summit, UK growth for 2012 was forecast to be 1.2% and that now the average of independent forecasts is just 0.3%? On the world economy, what this summit needed was a co-ordinated plan to generate greater growth, but the international community is divided between those who want a move towards greater growth and jobs and those whose answer to the failure of the last two years is simply more of the same. I fear that, on this issue, this Government and this Prime Minister are on the wrong side of that argument.

There is one important lesson for the Government from the last week. A global summit in the face of an economic hurricane needs action, not words. The reality is that the Government and the Prime Minister have come back from this summit with nothing for Britain—nothing to cope with double-dip recession, nothing to help Britain's families and nothing to ensure growth in the world economy. I trust that when the Prime Minister returns from the European summit next week he has growth at the top of his Statement and agenda. Britain deserves more than was achieved at the G20 summit, and we deserve a change of direction; a change of economic strategy; a change that puts action first, not words; and a change that puts jobs and growth first.

Lord Strathclyde: My Lords, the noble Baroness the Leader of the Opposition is on good form today. Typically, she sees a socialist president being elected in France, looks over the water and believes that everything over there is going swimmingly. However, she has not read what the good president has said. He said that,

"national debt is the enemy of the left and the enemy of France".

We agree with that. Mr Hollande would balance France's budget faster than the coalition plans for the United Kingdom. When asked how he would stimulate growth, the French President said, "The means cannot be extra public spending since we want to rein it in". We can agree with that; the noble Baroness and her party cannot.

We very much welcome the noble Baroness's support on the Falklands and Syria. The situation in Syria is immensely dangerous, difficult and complicated. We are still discussing with key partners what more we can do, including in the United Nations, to support the Annan plan. There remain differences over sequencing and the exact shape of how a potential transition can take place but we have put in place a strong EU arms embargo, are closely tracking other shipments to Syria and want to work with countries and companies around the world to stop them. We have had useful conversations with Russia but the key thing is to get together, to work together and to try to implement the Annan plan, if at all possible.

I rather admire the fact that the noble Baroness's research led her to spot that some of the words in this communiqué were the same as those used at the Cannes summit. She read that as signifying that nothing had changed. However, it may also prove some admirable consistency emanating out of G20 summits in that there are still common problems with which to deal, and they are going to be dealt with.

The noble Baroness took a pot shot at what my right honourable friend the Prime Minister did at the EU summit at the end of December, which was not to sign up to the communiqué. As I said at the time, the reason my right honourable friend did not sign that communiqué was because he believed in protecting British interests, which is what he did. The noble

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Baroness and her party would have signed it and, we believe, would have sold vital British interests down the river.

The G20 was a success in the sense that many of these gatherings are a success as an opportunity for the leaders of different countries to discuss some of the key issues facing the world and to try to come to an agreement. There was no shying away from the fact that one of the most difficult issues facing the world at the moment is the problems in the eurozone. We have come up with what we believe to be helpful and constructive words to try to encourage the eurozone to find a solution in preparation for the European Council later this week. However, in the end, the countries in the eurozone have to make those decisions themselves.

Earl Attlee: My Lords, I remind the House of the benefit of asking short questions in order that my noble friend the Leader of the House can answer as many questions as possible.

4.32 pm

Lord Kinnock: After £325 billion worth of quantitative easing and consecutive quarters of zero growth, is it not evident that the monetary activism of which the Prime Minister spoke earlier cannot get any traction without substantial fiscal stimulus? Therefore, why do the Government continue to resist the proposition that they should establish a national investment bank that through the use of public funds will attract private investment in order to stimulate growth, employment and development in this undergrowing economy? Secondly, when it is clear, as the Prime Minister said, that deficit reduction is not an alternative to growth but is contingent on growth, why do the Government continue to advocate expansionist growth policies in the eurozone but firmly resist exactly the same approach in the United Kingdom, which sorely needs those policies? Is it not clear that the Government's maxim of securing growth through austerity is oxymoron economics?

Lord Strathclyde: My Lords, I do not agree with what the noble Lord, Lord Kinnock, has said. Neither do I accept his characterisation of what we are doing in the United Kingdom and what we are exhorting our colleagues in the eurozone to do. I take his point about a national investment bank in order to try to encourage growth, but our solution has always been to try to encourage the private sector—and private sector banks—to have the confidence to invest in British business.

The UK economy is recovering from the deepest recession in living memory. It was even deeper than was previously thought: over 7% was wiped off the economy. Inevitably, recovery will be choppy, and by historical standards subdued, because household business and government debt rose unsustainably. Naturally, the eurozone crisis is making the recovery even more difficult.

The main point is that we have managed to maintain the lowest interest rates that this country has seen in modern times; a one percentage point rise in our interest rates today would add £10 billion to family mortgage bills alone. You only have to look at the interest rates in Spain, Italy and of course in Greece, to see just how much better off we are today than those nations. Despite having a deficit similar in size to that of Greece, the UK has interest rates at historic lows, similar to those in Germany; France's interest rates are more than 50% higher, and Italy's interest rates more than three and a half times higher. We can have a philosophical debate—even an economic debate—as to whether or not austerity and growth go together, but our firm view is that they can.

Lord Hannay of Chiswick: My Lords, will the Minister accept my thanks for that Statement? I must say that I found it a trifle Panglossian, but I do not wish to take issue with what was in it.

Are the Government not concerned that these G20 meetings are becoming of rather waning relevance, and that as each meeting succeeds each other the hopes that the world placed in the G20 when it was set up at the height of the crisis are not really being realised? Are they not, increasingly, simply photo opportunities and things of threads and patches that make no overall effort to get to terms with the challenges that confront us? If the Government are concerned about that, do they have any thoughts about how the G20 machinery could be made to work a little bit better?

Perhaps as an illustration of that, the distinctly disappointing outcome of the Rio meeting on the environment, which was held only shortly after the G20 meeting, was perhaps highlighted by the fact that the G20—the economies that are responsible for between 80% and 90% of the world's emissions, because they are responsible for 80% or 90% of the world's economic activity—did not even find time to talk about this subject. No effort was made to prepare a position that might have provided the 193 countries that went to Rio—which could not possibly have produced, in one or two weeks, a very meaningful outcome—with some guidance and momentum. That, too, seems to be lacking from the G20's present agenda.

Lord Strathclyde: My Lords, the noble Lord makes an interesting point, particularly with his background and experience, on the role of the G20 and, indeed, of the G8. The role of these organisations has changed, particularly over the course of the last five or six years, given the economic situation. However, there is a very important role in their meeting—both G8 and G20—to work through an agenda and come forward with conclusions. The important thing in those conclusions is that they make sure that there is a vibrant system that can check back to see who committed to doing what and to make them accountable. I am sure that the noble Lord, Lord Hannay, has views on how to streamline the secretariat, or indeed to make it more strategic, and I would encourage him to put those down on paper.

Do we believe that the G20 has made no difference at all on climate change? No; all G20 countries were committed to implementing the outcomes of the COP 17 in Durban, and we made it clear that we wanted a

successful outcome to the COP 18 in Qatar later on this year. As far as Rio is concerned, the deal delivers much of what the UK wanted and worked hard to achieve, and it puts the sustainable development agenda very firmly back on the map.

Baroness Goudie: My Lords, I thank the Leader of the House for repeating the Statement. I declare an interest as a member of the La Pietra Coalition, which is a group of international NGOs and global corporations that came together three years ago to try to influence the G20. Among the items on which we have been trying to influence the G20 is access to finance for women and youth around the world. I am very grateful to officials in Treasury and DfID who have worked very closely with us over the past three years, and I am pleased that at long last there is the following phrase in the communiqué:

"We recognise the need for women and youth to gain access to financial services and financial education".

It is stated that the OECD and one or two other international organisations will be responsible for this. Given that this Government have played such a part in this matter over the past three years, we should officially take this policy on board, keep an eye on it, and ensure that that access to financial services and financial education does happen, because we know that the GDPs of countries change enormously when women have access to finance and can educate their children.

Lord Strathclyde: My Lords, the noble Baroness is quite right and I very much welcome her welcome for the initiative. The Government are very pleased to receive these independent reports from NGOs, particularly regarding the extremely important areas of access for women and financial education. We certainly should keep an eye on it and I shall make sure that officials in the departments are aware of what the noble Baroness said.

The Lord Bishop of Ripon and Leeds: My Lords—

Lord Lester of Herne Hill: My Lords—

Earl Attlee: My Lords, can we hear first from the right reverend Prelate?

The Lord Bishop of Ripon and Leeds: My Lords, I am grateful for the particular stress that the Leader of the House put on support for the poorest countries of the world. As I understand it, there were three strands to that support and to the UK's part in creating it. The first was an anti-corruption plan. Can he be more specific on how corruption can be tackled within the poorest countries of the world and how the UK can contribute to that? The second strand relates to the inability of the poorest countries to access modern technology. What sort of help can be provided by the UK and does that have implications for our aid budget and aid policy? Thirdly, welcome though the hunger event at the Olympics, to which reference was made, would be, how is that intended to support the poorest countries of the world?

Lord Strathclyde: My Lords, I thank the right reverend Prelate for his general welcome. I cannot add anything more to the anti-corruption plan because G20 officials have been asked to come forward with details over the next few months. We will have to wait and see what will happen on that. As to food security and technology, the UK met its L'Aquila financial commitments in full and will continue to provide broadly equivalent resources to help food security. We made welcome progress at the G20 on implementation of commitments made last year at Cannes, including rolling out the Agricultural Market Information System to improve transparency, endorsing the Scaling Up Nutrition movement, and pledging to continue our work in other areas, such as the platform for agricultural risk management. This is an area to which a substantial amount of importance is given, as is the hunger event at the Olympics in London during August. I think that the idea is to hold a conference to concentrate people's minds on the issue of hunger around the world, but if I can add more I shall let the right reverend Prelate know.

Lord Lester of Herne Hill: My Lords, is my noble friend the Leader of the House aware that when a great democratic socialist—namely, Roy Jenkins—served as Chancellor of the Exchequer, he was of the view, and remained of the view when he became Home Secretary in the second Wilson Government, that the national debt should not occupy more than about 40% of GDP? That view was expressed by Mr David Laws in an interesting article in the *Sunday Telegraph* this weekend. Is my noble friend aware that it is possible to have that view and yet be a democratic socialist?

Lord Strathclyde: My Lords, I think my noble friend is trying to be helpful. Indeed, he is being very helpful. Our net debt/GDP is considerably higher than 40%. My noble friend is right: as President Hollande has shown, the answer does not lie in increasing debt.

Baroness Hooper: My Lords, I am delighted that the Prime Minister was able to make it quite clear to the President of Argentina that the British people and the British Government stand beside, and behind, the people of the Falkland Islands in deciding their own future.

Can my noble friend the Leader of the House let us know whether, in the margins of the G20 meetings, the Prime Minister was able to talk with political leaders in Mexico, given the importance and vitality of the Mexican economy, and in view of the forthcoming elections there?

Lord Strathclyde: Yes, my Lords. Certainly, on the first question, my right honourable friend the Prime Minister made a point on the future of the Falklands which he has made continually, which I know the whole House will agree with. We do not see that this question should be put into any doubt whatever. We have made the proposal that there should be a referendum. We believe wholeheartedly in self-determination. That is the right way forward and we encourage the people of Argentina and its Government to agree with us on this vital matter.

I can also confirm that my right honourable friend had a further meeting with Mexico, and an inward investment meeting of British businesspeople in Mexico.

[Lord Strathclyde]
It was extremely successful and useful, and showed again this Government's firm desire to demonstrate our need to grow our economy through exports.

Lord Hollick: The Leader of the House will recall that the verdict of the Office of Budget Responsibility on all of the growth measures announced by the Government is that they will have no impact. Now that the Prime Minister has signed up to the growth plan for the G20, when will the Government bring forward measures to give that some substance?

Lord Strathclyde: My Lords, the Government are continually bringing forward all sorts of plans and prospects—not least the speech my right honourable friend the Chancellor of the Exchequer made at the Bank of England only 10 days ago, where he made a specific commitment to try to improve liquidity of the banks, so as to increase lending, which will also lead to growth.

Lord Hughes of Woodside: My Lords, in the Statement, there was a repetition of the conviction that only the Annan plan will lead to peace in Syria. Is the Leader of the House aware that since it was first announced, the situation has not got better? It has got worse and worse. There is a dreadful parallel here with what happened in Libya. Will he assure us that we are not interested primarily in regime change, and that there have to be intense discussions at a very high level to bring this slaughter to an end?

Lord Strathclyde: My Lords, I have a lot of sympathy for what the noble Lord said about Syria. I said earlier that the situation was extremely difficult and complicated, and continues to be appalling. Syria is descending rapidly into a bloody and tragic civil war, with potentially irreparable consequences for its people and for the future.

We are continuing to discuss with key partners, including in the UN, exactly what the best way forward will be. We still believe that the essential framework of the Annan plan is the best way forward, and that is what we will continue to discuss. We have put forward a strong EU arms embargo, which we are currently tracking, and we will maintain that. The EU has announced further sanctions against the Syrian regime today. The UK is at the forefront of imposing the 16 rounds of EU sanctions against 129 individuals and 49 entities.

I cannot be sure that those things in themselves will work. As the noble Lord said, the international community at the highest level is aware of what is going on. There is a lot of activity and pressure is being applied to the Syrian regime. We have to hope and believe that in due course we will reach the end of this appalling conflict.

Lord Stoddart of Swindon: My Lords, like other noble Lords, I believe that the Statement is rather bland. I also agree with the noble Lord, Lord Hannay, that the influence of the G20 appears to be declining. My only question concerns the speech that Mr Barroso made to the G20 in which he blamed the United States for the economic and financial problems that we have today. Was he speaking for all the nation states of the European Union, including our own? Such a statement is hardly likely to improve relations between the United States and the EU.

Lord Strathclyde: My Lords, I speak on areas for which I am responsible and Mr Barroso speaks on areas for which he is responsible within the European Union. I do wonder whether what he said will influence relations not just with the United States but with the UK, and whether there is enough of a fundamental understanding of the problems that have occurred over the past five years, and therefore of the solutions that will need to be taken into account.

Crime and Courts Bill [HL]

Committee (3rd Day) (Continued)

4.51 pm

Schedule 8 : Abolition of SOCA and NPIA

Amendments 65 and 66 not moved.

Schedule 8 agreed.

Clause 16 : Interpretation of Part 1

Amendment 67

Moved by ***Lord Rosser***

67: Clause 16, page 14, line 23, leave out "local policing bodies" and insert "Police and Crime Commissioners"

Lord Rosser: My Lords, the amendment would ensure that persons representing the views of police and crime commissioners are included in the definition of "strategic partners" set out in Part 1. The definition refers to,

"such persons as appear to the Secretary of State to represent the views of local policing bodies".

Earlier in Part 1, a "policing body" is defined as including within its scope a police and crime commissioner. Perhaps the Minister will tell us whether the reference to "local policing bodies" in the definition of "strategic partners" also means local police and crime commissioners, or whether it means something different from the earlier definition of "policing body"—and if so, why.

It is important that police and crime commissioners are included as strategic partners. Under Clause 3, the Secretary of State is required in determining strategic priorities for the National Crime Agency to consult strategic partners. Bearing in mind that a police and crime commissioner will be responsible for issuing a police and crime plan and in so doing will have to have regard to the strategic policing requirement issued by the Secretary of State, it would seem odd if the Secretary of State were not required when determining his or her strategic priorities for the National Crime Agency to consult with persons representing the views of police and crime commissioners. Likewise, in preparing his or her annual plan, the director-general of the National Crime Agency must, under Clause 4 in Part 1, consult with the strategic partners. It would seem inappropriate if these partners did not include police

and crime commissioners, bearing in mind that the annual plan sets out how the director-general intends that the National Crime Agency functions should be exercised. This could well have an impact on the functioning of local police forces, including whether that force is efficient and effective, which it is a statutory responsibility of a police and crime commissioner to secure.

We also learnt from the Minister last week in Committee that the unelected director-general of the National Crime Agency could direct a chief officer of an England and Wales police force to perform a task of unlimited magnitude, impact and scope specified in such a direction without having to obtain the consent of the Secretary of State or even having to consult the elected police and crime commissioner responsible for the force whose chief officer the director-general is ordering to take that particular course of action. That might be, for example, as the Minister told us,

"to take the lead to disrupt a human-trafficking gang that is predominantly based in that force area".—[*Official Report*, 20/6/12; col. 1800.]

Potentially, that is hardly a minor task in terms of either time or resources.

On top of that, we were also told by the Minister that the unelected director-general of the National Crime Agency could direct a chief officer of an England and Wales police force to provide unlimited specified assistance to the National Crime Agency, also without having even to consult the elected police and crime commissioner responsible for that force—even though, as the Minister said, providing assistance involved transferring resources from the command of one force to another force or organisation.

To many people, that will seem an odd state of affairs, designed to marginalise the elected police and crime commissioner. If elected police and crime commissioners, now that we are going to have them, are not even one of the strategic partners to be consulted by the Secretary of State when determining strategic priorities for the National Crime Agency, or by the agency's director-general when preparing the annual plan, then it would be further confirmation that police and crime commissioners are intended, in many ways, to be little more than figureheads—a situation and role that any self-respecting elected police and crime commissioner will, I am sure, be unwilling to accept. I move this amendment and await the Minister's response.

Baroness Hamwee: My Lords, I have Amendment 68 in this group, and it is another amendment to the definition of "strategic partners". The relevance of strategic partners is their role as consultees of the Secretary of State when she determines the strategic priorities for the NCA. We are all familiar with the scope and importance of the NCA's functions. My amendment would add to the list of strategic partners the Security Service, the Secret Intelligence Service and GCHQ. There was a time when a fiction was maintained about the existence or otherwise of at least one of these organisations but I think that we have moved beyond that. It seems to me unthinkable that the Secretary of State, given the subject matter of consultation on strategic priorities, would not consult those agencies.

Last week, on Second Reading of the Justice and Security Bill, I commented on how the priorities and concerns of the Office for Security and Counter-Terrorism, which is embedded in the Home Office, seem to have affected—I am not making a judgment on this—all the Home Office's thinking. As I say, I simply cannot believe that these services and agencies would be omitted in such a consultation. If it is not the case, then why not say so? If it is, then why is it?

5 pm

The Minister of State, Home Office (Lord Henley): My Lords, I hope that I can deal with both amendments relatively briefly. I can say to the noble Lord, Lord Rosser, that the list of the NCA's strategic partners currently includes, as he said,

"such persons as appear to the Secretary of State to represent the views of local policing bodies".

We have used those terms because local policing bodies include not only the PCCs but two others—the Mayor's Office for Policing and Crime, and the Common Council of the City of London, which acts as the police authority for the City of London police area. For that reason, the noble Lord's amendment is completely unnecessary in that the provision achieves everything he seeks. Having said that, I accept what he says about the necessity of discussing all these matters with the people he was concerned about. Just to put him at ease, the term "local policing bodies" covers them all.

I turn now to my noble friend's amendment, Amendment 68. I think she said that there was a time when a fiction was maintained that the intelligence and security agencies did not exist. We now acknowledge that they do exist and we accept that the functions and responsibilities of these agencies go much wider than purely crime reduction and criminal intelligence. They have a limited statutory function in relation to serious crime because is not their primary focus and they are therefore not included in the list of partners that the Home Secretary or the director-general must consult—it is the word "must" that I stress to my noble friend on this occasion—when setting strategic priorities in drawing up annual plans. However, I can give her an assurance that the security and intelligence agencies will have an important relationship with the NCA. Provisions in the Bill allow the Home Secretary and the director-general to consult them when it is appropriate to do so. What we think is not appropriate is the use of the word "must" here, and that is why we have not included the agencies in the list set out in the interpretation clause, Clause 16.

I hope that that explanation is sufficient for my noble friend, and that the explanation I gave with regard to Amendment 67 is sufficient for the noble Lord, Lord Rosser.

Lord Rosser: I thank the Minister for his reply and for confirming that the reference to local policing bodies includes a police and crime commissioner. I think he also said that the provision has been written in this way—namely with a reference to local policing bodies—because, as well as a police and crime commissioner, it also includes the Mayor's Office for Policing and Crime and the Common Council of the

[Lord Rosser]
City of London. That rather begs the question of why earlier in the clause, where a "policing body" is also defined, it states that it means a police and crime commissioner, the Mayor's Office for Policing and Crime and the Common Council of the City of London. When we look down the same page to the "strategic partners", why does the clause not make it equally clear by simply repeating that they include a police and crime commissioner, the Mayor's Office for Policing and Crime and the Common Council of the City of London, instead of describing them as "local policing bodies"? Alternatively, if the phrase "local policing body" is satisfactory, why in the reference earlier on the page to "policing body" does it not simply say, instead of setting out the first three categories, "local policing bodies"?

Lord Henley: My Lords, I am not a parliamentary draftsman—I do not think that I ever will be, and I am simple in terms of my understanding of the law. But even I, and I dare say the noble Lord, can probably grasp this one little point. If he looks up to line 4 on page 14 he will see that the meaning of "policing body" is set out in paragraphs (a) to (c):

"(a) a police and crime commissioner;

"(b) the Mayor's Office for Policing and Crime"

"(c) the Common Council of the City of London as police authority for the City of London police area".

Later the meanings under "strategic partners" are set out, with paragraph (c) stating,

"such persons as appear to the Secretary of State to represent the views of local policing bodies".

The local policing bodies go back to "policing body" at that point. It does not take much understanding of drafting—I appreciate that I am not a draftsman—to understand that what is included in the first bit, "policing body", must be included under "strategic partners".

Lord Rosser: The only comment I would make in response to the noble Lord—like him, I have no great wish to prolong this matter—is that since the first reference is to "policing body" and the second is to "local policing bodies", one might be entitled to ask, what is the difference between the two? Is there a subtle difference or not? Why is it not simply described again as "policing bodies" when it comes to the definition under "strategic partners"?

Lord Henley: I think that the noble Lord is protesting too much, but I will consult those who advise me on drafting matters and ask them whether they can give me a good explanation. I think that "policing bodies" must include "local policing bodies", so there is no problem. The noble Lord is looking for conspiracies here, I suspect, but there is no conspiracy—it is straightforward, I can assure him of that. We are including the PCCs and the other two that I mentioned.

Lord Rosser: I assure the noble Lord that I do not think that there is a conspiracy. He has made it clear what the reference to local policing bodies covers and that is now in *Hansard* for the record. I do not believe in any conspiracy theory. However, I would certainly be interested to know, if he would write to me, why it is described as "policing body" in one place, with a definition, while a bit further down—under strategic partners—rather than repeating it as "policing body", it says "local policing body". One might wonder, why the difference? The Minister has said that he will look at it and write to me and I am extremely grateful for that. No, I do not believe there is a conspiracy, because the Minister has made it clear that police and crime commissioners are included in the reference to local policing bodies. This amendment sought to ensure that that was the case and in the light of the Minister's response, I beg leave to withdraw the amendment.

Amendment 67 withdrawn.

Amendment 68 not moved.

Clause 16 agreed.

Clause 17 : Civil and family proceedings in England and Wales

Amendment 68A

Moved by ***Lord Beecham***

68A: Clause 17, page 16, line 21, at end insert—

"(7) There shall be no restriction on the number of days that a family magistrate may sit in the family proceedings court."

Lord Beecham: I shall speak to Amendments 68A, 68B and 68C and, notionally, give an indication on the stand part question on Clause 17.

I begin by repeating a declaration of interest: I am an unpaid consultant in the firm of solicitors of which I was a senior partner. I will be saying something about the Court of Protection, with which the firm and I have had dealings which partly inform some of what I will say this afternoon. In addition, I should perhaps, through an abundance of caution, declare that my daughter sits as a part-time deputy judge; but whereas I have occasionally briefed her when I was at the office, she has not briefed me in connection with today's proceedings.

I shall go from the very particular to the general in discussing these amendments, and deal first with Amendment 68A, which seeks to remove the limits on the numbers of sittings that magistrates may make when sitting in the family court. The noble and learned Baroness, Lady Butler-Sloss, raised this matter at Second Reading and I share her opinion that it is undesirable to impose such a limit, given the necessity of building up expertise and providing continuity on the part of that part of the magistracy which deals with these very sensitive family issues. That is not a view universally shared, but it is my view and it will be interesting to hear the Government's response and their justification, if they see that there is one, for maintaining the limit. I believe that the Norgrove report advocated its abandonment and it has logic on its side.

The remaining substantive matters are Amendments 68B and 68C. I should say immediately that the indication that I would move that Clause 17 not stand part of the Bill was a procedural device to allow a general debate which has been superseded by the amendments that I have now tabled. I will not move that Clause 17 not stand part of the Bill. We accept that it is desirable to

move to the structure of single courts. The question is how they will be administered and what steps can be taken to ensure that the whole system of justice is adequately reviewed, kept under review and improved from time to time.

Amendment 68B seeks to require a report on the creation of the single court and how it works. As I say, we accept the concept in principle. We would like the Government to undertake a review after a relatively short time to see how it works in practice. There are concerns—some of which I will touch on when I come to the next amendment—around access, the venue and the like, particularly in the civil courts. Also there is a question about how the new family court will work. We are reasonably confident that it will work provided that it is adequately resourced but it would be sensible to review the situation before much time passes.

Having said that, my main concerns are reflected in Amendment 68C, which seeks an annual review by the Lord Chancellor of the workings of the whole court and tribunal service to take into account the experience that will accumulate over time, particularly the experience of practitioners and parties, but also to reflect other changes which are now in train. The civil justice system is undergoing massive change, not only as a result of the proposals in the Bill but also as a consequence of Lord Justice Jackson's comprehensive if—as we have debated at some length on a previous Bill—controversial review which paved the way for a radically different approach to the provision of legal aid and advice, and the financing of litigation.

In pages 428-34 of his report, Lord Justice Jackson called for improvements in courts administration in the light of a pervasive feeling of dissatisfaction on the part of many litigants and their advisers, occasioned in part by a high turnover of staff and an excessive time spent on processing documents unlikely to involve judicial input. His report called for the establishment of regional centres which could attract long-term staff. It was felt that if you had a small number of centres instead of having them dispersed across the whole country you would be able to find and retain staff with the necessary expertise. There seems to be some force in that intention. However, Lord Justice Jackson stressed that it would,

"be wrong to compel everyone to issue proceedings at regional centres. Litigants who wish to issue claims in person at their local county court and to pay fees at the counter should be free to do so".

In the event, the Government, for ever waving the banner of localism—I remind your Lordships that "waving" can be spelt in two different ways—have established a system in which all money claims have to be issued not just in regional centres but exclusively in Salford. Salford not only hosts the BBC and Manchester United, it also—

The Minister of State, Ministry of Justice (Lord McNally): Does it?

Lord Beecham: Not Manchester United. I withdraw that disgraceful slur on Salford or Manchester United—whichever way you want to look at it. All right, we have the BBC and the Lowry gallery in Salford and we now have the courts' business centre there, too. Unfortunately, the establishment of that centre has led to a torrent of complaints about delays and loss of documents reported on several occasions; for example, in the *Law Society Gazette* on 12 February, 8 March and 12 May, when the headline was "Civil Court System Faces 'Meltdown'". On 24 May—as recently as that—it reported on a work to rule by staff intended to last until 31 July which is,

"evidence of a civil courts service reaching breaking point".

The same story describes district judges being put up in hotels when on duty in Salford, because that is where they have to go, with a deputy district judge—not my daughter—complaining:

"New cuts are announced daily, and yet HMCTS is now squandering taxpayers' money on hotels".

5.15 pm

Nor is this the only part of the system to have suffered major criticism from parties and the legal profession. The Court of Protection and the Office of the Public Guardian have long been the subject of complaints over delays, failure to reply to correspondence and, most importantly, failure to protect the interests of people who, by definition, are incapable of looking after their own affairs. This neglect, incompetence or inefficiency can take two forms: first, the management of the funds in court held on behalf of claimants where the Court of Protection has been roundly attacked for keeping funds in accounts paying all of 0.5% interest and secondly, on the other side of its responsibilities, failing to organise timely and effective visits to patients in order to monitor progress.

Again, staffing levels appear inadequate in terms of both numbers and skills. I had occasion some years ago to write to my noble and learned friend Lord Falconer to point out that in a case that I was dealing with in the Court of Protection, it was virtually impossible to secure a reply to correspondence concerning the patient's affairs, that there was apparently no single individual in charge of any file—it seemed to be passed around the office—and I did not feel that anything like an adequate service was being offered to the deputy, or the receiver, as he was then known. The nomenclature has changed since. The patient was a young man who had suffered very severe brain injuries. There was a substantial amount in court, but there were also very substantial problems. It seemed that staffing was an issue. I have to say that that issue—not just that individual case, of course—did not appear to receive any adequate response in terms of change, and although there have been changes in the system with people moving out from London to Birmingham and Nottingham, the problems still seem fairly substantial.

There has, of course, been a change in the law involving the Court of Protection because now instead of the enduring power of attorney, we have the lasting power of attorney, a new form of document to facilitate the conduct of the affairs of people incapable of looking after themselves. That has led to a huge increase in the number of documents being filed, but that has not apparently been matched by a sufficient investment in staffing or IT, and there have been recurrent problems in this area. Indeed, the Court of Protection was the subject of a critical "File on 4" programme on BBC Radio 4 in 2010 that highlighted cases, in one of which a patient said that the Court of Protection had cost him £50,000 because of the way it had managed his

[LORD BEECHAM]
financial affairs. There was a series of other cases and there have been other newspaper reports, including in the house journal of the Conservative Party—the *Daily Mail*—that were very critical of the way that the court has operated. Indeed, last November, Sir Nicholas Wall, who heads the Court of Protection, called for it to be opened up to public scrutiny. It is fair to say that his principal concern was not so much the matters that I have been referring to but the delicate and difficult issues about making judgments on medical aspects and the degree to which these were at one time made in secret—certainly not in the full light of day. So, from a variety of perspectives, there are difficulties with that particular area of the court system.

In addition, the Government are abolishing the Public Guardian Board, which was established to have oversight over the operation of the Mental Capacity Act, and are replacing it with three people. Once again, because we have discussed this in the first part of the Bill in relation to the National Crime Agency, the Government are vesting a dual role in a single pair of hands. The public guardian is also to be the chief executive of the guardianship office. So there is no separation of powers; at the moment there is a Public Guardian Board, which is just about to come to an end, with an independent chairman and independent people serving on it. That will be replaced effectively by two people taking on this combined post of chief executive and public guardian—one will have IT experience and the other experience in the mental health field. That is not a satisfactory arrangement.

In her final report, the outgoing chairman has called on the Government to reform and streamline the lasting power of attorney process, which I have just mentioned, replace a creaking IT structure, as she puts it, develop relationships with stakeholders and appoint a powerful and independent champion for the Mental Capacity Act. I invite the Minister to say, not necessarily tonight because he has not had notice of this question, whether he will respond positively to those suggestions.

In addition to these particular problems, there is a major area of concern over access to justice in two senses. The first might be described as physical access, which for many people means local courts within a convenient distance. Many county and magistrates' courts have already closed, making it more difficult for parties and witnesses to attend. The Government need to ensure that, while they perfectly properly seek to reduce the cost of the system, they do not deter nor disadvantage those who need access to it. Bear in mind that they have already ignored Lord Justice Jackson's recommendation about allowing proceedings and money claims to be issued at a local court. The closure of courts makes any kind of access that much more difficult, unless you happen to live close to a building which has been retained.

In that context, it will be important to assess the impact of existing and any planned closures and staff reductions as well as the way in which allocations to local venues—which will happen under the Bill, but cases will be allocated to a local court— actually works. The Minister may have indicated to the noble Lord, Lord Elystan-Morgan, that at the moment no further closures are in the pipeline but perhaps he could indicate whether that can be reopened in the context of the next review of the national finances, when the Government are apparently looking for a further substantial tranche of savings.

Allied in part to this is the question to which the noble Baroness, Lady Seccombe, alluded in the Second Reading debate, the question of the lay magistracy. As I said at Second Reading, there are some feelings that there is an inexorable slide towards a paid judiciary in the lower courts and, where this displaces lay magistrates in criminal cases, criminal justice runs a risk of moving from involving trial by one's peers based in the community to a professional system less rooted in local communities. That is a questionable direction and perhaps the Minister could indicate whether the Government have any plans to continue this trend. The point of my amendment is to ensure that these matters are at least considered from time to time.

Then there is the impact on access to civil justice of the Legal Aid, Sentencing and Punishment of Offenders Act. With some 650,000 people being excluded from legal aid and advice, it will be essential to monitor the impact not only on those who need such advice and the organisations that the Government expect to take the strain, but on the courts and tribunals themselves. There will almost certainly be a substantial increase in the number of litigants in person, with all the difficulties that that can present to a tribunal—whether a court or an administrative tribunal—in managing and helping people through the process when they do not have the benefit of legal advice or assistance.

The Government also rely heavily on mediation and alternative dispute resolution as alternatives to litigation. However, as some of us said in the debates on the Legal Aid, Sentencing and Punishment of Offenders Act, these are by no means appropriate in all cases. It will be essential to assess their efficacy, which will depend on both the availability of suitably qualified personnel to conduct the processes and at least a rough equilibrium in the capacity, in all senses, of the parties. Again, it will be important to review and report on progress in these matters and how the new system is working, and to make changes if necessary.

The Government have also increased the financial limits in the small claims court and plan further increases in future. This potentially disadvantages claimants, who will be unable to recover their costs even when successful. Again, the impact of this policy, the prime beneficiaries of which will be insurance companies in personal injury cases and the like, will have to be assessed. The Government should commit themselves to a thorough review before any further increase to the small claims court limit is made, for which parliamentary approval should be sought.

Four years ago, in his report *Should the Civil Courts be Unified?*, Sir Henry Brooke rejected the notion of combining the High Court and county courts, which is not the proposition in the Bill, and did not even appear to call for a single county court, although we do not dissent from that proposition, provided that the mechanics of issue and venue are satisfactory. However, Sir Henry said that,

"we have been sleep-walking into a crisis, so far as civil justice is concerned".

This was under the previous Government; it is not a matter that has appeared overnight. He called for,

"a five-year strategy for reviving the civil justice system, to be implemented collaboratively by the judiciary, the Ministry of Justice and HM Courts Service".

I would add the Tribunals Service to that. Instead, we have a piecemeal approach that, moreover, does not at all ensure that the strategy includes, as Sir Henry recommended,

"adequate financing of the system on a long-term sustainable basis".

It is for this reason that I move the amendment, which is intended to ensure that the Government keep all these matters under review, together with all those affected by the provisions in the new legislation—within the service, those who use the service and those who practise in the service—from the judiciary to the individual applicant, appellant or litigant. In that way, the Government's aspirations can be better fulfilled. It is necessary to respond to changing circumstances, to be as economical as possible and, where possible, to reduce costs through better case-management and the like. However, it cannot be taken for granted that simply legislating in this way to create these new structures will achieve that objective. Therefore, the amendment is intended to create a framework within which the whole structure can be kept under comprehensive and regular review. I beg to move.

Baroness Butler-Sloss: My Lords, I am very relieved that the noble Lord, Lord Beecham, does not oppose the government proposal for a single family court. I agree to a considerable extent with what he said.

To take Amendment 68A, the single family court will implode the family proceedings court at the magistrates' level. The family proceedings court already takes a considerable burden of difficult family cases, both care cases and private law cases. The magistrates find that sometimes in the family proceedings court they have to sit for several consecutive days. In private law cases, families at odds with each other find it almost impossible to have their case dealt with to their satisfaction at one hearing. As a former president of the Family Division, my experience was that cases returned with monotonous regularity. I would be astonished if they returned with any less regularity to the magistrates' court, as they deal with a lot of quite difficult private law cases.

5.30 pm

Bearing in mind that legal aid will be removed from almost all private law disputes, other than domestic violence and one or two small matters, very much longer work will go on in the family proceedings court. As I understand it—certainly in the past and to some extent it may happen now—those who wish to sit in the family proceedings court are expected to carry their full share of the criminal courts, sitting in the criminal part of the magistrates' court. That means they are not necessarily available to sit on repeat hearings. One of the really important aspects of family proceedings is the continuity of the court. The judges at every level—district, circuit and High Court—try as hard as they can to keep the same judge if possible. Under the present system, where magistrates who are particularly good at family work find themselves having to sit in the criminal court, they might not be available for that necessary continuity. I am not suggesting that family proceedings magistrates should sit every day of the year, but in proportion to how they sit in the criminal court and family court, I would like very much greater flexibility. Where appropriate and when experienced, they should be able to spend their time sitting in the family proceedings court. The lack of legal aid will be a significant factor in the magistrates' family proceedings court, as I expect it will be in the district court.

I also very much support Amendment 68B. It would be very important to have a review of the provisions of the single family court, and I have no doubt that a review of the single county court will also be sensible. I am particularly concerned about the lack of legal aid at the single family court, with the impact on the family court at district, circuit and High Court judge levels. There will not only be problems with access to justice; perhaps more serious is the impact of longer cases. As I said at Second Reading, where litigants in person have lawyers, they can usually get the case tried quite quickly. If they do not have lawyers, it is impossible for a couple to settle their grievances—if they could have settled, they would not have come to court. The judge has great difficulty in getting them to settle and basically has to sit and hear the case. Therefore cases that would settle in half an hour are going to be heard for one or two days and sometimes longer. That is going to create an additional delay at several courts, particularly at the district judges' court.

It will have an impact in those courts where care cases are heard where, according to Norgrove and supported by the Government, they should begin and finish in six months. It is important that the effect of these various proposals should be reviewed by the Government, particularly on the legal aid aspect, in the next year to 18 months. Thereafter, however, looking at Amendment 68C, I wonder whether an annual basis might not be excessive, It is excessive in the sense that it will cost money and I would prefer to have it less frequently—every two or three years—but it should be in depth and action then taken by the Government of the day to improve what that report has said. I would not think that an annual basis was an entirely sensible proposal, but in principle I support these amendments.

Lord Ponsonby of Shulbrede: My Lords, I rise to support this group of amendments. Essentially, they are about monitoring the outcome of what has been the largest overhaul of the courts system for a long time. Many courts have closed and some have opened. Last Thursday, I went to the opening of the new Westminster Magistrates' Court by the Lord Chancellor. It is a magnificent building and I hope that it will be a centrepiece of London justice for the next 100 years. While this is set for London, over the whole country—including London—there have been many closures of smaller courts, which mean we are moving away from the principle of local justice which is administered locally. The reasons for these sweeping changes should be monitored and that is the main purpose of this group of amendments.

[Lord Ponsonby of Shulbrede]

I will now move to the idea of a single family court with a single point of entry. I understand that this change is generally welcomed by all those involved in the family court system. I will repeat a point that has been made before, that lay magistrates are looking for reassurance that they will continue to play an important part in the family proceedings courts. When I have raised this issue before, that reassurance has always been forthcoming from Ministers. I repeat that request today, although it will be in the details of the proceedings of the courts themselves—which I understand will be a separate Bill at a later stage—where the lay magistrates' concerns will be most likely to get their reassurance.

Amendment 68A states:

"There shall be no restriction on the number of days that a family magistrate may sit in the family proceedings court".

That is to meet the recommendation of the Norgrove report, as my noble friend Lord Beecham said. As the noble and learned Baroness, Lady Butler-Sloss, said, the main purpose is to increase flexibility and case continuity for repeat hearings. It is my understanding that it is for the Lord Chief Justice and Lord Chancellor to determine both the maximum and minimum amount of sittings by magistrates, and it is not a matter for primary legislation. I would argue that it is important that lay magistrates maintain their activities outside court and are not professionalised through excessive sitting. It is right that the route to appointment as a lay family magistrate is through the adult criminal lay Bench, as it is today. That should continue. I acknowledge that it is a conundrum to meet the needs which the noble and learned Baroness, Lady Butler-Sloss said, while at the same time maintaining a lay Bench which is genuinely lay.

There is an answer. These matters could be determined locally by bench chairmen and I understand that experienced family magistrates can choose to give up their adult criminal work, with the approval of their bench chairman. There are ways round these problems, which can be administered locally. The purpose of this group of amendments is to look at the many changes and be reassured that the Government want to review them, write reports about them and keep an open mind about what they are introducing. I wholly support this aim.

Lord McNally: My Lords, I am very grateful for the opportunity to discuss these proposals. I should put on the record that Manchester United is in the borough of Trafford. It is very dangerous for people such as the noble Lord, Lord Beecham, to wander west of the Pennines with football knowledge: they are just not up to it.

Lord Beecham: The noble Lord will acknowledge, and I am pleased to say, that sometimes it is very dangerous for Manchester United to venture to the north-east.

Lord McNally: I agree. The noble Lord kindly gave me a plank on which to walk to firmer ground. His points about the operations of the Court of Protection are wider than the scope of this Bill and it would be better if I write to him and put a copy in the Library of the House. This has been mainly a debate about the fundamental overhaul of the civil and family court system in England and Wales, which has the aim of providing an effective, proportionate and efficient system for resolving disputes.

With these principles in mind, Clause 17, as has been said, establishes a new single county court and a single family court for England and Wales. In January 2008, the Judicial Executive Board commissioned the former Lord Justice of Appeal, Sir Henry Brooke, to conduct an inquiry into civil court unification, and the noble Lord, Lord Beecham, quoted from Sir Henry's report. In that report, Sir Henry recommended that there should be consideration on the creation of a single national court.

Our proposals mean that a single court will provide a more efficient civil justice system where litigants can achieve a more efficient, proportionate and speedier resolution to their disputes. Access to justice will be increased as the single county court will enable Her Majesty's Courts and Tribunals Service to introduce more modern means for citizens to engage with courts in a cost-effective way. Court users in general will see a more responsive and consistent service through more effective use of information and communication technology, and the ability to centralise and standardise back office functions.

The noble Lord, Lord Beecham, mentioned the record of the business centre in Salford, which processes 1,800 claims every day. It does that within two to three days of their receipt. Some concerns have been raised but they are mainly as a result of bedding in a new service. The service is on a par with that previously experienced in the individual county courts.

Turning to the new family court, members of the public bringing family proceedings before the court rarely do so as a matter of choice. In many cases it is preferable for the parties and any children involved to be helped to resolve their differences outside the court arena. However, there are cases that are properly and appropriately brought to court for a judicial decision. The Government consider it is vital that individuals, many of whom are under stress when bringing family proceedings to court, are confronted with a system that is easier to use and access, and which provides swifter resolution of issues than is possible under the current court structure.

As your Lordships will be aware, the proposal to establish a single family court came from the independent review of the family justice system by a panel chaired by David Norgrove. A single family court will provide clarity and simplicity for the court user. It will increase accessibility to the court and reduce confusion. In particular, it will help those involved in family proceedings without representation who currently may be unsure whether their particular application should be made to a magistrates' court or a county court and, if so, which category of county court.

The creation of a single family court will allow cases to be allocated appropriately by a judicial gatekeeper on the issue of proceedings, as all judges and magistrates hearing family matters will be judges of the family court. That flexibility will benefit the court user as the early identification of the appropriate level of judiciary will minimise delay. As with the new county court, the

creation of the single family court will also lead to greater efficiencies in the use of administrative and judicial resources.

5.45 pm

Amendment 68A seeks to lift the restrictions on the number of days magistrates will be able to sit in the new family court. I note the points made by the noble Lords, Lord Beecham and Lord Ponsonby, and the noble and learned Baroness, Lady Butler-Sloss. First, perhaps I may give the noble Lord, Lord Ponsonby, the reassurance he seeks. I support the magistrates in the family proceedings court and elsewhere. I can assure your Lordships that there is no intention of using the creation of the single family court as a way of diminishing the role of magistrates in family proceedings. The purpose of these provisions is to create a more efficient and flexible system that is better able to respond to fluctuations in demand. The Government recognise the crucial and invaluable role that magistrates have to play in the family justice system and have no wish to undermine this.

Among the proposals by the Family Justice Review, judges and magistrates should be able to and encouraged to specialise in family matters. As part of this, the review recommended that the Judicial Office should revisit the restriction on magistrate sitting days. The Government accepted this recommendation and in our response to the review stated that,

"those willing to sit extra days to accommodate family cases should not be discouraged from doing so due to an arbitrary threshold".

In considering this, I will take back the points made by the noble Lord, Lord Ponsonby. The Government will work with the Judicial Office to look at the feasibility of making such changes. I am happy to keep the noble Lords informed of progress in this area. With that assurance, I hope that the noble Lord will feel happy to withdraw that amendment.

Amendment 68B would require the Secretary of State to conduct a review of the single county court and single family court, and to publish a report to Parliament within 18 months of commencement of these provisions. As the noble Lord, Lord Beecham, will be aware, the previous Administration introduced a system of post-legislative reviews of all government legislation. This is a valuable process and one that this Government have been happy to continue. Such reviews are conducted some three to five years after Royal Assent. Given this standing arrangement, I am not persuaded that we need to write a review mechanism into the Bill.

I can assure noble Lords that, in line with the standing arrangements for post-legislative scrutiny, we will be conducting a review of the new single county court and family court. Indeed, we included a commitment to this effect in the impact assessments which we have published alongside the Bill. These provide for a review to be carried out within five years. This timeframe will allow the new county and family courts to bed down and so enable the full benefits to be fully and properly evaluated. I put it to noble Lords that a review that starts just 12 months after commencement will be too soon to enable a proper evaluation to take place and to draw meaningful comparisons with the old arrangements. The longer timeframe we have in mind will enable appropriate statistical evidence to be compiled and the views of court users and others to be obtained based on a realistic period of operation under the new arrangements.

I am similarly not persuaded of the case for Amendment 68C. Under Section 1 of the Courts Act 2003, the Lord Chancellor is already under a general statutory duty to ensure that there is an efficient and effective system to support the carrying on of business in the courts and to report annually to Parliament on the discharge of this duty. Moreover, both Her Majesty's Courts and Tribunals Service and the Office of the Public Guardian publish annual reports. As the noble and learned Baroness, Lady Butler-Sloss, pointed out, imposing a requirement for an annual review would be excessive and unnecessary. I would be interested to know whether the noble Lord has put a cost on such annual reviews.

I was very pleased the noble Lord, Lord Beecham, said that he would not press his opposition to Clause 17 standing part of the Bill, and that there is general support around the House for these reforms. Now is the time to let them go forward and bed in. I take the point made about the magistracy, which I strongly endorse. In those circumstances, I hope that the noble Lord will be able to withdraw his amendment.

Lord Beecham: I am grateful to the Minister for his reply. In particular I welcome his response to limits on the time magistrates might sit in the family court. I also take the point made by the noble and learned Baroness, Lady Butler-Sloss, that an annual review, as called for in the amendment, is perhaps too frequent. However, I do not agree that it is simply good enough to rely on the present system with the Lord Chancellor reporting and then the other courts reporting separately. We need a comprehensive periodic review—I accept that annually may be too frequent—to look at how the whole system is working particularly in the light of other legislative changes, notably the Legal Aid Act, which is clearly going to impinge very substantially on the way the courts work. I do not think a review after five years, or even three, is adequate to assess how things are going, given the scale of the changes and the potential implications for parties and indeed the system itself. However, a periodic review perhaps less frequently than one year but more frequently than currently occurs across the whole system is required so that we can look at the effect of change—these statutory changes and others outside the province of the legislature—on society itself and whether it is adequately dealt with by the different parts of what is, after all, supposed to be effectively a single system which ought not to be too difficult for people to navigate.

In the circumstances, I will not press these amendments today but I am likely to return at least to the question of a comprehensive review, albeit perhaps on a different time basis, when we come to Report. At this stage, I beg leave to withdraw.

Amendment 68A withdrawn.

Clause 17 agreed.

Amendments 68B and 68C not moved.

Amendment 68D

Moved by ***Lord Beecham***

68D: After Clause 17, insert the following new Clause—

"Provision of information service for court users

An adequate information service must be provided for court users at each county court, which may be provided in partnership with a voluntary organisation."

Lord Beecham: My Lords, this is a relatively simple amendment. It arises from discussions with citizens advice bureaux nationally which have pointed out that the practice of there being reception staff at county courts has lapsed in many places. I understand that in many courts there is staffing available for only two hours a day. In some courts there is no staffing at all now. Given the changes in the legal aid and advice system increasingly people are going to be finding their own way, unsupported, to the courts and will find little or no help or advice available. The purpose of this amendment is simply to endeavour to require that there should be an information service accessible to people at the courts, not necessarily provided by the courts. Citizens advice bureaux and possibly other agencies might well be interested in undertaking this responsibility It is surely important, particularly for those who find the whole process of litigation difficult, as many do, to have accessible advice at the point where it is most needed—that is, at the court door, as it were. I hope that the Government will look at ways in which this might be achieved, particularly involving the voluntary sector. It would ultimately assist the efficiency of the courts because otherwise, I suspect, we are going to get increasing problems, as I have already indicated, from the number of litigants in person. At least if litigants in person can receive some advice at the outset, it might ultimately repay itself in financial and other terms quite profoundly with a reduced impact on more expensive court time, which is better deployed in determining cases. I beg to move.

Lord Woolf: My Lords, I hope that what the noble Lord, Lord Beecham, is proposing here is given most careful consideration. In order to obtain what we all want—access to justice for the citizen—information is critical. In *Access to Justice*, for which I was responsible many years ago, I hoped that we would one day reach the situation where the courts' role changed from what it had been in the past. In the past, its purpose was to respond to the litigant's activities and not to be proactive. I urged that the courts should become proactive and the citizen who come to the court shall receive not only the judgment, which sometimes they would be looking for, but also guidance as to the most economic and efficient way of resolving their dispute. Information provided as envisaged by the noble Lord, Lord Beecham, could play a critical role in this respect. Commendably, following *Access to Justice*, some courts provided very good services of this nature. It is very easy, when one is forced to make the economies that the Lord Chancellor is forced to make, perhaps not immediately recognise that although the service is a modest one it pays for itself over and again. It is important to the possible litigant seeking from the court general guidance on the resolution of their dispute. I hope what the noble Lord, Lord Beecham, has proposed will be taken away and considered very carefully and sympathetically.

Lord McNally: My Lords, the proposal of the noble Lord, Lord Beecham, is very much in line with what we are trying to do but I cannot believe that it is necessary to have a statutory duty. We went through some of this in the LASPO Bill. I think that sometimes noble Lords do not accept just how much these days people get their information via the telephone and the internet, and from well-prepared, well-produced literature. There is a role for the voluntary sector and certainly we will be willing to explore with it the role it can play. However, surveys we have carried out show that only a small minority of attendees at court counters were there to seek information. Overwhelmingly, people get their information through well-produced literature, the telephone and the internet. Part of the thrust of the reforms we are carrying through at the MoJ is to make sure that our online services are as full as possible with information and guidance to steer people through the processes.

Yes, it is quite true that places such as the CABs can play an important part in being the first point of contact to help people to go online and make the right phone call. Certainly, as I said, we would be willing to talk to third sector advice agencies. Indeed, the MoJ and the court services already provide some grants to those organisations for that purpose. I recognise the importance of ensuring that information is widely available without requiring citizens to travel to their local hearing centre to find it. Her Majesty's Courts and Tribunals Service already provides a wide variety of information to users and does so through a number of different channels, including websites, telephone and at court counters. In doing so, we already routinely work with third sector organisations. To keep pace with how citizens access information, and in keeping with other public services, we believe it is more appropriate to focus resources on providing information through online and telephone services so we can better serve the population as a whole to gain access to information from anywhere at any time. Equally, when people attend court, they will continue to have the information that they need to use our services effectively. With the assurance that county court users will continue, as now, to be provided with appropriate information, I hope that the noble Lord will be willing to withdraw his amendment.

6 pm

Lord Beecham: It is certainly possible to underestimate the degree to which people access online services, but it is equally possible to overestimate the willingness and capacity of people to use such services or, for that matter, the adequacy of the services themselves. In endeavouring to prepare for today's debate, for example, I went on to the MoJ website to track down documents referred to by the Minister, Mr Djanogly. I simply could not do that. It might well have been me, but it also might have been the MoJ. I cannot believe that it is universally the case that people, particularly people in sometimes difficult and distressing circumstances, which is why they are going to court in the first place, will necessarily be able to find information easily.

I know that the Minister is well intentioned in this, but it would be helpful if he could indicate whether, by the time we get to Report—after all, with the Summer

Recess, it will be some months before we do that—he would endeavour to have these discussions with the third sector and indicate an outcome. At that point, it may not be necessary to press the matter further, but I would like something a little more concrete than good will before abandoning the proposal, for which I am very glad to have received the support of the noble and learned Lord, Lord Woolf.

Lord McNally: The noble Lord said that some in the voluntary sector had said to him that they had ideas. Short of committing money, I am very willing to talk to them about this issue, and we can look at it and report back at Report—perhaps not with an amendment from him. My good will is certainly there, but I believe that with understandable websites, the telephone and the use of the voluntary sector we can meet his concerns.

Lord Beecham: I am grateful for that assurance. I know that the Minister is sympathetic to the objective, if not necessarily the means. I hope that he can have some discussions with the sector and resolve matters, but I shall reserve my position until then. I beg leave to withdraw the amendment.

Amendment 68D withdrawn.

Schedule 9 : Single county court in England and Wales

Amendment 69

Moved by ***Lord McNally***

69: Schedule 9, page 99, line 10, leave out "chairmen of employment tribunals" and insert "Employment Judges"

Lord McNally: My Lords, wearing another hat, I am a member of the public business committee that guides public business through both Houses. That business committee usually takes the strongest possible exception to any government department in any Bill where a large number of government drafting amendments appear on the order paper. So I am a little bit embarrassed to be moving this amendment, although I am assured by those who advise me that the amendments are entirely necessarily.

The amendments cover a number of pages in the Marshalled List, but they are technical in nature. They include a number of minor or consequential amendments to take account of the creation of the single county court and single family court. With the creation of the single county court, the 170 existing county courts will cease to exist as separate courts or jurisdictions but will remain as hearing centres with court offices attached to them. Perhaps I can use this opportunity to answer a point made in an earlier debate. No, there is no secret hit list behind this legislation in creating the two single courts. But what is left are numerous statutory references to "a county court", which now need throughout the legislation to be amended to "the county court."

However, some provisions require more than merely substituting one word for another. In some cases, the relevant provisions extend to other jurisdictions, most notably Scotland and Northern Ireland. Accordingly, although still consequential, some amendments require further work to ensure that they have effect only in England and Wales. In other cases, when certain proceedings are required to be undertaken in a county court in a particular district, it has been necessary to amend those provisions to reflect the fact that there will now be only one county court with a general jurisdiction. In future and where necessary, specialist jurisdiction will be conferred on particular hearing centres by secondary legislation.

Amendments 71 and 72 clarify the rules designed to prevent any conflict of interest by part-time judges in the county court. The amendments provide that a part-time judge in the county court may not act as a judge in relation to any proceedings in the court in which he or she, or anyone with whom the judge is in practice, is directly or indirectly engaged as a legal representative. The amendments are needed in light of the expanding number of business entities within which solicitors may now work following the enactment of the Legal Services Act 2007. Amendments 80 to 82 introduce parallel provisions for the family court. As with the single county court, the amendments to the family court provisions are also largely minor and consequential. These amendments take account of the creation of a single family court from the existing three levels of court which currently deal with family proceedings in England and Wales.

As I am sure your Lordships will appreciate, the process of creating a new court necessitates a plethora of consequential amendments to various enactments. The majority of the amendments in this group are intended to ensure that the family court has the same jurisdiction as the courts that currently deal with family proceedings. This process involves, among other things, substituting numerous references across many different Acts to the "magistrates' court" for the "family court".

I should draw to the Committee's attention one particular amendment relating to the family court. Amendment 83 removes the provision in new Section 31D of the Matrimonial and Family Proceedings Act 1984, which, by applying Part 1 of Schedule 1 to the Constitutional Reform Act 2005, gave the Lord Chancellor the power to require the Lord Chief Justice to make rules on the composition of the family court and the distribution of business among the judges within the family court. On further consideration, we have accepted that this power is unnecessary as the Lord Chief Justice will, regardless of this power, need to make rules to ensure the practical and efficient implementation of the single family court. As a result, we accept that there will be no need for any direction from the Lord Chancellor for him to do so.

There is also one final set of amendments in this group to which I should draw the Committee's attention. Amendments 69, 70, 78, 79, 134, 136, 141, 142, 143, 144 and 146 all make consequential amendments to various enactments as a consequence of the renaming of chairmen of employment tribunals as employment judges. These amendments simply ensure that the relevant legislation reflect the new nomenclature. As I indicated in my opening remarks, I appreciate that there are quite a few pages of amendments in this group. But as I have tried to explain, they are overwhelmingly of a

[LORD MCNALLY]
technical nature. I would, of course, be happy to explain particular amendments in further detail if necessary, but for now I would simply move Amendment 69.

Lord Beecham: My Lords, I am grateful to the Minister for giving us a quick guide through this jungle of amendments, about which I have nothing to say except that I note that the inflation of nomenclature is even greater than RPI: everybody now ends up as a judge, which I am sure is a great consolation to the legal profession. Clearly, these are technical and useful amendments and they should certainly stand.

Amendment 69 agreed.

Amendments 70 to 77

Moved by ***Lord McNally***

70: Schedule 9, page 99, line 11, after "Wales" insert "or for Scotland"

71: Schedule 9, page 100, line 1, leave out from "(1)" to end of line 3 and insert "(officer of a county court and officer's firm not to be engaged as representative in any proceedings in that court, subject to exception in subsection (4) for deputy district judges)—

(a) for the words from the beginning to "be" substitute—

"A fee-paid part-time judge of the county court may not act as a judge of the court in relation to any proceedings in the court in which—

(a) the judge,

(b) a partner or employer of the judge,

(c) a body of which the judge is a member or officer, or

(d) a body of whose governing body the judge is a member,

is", and

(b) omit "in any proceedings in that court"."

72: Schedule 9, page 100, line 5, leave out sub-paragraph (4) and insert—

"(4) Omit subsection (4) (provision about deputy district judges which is incorporated in the amended subsection (1))."

73: Schedule 9, page 106, line 4, at end insert—

"( ) In section 125(1) (execution of warrants) for "a court" substitute "the court"."

74: Schedule 9, page 110, line 1, at end insert ", and

(b) for "county court rules" substitute "rules of court"."

75: Schedule 9, page 114, line 17, at end insert—

"Part 2A

Further amendments

Amendment of references to "a county court"

51A (1) In the provisions listed in sub-paragraph (2) (but subject to any specific amendments made by or under this Act)—

(a) for "A county court", in each place, substitute "The county court", and

(b) for "a county court", in each place, substitute "the county court".

(2) The provisions are—

Access to Health Records Act 1990: section 8(5),

Access to Justice Act 1999: sections 17, 17A, 21 and 54 to 57,

Access to Medical Records Act 1988: section 8(2),

Access to Neighbouring Land Act 1992: section 8(3),

Administration of Justice (Miscellaneous Provisions) Act 1933: section 7(2),

Administration of Justice Act 1960: sections 12 and 13,

Administration of Justice Act 1970: section 11(b) in the words before sub-paragraph (i), and section 41(3),

Administration of Justice Act 1977: section 23(4)(a),

Administration of Justice Act 1982: section 38,

Administration of Justice Act 1985: section 53(2)(c),

Anti-social Behaviour Act 2003: sections 13 and 26A to 28,

Charging Orders Act 1979: sections 1(1), (2)(c) and (d) and (6), 3(4A)(a) and 6(2),

Charities Act 1992: section 58(1),

Civil Jurisdiction and Judgments Act 1982: section 18(4A)(a),

Commonhold and Leasehold Reform Act 2002: sections 66(1) and 107(1),

Commons Act 2006: sections 34(5) and 46(7)(a),

Companies Act 2006: section 1183,

Communications Act 2003: section 124Q(7)(a),

Compensation Act 2006: section 8(2),

Contempt of Court Act 1981: section 14 (but not in its application to Northern Ireland as set out in Schedule 4 to that Act),

Crime and Disorder Act 1998: sections 1B(1) and 10,

Criminal Justice Act 2003: section 329(8)(c),

Data Protection Act 1998: section 55D(2)(a),

Education Act 1996: section 336(2)(g),

Education and Skills Act 2008: sections 56(5), 57(2), 58(4)(b), 59(4) and 65(3),

Electricity Act 1989: sections 39B(4)(a) and 44A(6)(b)(i),

Employment Rights Act 1996: sections 110(6)(a), 194(4) and 195(4),

Employment Tribunals Act 1996: sections 7(3)(e)(i), 13(1C), 15(1) and 19A,

Environmental Protection Act 1990: section 78P(8),

Equality Act 2006: sections 21(7)(b), 22(6), 24 and 32(9)(b), and paragraphs 11 and 12(2) of Schedule 2,

Equality Act 2010: sections 114(1), 119(1), 120(6), 124(6), 127(9), 138(8), 140(6) and 143(1), paragraph 12(5) of Schedule 20 and paragraphs 4(2) and 5(7) of Schedule 21,

Finance Act 2003: paragraph 5(1)(a) of Schedule 12, and the first "a county court" in paragraph 5(3)(a) of that Schedule,

Financial Services and Markets Act 2000: paragraphs 16(a) and 16D(a) of Schedule 17,

Gas Act 1986: sections 15A(6)(b), 27A(9)(b) and 33AB(4)(a),

Health and Social Care (Community Health and Standards) Act 2003: section 155(7),

Highways Act 1980: sections 79(8) and (13) and 308,

Horserace Betting and Olympic Lottery Act 2004: section 9(6),

Housing Act 1980: section 86(1),

Housing Act 1985: sections 82A(2), 110(1), 181(1) and 272(5), and paragraph 6(5) of Schedule 18,

Housing Act 1988: sections 6A(2) and 40(1) and (3), and section 40(4) until its repeal by the Courts and Legal Services Act 1990 is fully in force,

Housing Act 1996: sections 95, 138(1), 153E(6), 154(1), 155(6), 157(1) and 203(5),

Housing Act 2004: sections 214(1) and 215(2A), and paragraphs 5(3)(a) and 13 of Schedule 13,

Immigration and Asylum Act 1999: section 43(2)(a),

Immigration, Asylum and Nationality Act 2006: section 17(6)(a),

Industrial and Provident Societies Act 1965: section 60(8)(a),

Insolvency Act 1986: sections 196(a), 373(2), 375 and 429(1),

Land Registration Act 2002: sections 75(4), 76(5) and 132(3)(a),

Landlord and Tenant (Covenants) Act 1995: sections 8(4) and 10(4),

Landlord and Tenant (War Damage) Act 1939: section 23(1),

Landlord and Tenant Act 1954: section 63(2) and (9),

Landlord and Tenant Act 1985: section 20C(2), and paragraph 8(2) of the Schedule,

Landlord and Tenant Act 1987: sections 52(1) and (3) and 60(1), and paragraphs 4(3) and 9(3) of Schedule 1, and section 52(4) until its repeal by the Courts and Legal Services Act 1990 is fully in force,

Learning and Skills Act 2000: section 145(5),

Leasehold Reform, Housing and Urban Development Act 1993: sections 90, 93(3) and 101(1), paragraph 4(3) of Schedule 8 and paragraph 4 of Schedule 14,

Legal Aid, Sentencing and Punishment of Offenders Act 2012: sections 24(3)(b) and 36(5), paragraph 5 of Part 3 of Schedule 1 and paragraph 2(3) of Schedule 2,

Legal Services Act 2007: section 141(7),

Local Government Act 1972: section 146(3),

Local Government Act 2000: section 77(6)(e),

Local Government Finance Act 1992: paragraph 11(4) of Schedule 4,

Local Land Charges Act 1975: section 10(8),

Localism Act 2011: section 159(5),

London Building Acts (Amendment) Act 1939 (c. xcvii): sections 103 and 143, and entry (xxxiv) in the table in section 148(2),

London County Council (General Powers) Act 1955 (c. xxix): section 7(4),

Magistrates' Courts Act 1980: sections 87(1) and 111A(3)(a),

Mental Health Act 1983: section 31,

Mines and Quarries (Tips) Act 1969: section 28,

National Health Service Act 2006: sections 90(5), 94(3)(h), 105(5), 109(3)(h), 122(5) and 139(8), and paragraph 3(3)(j) of Schedule 12,

National Health Service (Wales) Act 2006: sections 48(5), 52(3)(h), 62(5), 66(3)(h) and 97(8), and paragraph 3(3)(j) of Schedule 7,

National Minimum Wage Act 1998: sections 19E(a), 38(2) and 39(2),

Patents Act 1977: sections 41(9), 61(7)(a), 93(a) and 107(2),

Pension Schemes Act 1993: sections 53(1B)(a), 115(6)(a), 150(8)(a) and 151(5)(a),

Pensions Act 1995: section 10(8A)(a),

Pensions Act 2004: sections 103(9)(a), 217(2)(a) and 218(5)(a),

Pensions Act 2008: section 42(2),

Planning Act 2008: section 171(4), and paragraph 24 of Schedule 12,

Policing and Crime Act 2009: section 49(1), and paragraph 1(9) of Schedule 5A,

Protection from Harassment Act 1997: section 3A(2),

Rent (Agriculture) Act 1976: section 26,

Rent Act 1977: sections 96(3), 132(6) and 141,

Representation of the People Act 1983: sections 78(4), 86(1)(c) and 167(1), and rule 56(1), (4) and (5)(a) of Schedule 1, with a view to the inserted references to the county court including (as in other places in that Act) a county court in Northern Ireland,

Representation of the People Act 1983: section 167(3), and paragraph 9 of Schedule 4,

Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951: section 2(1),

Senior Courts Act 1981: section 29(4),

Social Security (Recovery of Benefits) Act 1997: section 7(4),

Social Security Act 1989: paragraph 9 of Schedule 5,

Social Security Administration Act 1992: sections 71ZE(1) and 126(3)(a),

Social Security Contributions and Benefits Act 1992: section 12(7),

Solicitors Act 1974: sections 61(6), 68(2), 69(3) and 74(3),

Trade Union and Labour Relations (Consolidation) Act 1992: section 277(3), and paragraphs 19E(5), 28(6) and 120(6) of Schedule A1,

Tribunals, Courts and Enforcement Act 2007: sections 27(1)(a) and 78(3), section 92(1) (in the inserted section 15D(3)), section 93(2) (in the inserted section 1(6)), section 93(3) (in the inserted section 3(4A)(a)), sections 93(6), 95(1), 104(2), 115 to 118, 119(1)(b), 122(2) and 123(1), paragraph 12(2)(b) of Schedule 5, paragraphs 3(1), 60(8) and 66(4) of Schedule 12, paragraphs 77 and 79(2)(a) of Schedule 13 (in the quoted or inserted text), paragraphs 2(2), 5, 7, 10, 18 and 21 of Schedule 15 (in the inserted text) and paragraph 3(2) of Schedule 16 (in the inserted section 429(1)),

Trusts of Land and Appointment of Trustees Act 1996: section 23(3),

Violent Crime Reduction Act 2006: section 4(1),

Water Industry Act 1991: sections 30A(5), 51B(5) and 150A(6), and

Welfare Reform Act 2012: section 105(1) (in the inserted section 71ZE(1)).

Amendments of other references

51B In section 7(1) of the Access to Neighbouring Land Act 1992 for "the county courts" substitute "the county court".

51C In section 40 of the Administration of Justice Act 1956 for "a county court", and for "that county court", substitute "the county court".

51D In section 26 of the Administration of Justice 1964 (Inner and Middle Temples in City of London for certain purposes including the law relating to county courts) omit "county courts,".

51E In section 96(1) of the Agricultural Holdings Act 1986 omit the definition of "county court".

51F In section 18(5) of the Agricultural Marketing Act 1958 omit the words from "within the district" to "may be brought".

51G In section 5 of the Agriculture (Miscellaneous Provisions) Act 1954—

(a) in subsections (2) and (3) for "county court rules" substitute "rules of court", and

(b) omit subsection (4) (powers of district judge).

51H In section 6 of the Allotments Act 1922 for "the judge of the county court having jurisdiction in the place where the land is situated", and for "a county court", substitute "the county court".

51I (1) In section 82(1) of the Arbitration Act 1996, in the definition of "legal proceedings", after "civil proceedings" insert "in England and Wales in the High Court or the county court or in Northern Ireland".

(2) In section 105 of that Act—

(a) in subsection (1) after ""the court"" insert "in relation to England and Wales means the High Court or the county court and in relation to Northern Ireland",

(b) in subsection (2) before paragraph (a) insert—

"(za) allocating proceedings under this Act in England and Wales to the High Court or the county court;",

(c) in subsection (2)(a) after "this Act" insert "in Northern Ireland",

(d) in subsection (2)(b) after "or in" insert "the county court or (as the case may be)",

(e) in the first sentence in subsection (3) after "a county court" insert "in Northern Ireland", and

(f) in the second sentence in subsection (3) omit "England and Wales or, as the case may be,".

51J In section 22(6) of the Architects Act 1997 (appeals) after "appeal" insert "in England and Wales to the county court or, in Northern Ireland,".

51K In section 17(6) of the Audit Commission Act 1998 for "the county courts" substitute "the county court".

51L In section 5(1) of the Caravan Sites Act 1968 (meaning of "the court") omit the words from "and any powers" to the end.

51M In the Chancel Repairs Act 1932—

(a) in section 3(1)—

(i) omit "for the district in which the chancel is situate", and

(ii) for "a county court" substitute "the county court",

(b) in section 3(3)—

(i) for "a judge of county courts" substitute "the county court", and

(ii) for "the judge" substitute "the court", and

(c) in section 4(1) for "county court rules" substitute "rules of court".

51N In sections 10(7), 29(4) and 29A(1) of the Chiropractors Act 1994—

(a) after "appeal" insert "in England and Wales to the county court or in Northern Ireland", and

(b) before "the sheriff" insert "to".

51O In section 18(2)(b) of the Civil Jurisdiction and Judgments Act 1982 for "or", in the second place, substitute "in the High Court or the county court or in".

51P In the Civil Procedure Act 1997—

(a) in sections 1(1)(c) and 2(2)(e) and (f) for "county courts" substitute "the county court", and

(b) in Schedule 1 (civil procedure rules)—

(i) in paragraph 3(1)(b) for "between county courts" substitute "within the county court", and

(ii) in paragraph 3(2)(a)(ii) for "by another county court" substitute "elsewhere within the county court".

51Q In section 25(5)(c) of the Commissioners for Revenue and Customs Act 2005, in the definition of "legal proceedings", after "civil proceedings" insert "in England and Wales in the county court or in Northern Ireland".

51R In paragraph 11 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for "a county court", and for "such a court", substitute "the county court".

51S In section 41(1) of the Commons Act 2006 omit "in whose area the land is situated".

51T In section 2(7) of the Contracts (Rights of Third Parties) Act 1999 after "exercisable" insert "in England and Wales by both the High Court and the county court and in Northern Ireland".

51U In sections 115(1), 205(1) and 232(1) of the Copyright, Designs and Patents Act 1988 for ",Wales and" substitute "and Wales the county court and in".

51V In section 8(4) of the Coroners and Justice Act 2009 for "county courts" substitute "county court".

51W In section 30 of the Courts Act 1971 for "county courts" substitute "the county court".

51X In section 1B(5) of the Crime and Disorder Act 1998 for "which made an order under this section for it" substitute "for an order made under this section".

51Y In section 10(1) of the Criminal Law Act 1977 for "by any" substitute "the".

51Z In section 15(1) of the Data Protection Act 1998 after "exercisable" insert "in England and Wales by the High Court or the county court or, in Northern Ireland,".

51AA In section 5 of the Debtors Act 1869—

(a) in paragraph (a) of proviso (1) for "or his deputy" substitute "of the court",

(b) for "any county court" substitute "the county court", and

(c) for "other than a" substitute "other than the".

51AB In the Deeds of Arrangement Act 1914—

(a) in section 10(1) for the words after "copy of the deed to the" substitute "county court.",

(b) in section 10(2) omit "the registrar of", and

(c) in section 16 for "a county court" substitute "the county court".

51AC In section 8 of the Disused Burial Grounds (Amendment) Act 1981—

(a) omit "in whose district the land is situated who", and

(b) omit the words after "costs of the application".

51AD In the Enterprise Act 2002—

(a) in section 16(6) after "High Court" insert "or the county court",

(b) in section 215(5)(a) omit "England and Wales or",

(c) in section 215(5) before paragraph (a) insert—

"(za) the High Court or the county court if the person against whom the order is sought carries on business or has a place of business in England and Wales;", and

(d) in paragraph 25(a) of Schedule 4 for "a county court in England and Wales or" substitute "the county court in England and Wales or the High Court or a county court in".

51AE In the Estate Agents Act 1979—

(a) in the definition of "court" in section 11A(4) omit "England and Wales and" and before paragraph (a) insert—

"(za) in England and Wales, the High Court or the county court;", and

(b) in paragraph 6(1) of Schedule 4 after "appeal" insert "in England and Wales to the county court or, in Northern Ireland,".

51AF In section 133(8)(a) of the Financial Services and Markets Act 2000 before "as if" insert "in England and Wales, as if it were an order of the county court or, in Northern Ireland,".

51AG (1) In section 22 of the Friendly Societies Act 1974 after subsection (2) insert—

"(2A) In the application of subsection (2) to England and Wales, for the words "for the district in which the member resides" there shall be substituted "if the member resides in England and Wales".

(2) In section 80(2)(b) of that Act after "brought" insert "in England and Wales in the county court or, in Northern Ireland,".

(3) In section 93(3) of that Act—

(a) for the words from "make an application—" to the end of paragraph (a) substitute "make an application to the county court in England and Wales if the chief or any other place of business of that society or branch is situated in England and Wales or may make an application—", and

(b) for "such application" substitute "application under this subsection".

51AH (1) In section 82(4) of the Friendly Societies Act 1992 after "brought" insert "in England and Wales in the county court or, in Northern Ireland,".

(2) In section 119(1) of that Act in the definition of "the court" for "Wales or" substitute "Wales, the county court;

(aa) in the case of a body whose registered office is situated in".

51AI (1) In section 48 of the Government Annuities Act 1929 after subsection (2) insert—

"(2A) For the purposes of this section, England and Wales is to be treated as the district of the county court in England and Wales."

(2) In section 61(1) of that Act after "a county court" insert "in Northern Ireland or the county court in England and Wales".

51AJ Omit section 59(4) of the Highways Act 1980 and, in consequence, omit paragraph 8(2) of Schedule 3 to the Administration of Justice Act 1982.

51AK In paragraph 6(2) of Schedule 18 to the Housing Act 1985 for "a county court judge", and for "the county court judge", substitute "a judge of the county court".

51AL In paragraph 13 of Schedule 13 to the Housing Act 2004 for "such a" substitute "that".

51AM In the Immigration and Asylum Act 1999—

(a) in section 25(5)(a) after "granted" insert "in England and Wales by the county court or in Northern Ireland",

(b) in section 43(3)(a) after "a county court" insert "in Northern Ireland, or the county court in England and Wales,", and

(c) in sections 89(7), 92(1) and 112(4) after "a county court" insert "in Northern Ireland or the county court in England and Wales".

51AN In section 42(3)(b) of the Industrial and Provident Societies Act 1965 for "that county court or" substitute "the county court or that".

51AO In section 25(1) of the Inheritance (Provision for Family and Dependants) Act 1975 in the definition of "the court"—

(a) for "a county" in both places substitute "the county", and

(b) for "22 of this Act" substitute "25 of the County Courts Act 1984".

51AP In the Insolvency Act 1986—

(a) in section 117(2) (county court winding-up jurisdiction)—

(i) for "the amount of a company's" substitute "in the case of a company registered in England and Wales the amount of its", and

(ii) omit "of the district in which the company's registered office is situated",

(b) omit section 117(4) and (6),

(c) in section 197(1)(a) for "a specified" substitute "the",

(d) in section 373(1) for "county courts" substitute "county court",

(e) in section 373(3)(a) for "Central London County Court" substitute "county court",

(f) in section 373(3)(b) (jurisdiction in relation to insolvent individuals)—

(i) for "each" substitute "the", and

(ii) for "the insolvency district of that court" substitute "any other insolvency district",

(g) in section 374(1) for the words from "of each" to the end substitute ", or districts, of the county court.",

(h) in section 399(3) for the words from "a county court" to the end substitute "the county court.",

(i) in section 399(5)—

(i) for the words from "each" to "Parts" substitute "the county court", and

(ii) for "two or more different" substitute "both",

(j) in section 399(6) for "another" substitute "the other",

(k) for section 413(3)(d) substitute—

"(d) a district judge;", and

(l) in paragraph 2 of Schedule 9—

(i) omit "or a registrar of a county court having jurisdiction for the purposes of those Parts", and

(ii) omit "or, as the case may be, that county court".

51AQ In Schedule 1 to the Interpretation Act 1978, in paragraph (a) of the definition of "County court", for "a court held for a district under" substitute "the county court established under section A1 of".

51AR In section 26(7)(g) of the Judicial Retirement and Pensions Act 1993 omit "in the county courts".

51AS In the Juries Act 1974—

(a) in sections 1(1), 2(1) and 12(6) for "county courts" substitute "the county court", and

(b) in section 7 for "any county", and in sections 17(2) and 23(2) for "a county", substitute "the county".

51AT In section 1(6A) of the Land Charges Act 1972 for "county courts" substitute "county court".

51AU In section 10 of the Landlord and Tenant (Requisitioned Land) Act 1942, and in section 2(2) of the Landlord and Tenant (Requisitioned Land) Act 1944, after "exercised" insert "in England and Wales by the county court and in Northern Ireland".

51AV In paragraph 4 of Schedule 2 to the Leasehold Reform Act 1967—

(a) omit "making the order or another county court", and

(b) for "county courts" substitute "the county court".

51AW In paragraph 4 of Schedule 14 to the Leasehold Reform, Housing and Urban Development Act 1993 omit "or another county court".

51AX In section 194(10) of the Legal Services Act 2007 in the definition of "civil court" as originally enacted and as substituted by section 61 of the Legal Aid, Sentencing and Punishment of Offenders Act 2007 for "any county" substitute "the county".

51AY In section 35(3) of the Limitation Act 1980 for "any county" substitute "the county".

51AZ In paragraph (a) of the second sentence in section 1(1) of the Litigants in Person (Costs and Expenses) Act 1975 before "in a county court" insert "in England and Wales in the county court or in Northern Ireland".

51BA In sections 62(1) and 87(2) of the Local Government Act 1948 omit "for the county court district in which the property in question is situated".

51BB In the London Building Acts (Amendment) Act 1939 (c. xcvii)—

(a) in section 103(2) for "such court", in both places, substitute "that court", and

(b) in section 107(1) omit "of the district in which the premises are situate".

51BC In Schedule 1 to the London Local Authorities Act 1996 (c. ix)—

(a) in paragraph 9(1) for "if a county" substitute "if the county",

(b) in paragraph 10(1)(a) for "a county" substitute "the county", and

(c) in paragraph 10(1)(c) omit "which made the order".

51BD In section 64(2)(b) of the London Local Authorities Act 2007 (c. ii) for "if a county" substitute "if the county".

51BE In paragraph 7 of Schedule 1 to the London Local Authorities and Transport for London Act 2003 (c. iii) until its repeal by the Traffic Management Act 2004 is fully in force—

(a) in sub-paragraph (1)(c) omit "which made the order",

(b) in sub-paragraph (5) for "a district judge" substitute "the county court",

(c) in sub-paragraphs (6), (7) and (8)(d) for "district judge" substitute "county court", and

(d) in sub-paragraph (7) for "he" substitute "the court".

51BF In section 25 of the London Overground Wires &c. Act 1933 (c. xliv) for "any county court having otherwise jurisdiction in the matter" substitute "the county court".

51BG In paragraph 8(3) of Schedule 3B to the Medical Act 1983 after "made" insert "in England and Wales to the county court or, in Northern Ireland,".

51BH In paragraph 28 of Schedule 3 to the Medicines Act 1968 after sub-paragraph (2) insert—

"(2A) For the purposes of this paragraph, England and Wales is to be treated as the district of the county court in England and Wales."

51BI In section 31 of the Mental Health Act 1983 for "County court rules" substitute "rules of court".

51BJ In section 5(1) of the Mobile Homes Act 1983, in paragraph (a) of the definition of "the court", omit "for the district in which the protected site is situated".

51BK In section 73 of the Offices, Shops and Railway Premises Act 1963—

(a) in subsections (1) and (2) for "county court within whose jurisdiction the premises are situate" substitute "court", and

(b) for subsection (3) substitute—

"(3) In subsections (1) and (2) "the court", in relation to any premises, means—

(a) the county court if the premises are in England and Wales, or

(b) if the premises are in Scotland, the sheriff within whose jurisdiction the premises are situate."

51BL In section 4(2) of the Open Spaces Act 1906 after "shall" insert "in England and Wales be either the High Court or the county court and, in Northern Ireland, shall".

51BM In sections 10(7), 29(4) and 29A(1) of the Osteopaths Act 1993—

(a) after "may appeal" insert "in England and Wales to the county court or in Northern Ireland", and

(b) before "the sheriff" insert "to".

51BN In paragraphs 4(4) and 12(4) of Schedule 4 to the Parliamentary Standards Act 2009 for "a county court" substitute "the county court in England and Wales or a county court in Northern Ireland".

51BO In section 23(2) of the Partnership Act 1890 for "or a county court," substitute "or the county court in England and Wales or a county court in Northern Ireland,".

51BP In section 152 of the Pension Schemes Act 1993—

(a) in subsection (1)(a) for "county courts" substitute "the county court", and

(b) in subsection (2) for "the county court rules" substitute "rules of court".

51BQ In paragraph 11(2) of Schedule 3 to the Plant Varieties Act 1997 for "the county court rules" substitute "rules of court".

51BR In the Political Parties, Elections and Referendums Act 2000—

(a) in section 48(12)(a) for "or" substitute "means the county court and, in",

(b) in sections 77(4), 92(4) and 115(4) after "may apply" insert "in England and Wales to the High Court or the county court or, in Northern Ireland,",

(c) in sections 77(12) and 92(8) for the words after "In" substitute "its application to Gibraltar, subsection (4) has effect as if for the words between "apply" and "leave" there were substituted "to the Gibraltar court for".", and

(d) in paragraphs 2(7), 6(7), 9(4) and 13(3) of Schedule 19C after "is to" insert "(in England and Wales) the county court or (in Northern Ireland)".

51BS Omit section 9(2) of the Protection from Eviction Act 1977 (exercise of jurisdiction by district judges).

51BT In section 9(5) of the Protection of Children Act 1999 after "imposed" insert "in England and Wales by the county court or in Northern Ireland".

51BU In section 32(10) of the Public Audit (Wales) Act 2004 for "courts" substitute "court".

51BV In paragraph 6(2)(a) of Schedule A1 to the Regulation of Investigatory Powers Act 2000 for "a county court" substitute "the county court in England and Wales or a county court in Northern Ireland".

51BW In section 104(1) of the Road Traffic Act 1988 (conduct of proceedings)—

(a) for "before the registrar of a" substitute "the", and

(b) after "may" insert ",except in the county court if rules of court provide otherwise,".

51BX In section 113(3) of the Settled Land Act 1925 for "any county" substitute "the county".

51BY In paragraph 9(3)(a) of Schedule 5 to the Social Security Act 1989 for "such a" substitute "that".

51BZ In paragraph 3(1) of Schedule 4 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 after "proceedings" insert "in England and Wales in the county court or in Northern Ireland".

51CA In the Solicitors Act 1974—

(a) in section 61(6) for "any county" substitute "the county",

(b) in section 68(2) for "that county" substitute "the county", and

(c) in section 69(3) for "any county court in which any part of the business was done" substitute "the county court".

51CB In section 61(3)(a) of the Taxation of Chargeable Gains Act 1992 for "county courts" substitute "the county court".

51CC In section 66(1) of the Taxes Management Act 1970 after "proceedings" insert "in England and Wales in the county court or in Northern Ireland".

51CD In the Torts (Interference with Goods) Act 1977—

(a) in section 4(4)—

(i) for "under section", in the first place, substitute "for the High Court in England and Wales",

(ii) omit "84 of the Senior Courts Act 1981", and

(iii) omit "99 of the Supreme Court of Judicature (Consolidation) Act 1925",

(b) in section 4(5)—

(i) after "in relation to county courts" insert "in Northern Ireland",

(ii) after "High Court" insert "in Northern Ireland", and

(iii) omit "84", "99", "of the said Act of", "1981", "1925", "section or" and "section 75 of the County Courts Act 1984 or",

(c) in section 4 after subsection (5) insert—

"(6) Subsections (1) to (4) have effect in relation to the county court in England and Wales as they have effect in relation to the High Court in England and Wales.",

(d) in section 9(3) and (4) after "brought" insert "in England and Wales in the county court or in Northern Ireland",

(e) in section 9(3)—

(i) before "county court rules" insert "rules of court or", and

(ii) for "same county" substitute "same", and

(f) in section 13(3) for the words from the beginning to "if" substitute "In this section "the court", in relation to England and Wales, means the High Court or the county court and, in relation to Northern Ireland, means the High Court or a county court, save that a county court in Northern Ireland has jurisdiction in the proceedings only if".

51CE In section 75(1) of the Trade Marks Act 1994 for "or a county court having" substitute ",or the county court where it has".

51CF In section 82(2)(b) of the Traffic Management Act 2004 for "if a county" substitute "if the county".

51CG In the Tribunals, Courts and Enforcement Act 2007—

(a) in section 121(8) for paragraphs (a) and (b) substitute—

"(aa) in relation to an administration order or an enforcement restriction order: the county court;", and

(b) omit sections 123(6) and 131(2), and paragraph 79(2)(b) of Schedule 13.

51CH In section 67(2) of the Trustee Act 1925 for "county courts" substitute "the county court".

51CI In section 11(1)(a) of the UK Borders Act 2007 for "a county court, in England and Wales or" substitute "the county court in England and Wales or a county court in".

51CJ In section 5CE(5)(a) of the Veterinary Surgeons Act 1966 for "a county court" substitute "the county court in England and Wales or a county court in Northern Ireland".

51CK In paragraph 11(1) of Schedule 15 to the Water Resources Act 1991 omit "for the area in which the land or any part of it is situated".

76: Schedule 9, page 114, line 21, at end insert—

"Literary and Scientific Institutions Act 1854 (c. 112)	In section 30, "the judge of" and "aforesaid".
Hovercraft Act 1968 (c. 59)	In section 2(1), "27 to 29,".
Senior Courts Act 1981 (c. 54)	In Schedule 5, the entry for the Torts (Interference with Goods) Act 1977.
County Courts Act 1984 (c. 28)	In Schedule 2, paragraph 64."

77: Schedule 9, page 114, line 35, at end insert—

"Legal Services Act 2007 (c. 29)	In Schedule 16, paragraph 69(a).
Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2009 (S.I. 2009/871)	Article 9(1) and (2)."

Amendments 70 to 77 agreed.

Schedule 9, as amended, agreed.

Schedule 10 : The family court

Amendments 78 to 84

Moved by ***Lord McNally***

78: Schedule 10, page 116, line 20, leave out "chairmen of employment tribunals" and insert "Employment Judges"

79: Schedule 10, page 116, line 21, after "Wales" insert "or for Scotland"

80: Schedule 10, page 116, line 39, leave out from beginning to "a" in line 43

81: Schedule 10, page 116, line 44, leave out from "court" to "may" in line 45

82: Schedule 10, page 116, line 47, after "judge," insert "or a body of which the judge is a member or officer, or a body of whose governing body the judge is a member,"

83: Schedule 10, page 117, line 40, at end insert—

"(7A) Paragraph 5 of that Schedule (duty to make rules to achieve purpose specified by Lord Chancellor) does not apply in relation to rules under this section."

84: Schedule 10, page 123, line 20, leave out from "1958" to end of line 21 and insert ", the Maintenance Orders (Reciprocal Enforcement) Act 1972 or Part 1 of the Civil Jurisdiction and Judgments Act 1982."

Amendments 78 to 84 agreed.

Amendment 84A

Moved by ***Lord McNally***

84A: Schedule 10, page 126, line 25, at end insert "or the first rules under section 31O(4)"

Lord McNally: I beg your Lordships' pardon; I have lost my place. I apologise to the Committee for the delay in getting to my feet. I do not think that I have ever got so many amendments through at one go. I was overwhelmed by my success. However, I am slightly worried as the Chamber looks rather like a scene from the Alfred Hitchcock film "The Birds", in which the birds start to appear rather menacingly. I am looking at the Cross Benches where noble Lords are starting to come in and wait.

These amendments implement one of the recommendations of the Delegated Powers Committee's report on the Bill. In line with that committee's recommendation, the amendments provide that the first rules to be made specifying the functions of judges of the family court which can be performed by legal advisers or their assistants will be subject to the affirmative procedure. Any subsequent rules will, as the Bill currently provides, be subject to the negative procedure. I beg to move.

Lord Beecham: My Lords, I do not belong to the flock to which the noble Lord referred but I want to speak briefly to this amendment because I have some concerns about this matter, not so much as regards the procedure in terms of requiring resolutions but on the substance of the functions that are proposed to be conferred on legal advisers, as they appear to be very wide. Of course, justices clerks can take certain decisions now but it seems that that could be much extended under the provisions in Schedule 10, at page 124, which would allow the Lord Chancellor, with the agreement of the Lord Chief Justice, to,

"make provision enabling functions of the family court, or of a judge of the court, to be carried out by a legal adviser".

It is a long time since I participated in a magistrates' court, whether as regards the criminal law or a family court, but it is not clear to me what this is aimed at.

The concern has been expressed before in your Lordships' House, and I have touched on it again today, about the potential to displace the lay magistracy with professionals. In that context I think of people who used to be called stipendiary magistrates but are now district judges. That is a displacement upwards in the qualification stakes, as it were, but this provision is not necessarily a measure of that kind. It would allow a legal adviser, a justices' clerk or an assistant legal adviser to take decisions around family matters. I am not sure whether that is the intention but perhaps the Minister could indicate what sort of decisions are envisaged to be delegated to a legal adviser as opposed to a properly constituted family court judge or a bench of judges. I would be reluctant to see significant functions determined by the legal adviser to which this amendment refers. However, I may have got it wrong. I await the Minister's enlightenment with interest, if there is such enlightenment.

6.15 pm

Lord McNally: My Lords, I am happy to try to clarify the thinking behind this. The Delegated Powers Committee made this recommendation because it felt that the provision in the Bill represented an expansion of the existing power in Section 28 of the Courts Act 2003. Under this Act, functions of the magistrates' court may be delegated in rules to justices' clerks if a function is one which may be undertaken by a single justice.

[Lord McNally]

As part of the creation of the family court, all judges, including magistrates, who deal with family proceedings will become judges of the family court. New Section 31O of the Matrimonial and Family Proceedings Act 1984 provides a power for the Lord Chancellor to make rules to enable functions of the family court, or of a judge of the court, to be carried out by a legal adviser. As is the case with rules made under Section 28 of the Courts Act 2003, this power will be exercised only with the agreement of the Lord Chief Justice and after consulting the Family Procedure Rule Committee.

This new measure provides scope for justices' clerks and assistant justices' clerks acting as legal advisers and assistant legal advisers to the family court to carry out a wider range of the court's functions than they currently perform. This is because the functions of the family court will be wider than those of the magistrates' courts currently dealing with family proceedings, since the family court will have jurisdiction to deal with a wider range of family proceedings.

We are discussing with the judiciary how the new powers may be used. As I say, as in the case with rules made under Section 28 of the Courts Act 2003, this power will be exercised only with the agreement of the Lord Chief Justice and after consulting the Family Procedure Rule Committee.

Lord Beecham: I am grateful to the Minister for that information as far as it goes but I am afraid that it does not help me to understand what kind of decisions might now fall to be made by a legal adviser or assistant legal adviser that are not currently being made. I appreciate that the Minister may not be able to give an answer to that at this point, but it would be very helpful to have that indication before Report. Presumably there is time for consultation. There must be some concept of what would be different under a new regime, if agreed by the courts. I understand, of course, the rules procedure and indeed the approval procedure that the amendment prescribes. However, I still do not understand the outcome, and I am aware that there is concern about it. My noble friend Lord Rosser has shown me a document from the London courts which expresses concern about this general issue of the movement of decision-making away from magistrates themselves, who will be judges of the family court.

It would be helpful to your Lordships' House to understand exactly what difference is anticipated to emerge from these discussions and consultations in the actual operation of the courts—where decisions will be made, who will make them and what they would cover. Again, I repeat that I do not expect the Minister to deal with that tonight, but it would be helpful to have an assurance that we can have clarity about this when we get to Report.

Lord McNally: It is a very fair question and I will try to give the noble Lord a very full answer

Amendment 84A agreed.

Amendments 84B to 99

Moved by ***Lord McNally***

84B: Schedule 10, page 126, line 26, at end insert "or rules"

85: Schedule 10, page 126, line 39, at end insert—

"Debtors Act 1869 (c. 62)

1A (1) In proviso (1) to section 5 of the Debtors Act 1869—

(a) for the words from "any court other than" to "is to say," substitute "the county court—", and

(b) omit paragraph (c).

(2) In that section—

(a) for "superior courts may" substitute "High Court or family court may",

(b) for "by a superior court", and for "by any superior court", substitute "by the High Court or family court", and

(c) at the end insert—

"Section 31E(1)(b) of the Matrimonial and Family Proceedings Act 1984 (family court has county court's powers) does not apply in relation to the powers given by this section to the county court.""

86: Schedule 10, page 126, line 41, at end insert ", but sections 2(1) to (5), 2A and 5(2) to (4) of that Act as applied by section 36(3) of the Civil Jurisdiction and Judgments Act 1982 (re-registration in different Northern Ireland court of orders made in England and Wales or Scotland and registered in a Northern Ireland court) have effect without the amendments made in them by this Schedule."

87: Schedule 10, page 128, line 39, at end insert—

"9A Section 18 (powers of magistrates to review committals etc) is repealed.

9B (1) Section 20 (registration, variation and arrears) is amended as follows.

(2) Omit subsections (1) and (2) (magistrates' courts: applications for registration, revocation or variation of maintenance orders).

(3) In subsection (8) (repeated complaints to enforce payment)—

(a) for "a complaint" substitute "an application", and

(b) for "complaint", in the second and third places, substitute "application".

(4) For the title substitute "Repeat applications to enforce payment of maintenance arrears".

9C In section 21(1) omit the definition of "magistrates' court".

Public Records Act 1958 (c. 51)

9D In paragraph 4(1) of Schedule 1 to the Public Records Act 1958 (records which are public records) after paragraph (a) insert—

"(aa) records of the family court;"."

88: Schedule 10, page 129, line 12, at end insert—

"Civil Evidence Act 1968 (c. 64)

11A In section 12(5) of the Civil Evidence Act 1968 in the definition of "matrimonial proceedings" for "a county" substitute "family".

Administration of Justice Act 1970 (c. 31)

11B (1) In section 11 of the Administration of Justice Act 1970 (restriction on powers of committal under section 5 of the Debtors Act 1869)—

(a) omit the "and" at the end of paragraph (a),

(b) in paragraph (b) for the words from "in respect" to "judgment" substitute "in respect of a judgment", and

(c) after paragraph (b) insert "; and

(c) by the family court in respect of a High Court or family court maintenance order."

(2) In section 28 of that Act (interpretation)—

(a) for ", "county court maintenance order"" substitute "and "family court maintenance order"", and

(b) for ", a county court" substitute "and the family court"."

89: Schedule 10, page 130, line 5, leave out "(a)" and insert "(a)(ii)"

90: Schedule 10, page 131, line 12, at end insert—

"Litigants in Person (Costs and Expenses) Act 1975 (c. 47)

27A In paragraph (a) of the second sentence in section 1(1) of the Litigants in Person (Costs and Expenses) Act 1975 before "in the Senior" insert "in the family court,"."

91: Schedule 10, page 134, line 25, at end insert—

"50A In section 42(1)(a) and (b) (engaging in vexatious civil proceedings is ground for High Court making order under the section) after "High Court" insert "or the family court"."

92: Schedule 10, page 135, line 6, at end insert—

"( ) In section 38(4) (regulations about orders which court may not make) after paragraph (d) insert "; and

(e) may make different provision for different purposes.""

93: Schedule 10, page 135, line 28, at end insert—

"Administration of Justice Act 1985 (c. 61)

62A In section 53(2) of the Administration of Justice Act 1985 (costs where judge unable to act) before the "and" at the end of paragraph (b) insert—

"(ba) proceedings in the family court;".

Insolvency Act 1986 (c. 45)

62B In section 281(8) of the Insolvency Act 1986 (discharge does not release bankrupt from bankruptcy debt arising under order made in family proceedings), in the definition of "family proceedings", for paragraph (a) (but not the "and" following it) substitute—

"(a) proceedings in the family court;"."

94: Schedule 10, page 138, line 26, at end insert—

"74A (1) Section 28 (functions of justices' clerks and assistant clerks) is amended as follows.

(2) After subsection (5) insert—

"(5A) For the purposes of subsections (1) to (5) the functions of justices of the peace do not include functions as a judge of the family court."

(3) Omit subsection (9)(b) (requirement to consult Family Procedure Rule Committee) but not the "and" following it."

95: Schedule 10, page 140, line 2, at end insert—

"Legal Services Act 2007 (c. 29)

83A (1) For paragraph 1(7)(c) of Schedule 3 to the Legal Services Act 2007 (rights of audience in chambers of exempt persons) substitute—

"(c) the proceedings are not reserved family proceedings and are being heard in chambers—

(i) in the High Court or county court, or

(ii) in the family court by a judge who is not, or by two or more judges at least one of whom is not, within section 31C(1)(y) of the Matrimonial and Family Proceedings Act 1984 (lay justices)."

(2) In paragraph 1(10) of that Schedule in the definition of "family proceedings" after "also includes" insert "any proceedings in the family court and"."

96: Schedule 10, page 140, line 35, at end insert—

"In Schedule 7, paragraphs 23 and 24."	

97: Schedule 10, page 141, line 14, at end insert—

"Family Law Act 1996 (c. 27)	In Schedule 8, paragraph 49."

98: Schedule 10, page 141, line 21, after "paragraphs" insert "22,"

99: Schedule 10, page 141, line 33, leave out "101" and insert "103"

Amendments 84B to 99 agreed.

Schedule 10, as amended, agreed.

Schedule 11 : Transfer of jurisdiction to family court

Amendments 100 to 114

Moved by ***Lord McNally***

100: Schedule 11, page 145, line 23, at end insert—

"16A (1) In section 15(2) and (3) (service of process: endorsement by, and declarations before, justices of the peace etc) for "justice of the peace" substitute "judge of the family court".

(2) In Schedule 2 (forms)—

(a) in the form numbered 1 (endorsement of summons) for "justice of the peace" substitute "judge of the family court", and

(b) in the form numbered 2 (declaration as to service) for "Justice of the Peace" substitute "judge of the family court"."

101: Schedule 11, page 148, line 17, at end insert—

"Maintenance Orders (Reciprocal Enforcement) Act 1972 (c. 18)

27A The Maintenance Orders (Reciprocal Enforcement) Act 1972 is amended as follows.

27B (1) Section 3 (magistrates' court may make provisional maintenance order against person residing in reciprocating country) is amended as follows.

(2) In subsection (1) for "a magistrates' court" substitute "the family court".

(3) In subsection (4) (application not to be transferred etc)—

(a) before paragraph (a) insert—

"(za) a court to transfer proceedings from the family court to the High Court,", and

(b) in paragraphs (a) and (b) after "magistrates' court" insert "in Northern Ireland", and

(c) in those paragraphs after "High Court" insert "of Justice in Northern Ireland".

(4) In subsection (6) (effect of order being confirmed) omit "magistrates'".

(5) Omit subsection (7)(b) (Northern Ireland: application of subsection (4)).

(6) In the title omit "magistrates'".

27C In section 4(6) (Scotland: application of section 3(5) and (6)) after "for references to" insert "a court that are references to the family court or".

27D Omit section 5(3A) (modification of section 60 of Magistrates' Courts Act 1980 in relation to maintenance orders to which section 5 applies).

27E In section 7 (confirmation of order made in reciprocating country)—

(a) in subsection (5A) (court to exercise one of its powers under subsection (5B) upon confirming order)—

(i) for "a magistrates' court in England and Wales" substitute "the family court", and

(ii) for "shall" substitute "may",

(b) in subsection (5B) (available powers)—

(i) in each of paragraphs (a) and (b) for the words from "the designated" to "Wales" substitute "the court",

(ii) in paragraph (b) for "59(6) of the Magistrates' Courts Act 1980" substitute "1(5) of the Maintenance Enforcement Act 1991",

(c) in subsection (5C) (deciding on exercise of powers)—

(i) for "which of the" substitute "whether to exercise any of its", and

(ii) omit "it is to exercise", and

(d) in subsection (5D) (power to require account to be opened) for "Subsection (4) of section 59 of the Magistrates' Courts Act 1980" substitute "Subsection (6) of section 1 of the Maintenance Enforcement Act 1991".

27F In section 8 (enforcement of registered maintenance orders)—

(a) in subsection (3) (offence of not giving notice of change of address to appropriate officer)—

(i) for "a registered order" substitute "an order registered in a court in Northern Ireland", and

(ii) for "appropriate officer of the registering" substitute "clerk of that",

(b) omit subsection (3A) (meaning of "appropriate officer"),

(c) omit subsections (4) to (4B) (enforcement by magistrates' courts in England and Wales), and

(d) in subsection (5) (magistrates' court to take prescribed steps) for "The magistrates' court" substitute "A magistrates' court in Northern Ireland".

27G Omit section 9(1ZA) (modification of section 60 of Magistrates' Courts Act 1980 in relation to registered order).

27H In section 10(3) (transfer to other magistrates' court)—

(a) after "magistrates' court", in the first place, insert "in Northern Ireland", and

(b) for the words from "that part" to "court is" substitute "Northern Ireland".

27I (1) In section 14(3) (compelling attendance of witnesses etc)—

(a) for the words from "Section" to "1980" substitute "Articles 118(1), (3) and (4), 119 and 120 of the Magistrates' Courts (Northern Ireland) Order 1981", and

(b) after "a magistrates' court" insert "in Northern Ireland".

(2) Omit section 14(6) (Northern Ireland: modifications).

27J In section 17 (proceedings in magistrates' courts)—

(a) in subsection (4) (courts in same area have same jurisdiction)—

(i) after "magistrates' court", in the first place, insert "in Northern Ireland",

(ii) omit the words from "acting", in the first place, to "Northern Ireland,", and

(iii) for "district)" substitute "district",

(b) in subsection (5A) (jurisdiction where respondent resides in reciprocating country) for "a magistrates' court in England and Wales", in both places, and for "such a court", substitute "the family court",

(c) in subsection (7) (proceedings in absence of respondent) for "a magistrates' court", in both places, substitute "the family court in England and Wales or a magistrates' court in Northern Ireland".

27K (1) Section 18 (magistrates' courts rules) is amended as follows.

(2) Before subsection (1) insert—

"(A1) Rules of court may make provision with respect to the matters that would be mentioned in any of paragraphs (b), (c), (e) and (f) of subsection (1) if references in those paragraphs to a magistrates' court, or to magistrates' courts, were references to the family court."

(3) In subsection (1) (provision which may be made in rules of court)—

(a) for the words before paragraph (a) substitute "The matters referred to in subsections (A1) and (2) are—", and

(b) in paragraph (a) for "local justice area", in both places, substitute "petty sessions district".

(4) In subsection (1A) (further provision about rules of court in relation to England and Wales) for "(1)" substitute "(A1)".

(5) For the title substitute "Rules of court".

27L In section 21(1) in the definition of "the appropriate court"—

(a) after ""the appropriate court"" insert "—

(a) ", and

(b) for "Wales or" substitute "Wales means the family court; and

(b) in relation to a person residing or having assets".

27M (1) Section 23 (orders registered in High Court under Maintenance Orders (Facilities for Enforcement) Act 1920) is amended as follows.

(2) In subsection (1) (orders registered at time when 1920 Act ceases to apply)—

(a) after "High Court", in the first place, insert "or the High Court of Justice in Northern Ireland",

(b) for "the High Court", in the second place, substitute "subsection (1A) applies in relation to the order.

(1A) Where the order was at that time registered in the High Court, that court may, on an application by the payer or the payee under the order or of its own motion, transfer the order to the family court, with a view to the order being registered in the family court under this Part of this Act; and where the order was at that time registered in the High Court of Justice in Northern Ireland, that court",

(c) after "magistrates' court" insert "in Northern Ireland", and

(d) after "registered in that" insert "magistrates'".

(3) Before subsection (2) insert—

"(1B) Where the High Court transfers an order to the family court under this section it shall—

(a) cause a certified copy of the order to be sent to an officer of the family court, and

(b) cancel the registration of the order in the High Court."

(4) In subsection (2) (certified copy to be sent to court which is to register order) after "High Court", in the first place, insert "of Justice in Northern Ireland".

(5) In subsection (3) (officer to register order) omit "appropriate".

(6) In subsection (4)—

(a) for "the magistrates'" substitute "a", and

(b) for "appropriate officer of the court" substitute "officer registering it".

(7) Omit subsection (5) (Northern Ireland: modification).

(8) In subsection (6) (meaning of "appropriate officer") for the words from "means—" to the end substitute ", in relation to a magistrates' court in Northern Ireland, means the clerk of the court."

27N In section 26(6)(a) (appropriate officer) for the words from "the designated" to the end substitute "an officer of the family court".

27O In section 27B (sending application to which section 27A applies to appropriate magistrates' court)—

(a) in subsection (1) for the words from "designated" to the end substitute "family court",

(b) in subsection (2) (attempted service of respondent)—

(i) for "Subject to subsection (4) below, if" substitute "If",

(ii) for "a magistrates' court having jurisdiction to hear it" substitute "the family court",

(iii) for "designated officer for the" substitute "family", and

(iv) for "he" substitute "the family court",

(c) omit subsections (4) and (5) (sending on of application to another magistrates' court), and

(d) in the title for "appropriate magistrates'" substitute "family".

27P In section 27C (applications to which section 27A applies: general)—

(a) in subsection (1) for "a magistrates'" substitute "the family",

(b) omit subsection (2) (disapplication of section 59 of Magistrates' Courts Act 1980),

(c) in subsection (3) (court to exercise one of its powers under subsection (4) upon making order) for "shall" substitute "may",

(d) in subsection (4) (available powers)—

(i) in each of paragraphs (a) and (b) for the words from "the designated" to "Wales" substitute "the court", and

(ii) in paragraph (b) for "59(6) of the Magistrates' Courts Act 1980" substitute "1(5) of the Maintenance Enforcement Act 1991",

(e) in subsection (5) (deciding on exercise of powers)—

(i) for "which of the" substitute "whether to exercise any of its", and

(ii) omit "it is to exercise",

(f) in subsection (6) (power to require account to be opened) for "Subsection (4) of section 59 of the Magistrates' Courts Act 1980" substitute "Subsection (6) of section 1 of the Maintenance Enforcement Act 1991", and

(g) in subsection (7) (registration)—

(i) omit "designated officer for the", and

(ii) omit "in the court".

27Q In section 28 (applications by spouses under the Domestic Proceedings and Magistrates' Courts Act 1978)—

(a) in subsection (1) (orders court may make)—

(i) for "The magistrates' court" substitute "On", and

(ii) after "1978" insert ", the family court", and

(b) in subsection (2) (modifications of 1978 Act)—

(i) in paragraph (a) for "to 27" substitute ", 26", and

(ii) omit paragraph (b), but not the "and" following it.

27R In section 28A (applications by former spouses under the Domestic Proceedings and Magistrates' Courts Act 1978)—

(a) in subsection (2) (jurisdiction of magistrates' court) for the words from the beginning to "it" substitute "The family court shall have jurisdiction to hear the application",

(b) in subsection (3) (court's powers) for "magistrates' court hearing the application" substitute "family court", and

(c) in subsection (6) (modifications of 1978 Act)—

(i) in paragraph (e) for "and 25 to 28" substitute "25, 26 and 28", and

(ii) omit paragraph (f), but not the "and" following it.

27S Section 28B (certain orders under Schedule 11 to the Children Act 1989 do not apply) is repealed.

27T (1) Section 32 (transfer of orders) is amended as follows.

(2) In subsection (2) (transfer to other magistrates' court)—

(a) for "the appropriate officer", in the first and second places, substitute "the clerk",

(b) after "magistrates' court", in the first place, insert "in Northern Ireland",

(c) for the words from "that part" to "court is" substitute "Northern Ireland", and

(d) for "the appropriate officer", in the third place, substitute "that clerk".

(3) Omit subsection (2A) (meaning of "appropriate officer").

(4) In subsection (8) in the definition of "the appropriate court"—

(a) after ""the appropriate court"" insert "—

(a) ", and

(b) for "Wales or" substitute "Wales, means the family court; and

(b) in relation to a person residing".

27U In section 33 (enforcement of orders)—

(a) omit subsections (3) and (3A) (enforcement by magistrates' courts in England and Wales),

(b) in subsection (3B) (enforcement by courts of summary jurisdiction in Northern Ireland) after "jurisdiction", in the first place, insert "in Northern Ireland", and

(c) in subsection (4) (magistrates' court to take prescribed steps) after "court" insert "in Northern Ireland".

27V In section 34 (variation and revocation of orders)—

(a) in subsection (1) (powers of registering court etc) omit "subsection (3A) below and",

(b) in subsection (3) (officer to whom application to be sent) for the words from "shall" to the end substitute "shall—

(a) if the registering court is the family court, send the application together with any documents accompanying it to that court,

(b) if the registering court is a magistrates' court in Northern Ireland, send the application together with any documents accompanying it to the clerk of that court.", and

(c) omit subsection (3A) (modification of section 60 of Magistrates' Courts Act 1980 in relation to registered orders).

27W (1) Section 34A (variation of orders by magistrates' courts in England and Wales) is amended as follows.

(2) In subsection (1) (application of certain provisions)—

(a) for "a magistrates' court in England and Wales" substitute "the family court", and

(b) for paragraph (a) substitute—

"(a) section 1(3A) of the Maintenance Enforcement Act 1991;".

(3) In subsection (2) (court may exercise one of powers under subsection (3) upon varying order) for "a magistrates' court in England and Wales" substitute "the family court".

(4) In subsection (3) (available powers)—

(a) in each of paragraphs (a) and (b) for the words from "the designated" to "Wales" substitute "the court", and

(b) in paragraph (b) for "59(6) of the Magistrates' Courts Act 1980" substitute "1(5) of the Maintenance Enforcement Act 1991".

(5) Omit subsections (4) to (8) (variation by justices' clerk).

(6) In subsection (9) (deciding on exercise of powers)—

(a) for "subsections (2) and (8)" substitute "subsection (2)",

(b) for "which of the" substitute "whether to exercise any of its",

(c) omit "it is to exercise", and

(d) after "debtor" insert "or the creditor".

(7) In subsection (10) (power to require account to be opened) for "Subsection (4) of section 59 of the Magistrates' Courts Act 1980" substitute "Subsection (6) of section 1 of the Maintenance Enforcement Act 1991".

(8) In subsection (11) (meaning of "creditor" and "debtor") for "section 59 of the Magistrates' Courts Act 1980" substitute "section 1 of the Maintenance Enforcement Act 1991".

(9) In the title for "magistrates' courts" substitute "the family court".

27X In section 35 (further provision relating to variation etc of orders by magistrates' courts in England and Wales)—

(a) in subsection (1) (powers exercisable notwithstanding that applicant resides outside England and Wales) for "a magistrates' court in England and Wales" substitute "the family court",

(b) in subsection (2) (powers under section 34A not exercisable) omit ", or of the clerk of the court,",

(c) in subsection (3) (proceedings in absence of respondent) for "a magistrates' court in England and Wales" substitute "the family court", and

(d) in the title for "magistrates' courts" substitute "the family court".

27Y (1) Section 36 (admissibility of evidence given in convention country) is amended as follows.

(2) Before subsection (1) insert—

"(A1) A statement contained in a document mentioned in subsection (1) shall—

(a) in any proceedings in the family court arising out of an application to which section 27A(1) of this Act applies or an application made by any person for the variation or revocation of a registered order, or

(b) in proceedings on appeal from proceedings within paragraph (a),

be admissible as evidence of any fact stated to the same extent as oral evidence of that fact is admissible in those proceedings."

(3) In subsection (1) (statements made in convention country to be admissible)—

(a) for "A statement contained in—" substitute "The documents referred to in subsections (A1) and (1A) are—",

(b) omit the "or" following paragraph (a) and the "or" following paragraph (b),

(c) after paragraph (c) insert—

"(1A) A statement contained in a document mentioned in subsection (1)",

(d) after "magistrates' court" insert "in Northern Ireland", and

(e) omit "an application to which section 27A(1) of this Act applies,".

27Z In section 38 (obtaining evidence at request of court in convention country)—

(a) in subsection (4) (application of provisions of Magistrates' Courts Act 1980) for the words from "Section" to "1980" substitute "Articles 118(1), (3) and (4), 119 and 120 of the Magistrates' Courts (Northern Ireland) Order 1981",

(b) in subsection (4) after "a magistrates' court" insert "in Northern Ireland", and

(c) omit subsection (6) (Northern Ireland: modifications).

27Z1 In section 38A(1) (rules of court) after "done by" insert "the family court or".

27Z2 In section 42 (provisional order to cease to have effect on remarriage) in subsection (1) and in the title omit "magistrates'".

27Z3 In section 47(3) (interpretation: jurisdiction of magistrates' courts) for the words from "construed—" to "in relation to", in the second place, substitute "construed in relation to"."

102: Schedule 11, page 153, line 10, at end insert—

"Civil Jurisdiction and Judgments Act 1982 (c. 27)

55A (1) The Civil Jurisdiction and Judgments Act is amended as follows.

(2) In the second sentence of section 5(1) (enforcement of maintenance orders under 1968 Convention) after "Article 32" insert "but, if the appropriate court is a magistrates' court in England and Wales, the Lord Chancellor is to transmit the application to the family court".

(3) In section 5(2) (determination of transmitted application) for "officer of that court" substitute "officer—

(a) of the family court if the application is transmitted to that court, or

(b) in any other case, of the court having jurisdiction in the matter".

(4) Omit section 5(5A) to (5C) (enforcement in magistrates' courts in England and Wales).

(5) In section 5(7) omit "England and Wales or".

(6) In section 5(8) omit paragraph (a) (including the "and" at the end).

(7) In the second sentence of section 5A(1) (enforcement of maintenance orders under the Lugano Convention of 2007) after "Article 39" insert "but, if the appropriate court is a magistrates' court in England and Wales, the Lord Chancellor is to transmit the application to the family court".

(8) In section 5A(2) (determination of transmitted application) for "officer of" substitute "officer—

(a) of the family court if the application is transmitted to that court, or

(b) in any other case, of".

(9) Omit section 5A(5) (enforcement in magistrates' courts in England and Wales).

(10) In section 5A(7) omit "England and Wales or".

(11) In section 5A(9) omit paragraph (a) (including the "and" at the end).

(12) Omit sections 6(3)(a) and 6A(3)(a) (appeals in England and Wales).

(13) In section 7(4) (interest on arrears)—

(a) omit "England and Wales or",

(b) omit "section 2A of the Maintenance Orders Act 1958 or", and

(c) for "enable" substitute "enables".

(14) In section 15(3) (jurisdiction of magistrates' courts)—

(a) after "particular magistrates' court" insert "in Northern Ireland", and

(b) for "in the same local justice area (or, in Northern Ireland, for the same petty sessions district)" substitute "for the same petty sessions district".

(15) In section 36(1)(b) (registration of maintenance orders) for "county court order, a magistrates'" substitute "family".

(16) In section 48(3) (rules of court relating to maintenance orders)—

(a) in the words before paragraph (a) for "magistrates' courts," substitute "the family court, the power to make rules of court for magistrates' courts in Northern Ireland,",

(b) in paragraphs (a) and (g) after "purposes of" insert "the family court or", and

(c) in paragraphs (f) and (h) after "which" insert "the family court or".

(17) In section 50 (interpretation) in the definition of "court of law"—

(a) after paragraph (a) insert—

"(aa) in England and Wales, the Court of Appeal, the High Court, the Crown Court, the family court, the county court and a magistrates' court,", and

(b) in paragraph (b) omit "England and Wales or"."

103: Schedule 11, page 154, line 38, at end insert—

"71A In section 14(1) (enforcement of residence orders in magistrates' courts) omit "under section 63(3) of the Magistrates' Courts Act 1980"."

104: Schedule 11, page 157, line 5, at end insert—

"Criminal Justice Act 1991 (c. 53)

93A In section 60(3) (applications under section 25 of Children Act 1989 in certain cases) for "92(2) of that Act or section 65 of the 1980" substitute "92(7) of that"."

105: Schedule 11, page 165, line 9, at end insert—

"170A In section 98F (power of constable to assist in exercise of powers of entry)—

(a) omit subsection (5) (which applies Schedule 11 to the Children Act 1989 to proceedings under section 98F), and

(b) for subsection (6) (meaning of "the court") substitute—

"(6) In this section "court" means the High Court or the family court.""

106: Schedule 11, page 166, line 5, after "paragraphs" insert "105, 109,"

107: Schedule 11, page 166, line 6, at end insert—

"Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26))	In Schedule 6, paragraphs 21 and 25."

108: Schedule 11, page 166, line 10, leave out "and 70" and insert ", 45, 50, 70 and 89(2)"

109: Schedule 11, page 166, line 15, leave out "paragraph 3" and insert "paragraphs 3, 13, 14, 18 and 21"

110: Schedule 11, page 166, line 18, leave out "paragraph 2(7)" and insert "paragraphs 2(7), 7, 9 and 15"

111: Schedule 11, page 166, line 24, at end insert—

"Access to Justice Act 1999 (c. 22)	In Schedule 13, paragraphs 73(1) to (3), 79 and 80."

112: Schedule 11, page 166, line 30, at end insert "151 to 153, 154(a), 155(2)(a), 157, 158(a), 159 to 163,"

113: Schedule 11, page 166, line 31, after "196(2)," insert "268, 269,"

114: Schedule 11, page 167, line 10, column 2, leave out from beginning to "8." in line 12 and insert "Articles 5 to"

Amendments 100 to 114 agreed.

Schedule 11 agreed.

Clause 18 : Judicial appointments

Amendment 115

Moved by ***Lord Lloyd of Berwick***

115: Clause 18, page 16, leave out lines 24 to 27

Lord Lloyd of Berwick: Amendments 115 and 116 are both concerned with the constitution of the Supreme Court. Amendment 120 is concerned with diversity, and applies not only to the Supreme Court but to the Court of Appeal and the High Court. These amendments were all grouped together, but it might be convenient for the Committee to hear the argument first on Amendments 115 and 116, and to hear the Minister's reply on that before I develop the argument on Amendment 120. They are closely connected, and so that might be convenient, as it would enable me to rest my voice and the Minister a chance to get in—I was going to say, before it is too late.

At Second Reading I expressed some surprise, even incredulity, that we should be seeking to introduce part-time judges into the Supreme Court. So far as I know, there are no part-time judges in the Supreme Court of the United States, or in the International Court at The Hague, or indeed at any other supreme court anywhere else in the world. The Explanatory Notes give no reasons for this sudden change in the constitution of the Supreme Court so soon after its creation. However, the reason appears to be that the Government want to encourage more women and ethnic minority judges to apply for membership of the Supreme Court. Thus, if the Government's view is accepted, one could have 11 full-time white judges—including, by convention, always two from Scotland and one from Ireland—plus one part-time woman judge and another part-time black judge, making 13 judges in all, but only 12 full-time equivalents. That seems to be the idea.

What, then, is the difficulty? Everybody agrees on two things. First, that in choosing judges at any level, one must always choose the best available candidate. This principle is now enshrined in Section 63(2) of the 2005 Act, which says that selection must be solely on merit. I said that everybody agrees about that, but that is not quite true, because the noble and learned Lord, Lord Falconer, does not agree. He believes that merit is only a threshold, and is supported in that view by Professor Cheryl Thomas. However, their view was, I think I can say, decisively rejected by the Constitution Committee, so I will say no more about it.

The second thing on which we are all agreed is that we need greater diversity among the judges, and particularly at the top. The difficulty is how to achieve that second objective without infringing the first. This problem has been around for a long time—almost for as long as I can remember. If there had been a quick solution, successive Lord Chancellors would, I am quite sure, have found it by now. However, sadly, there is no quick or easy solution.

The Government think that they may now have found a way forward. They argue that we should be able to appoint part-time judges in the Supreme Court in order to enable women with family commitments to apply for that appointment. I say at once that that is a very strong argument—indeed a decisive one—at the circuit judge level and below, where applications are likely to come from much younger women. However, I cannot see what relevance it could have to the Supreme Court, where the only family commitments that any applicant is likely to have will be those of a grandparent. I cannot for the life of me see how the argument could apply in the place of male judges from ethnic minorities.

The truth is that if we enact Clause 18 and Schedule 12, it will not make the slightest difference to the number of women or black judges applying to become Supreme Court judges. In practice, therefore, if this part of the Bill is enacted, it will do nothing at all to increase diversity at that level, which is the whole object. I suggest that since that is the only reason given for taking this novel course, we should think no more about it.

It may be said at this stage that this is a depressing outlook, which was a point made by the noble Lord, Lord Lea of Crondall, during my speech at Second Reading, and I was very glad that he made that intervention. However, I have to tell him and the Committee that it is not all gloom. If one takes the figures given on page 25 of the Constitution Committee report, in 1998 only 10% of all judges were women. By 2005 the figure was 17%, and now it is 22%—more than double. Of the 2,500 appointments made by the Judicial Appointments Commission since 2005, 35% have been women. One finds the same picture in the 2010 report from the advisory panel.

In 1998, there were no women sitting as Law Lords, only one woman in the Court of Appeal, and only nine in the High Court. By the end of 2011, there was one woman sitting in the Supreme Court; there were five women in the Court of Appeal, in contrast to one; and 18 in the High Court, in contrast to nine. There are at least 78, and probably many more, on the circuit Bench.

6.30 pm

Lord Lea of Crondall: Given that the noble and learned Lord kindly mentioned my intervention, he will agree that it specifically related to another aspect of inequality of access, whereby 75% of judges—and the percentage is higher, the higher up you go—as compared with 7% of the population, were educated at public schools. Although his point about women is a good one, the noble and learned Lord, Lord Lloyd, said that my point on public schools was a bad one on the grounds that there is no way in which you can manipulate appointment on merit to deal with something that happened 50 years ago, such as where you went to school. I simply ask the noble and learned Lord, if I concede that you cannot do anything in terms of social engineering at this level, whether he will agree that the judiciary should take on board that it is highly damaging if nothing is seen to be done at the junior barrister level regarding access to chambers. Mummy and daddy can afford to take you through that period, but working-class people cannot have that access. Will the noble and learned Lord take that point in any way at all, because he did not do so at Second Reading?

Lord Lloyd of Berwick: I am grateful to the noble Lord for intervening again. I had interpreted his question at Second Reading as referring to diversity as a whole, and not limited to the number of judges who had been to public school. The Government's case is based on the need to appoint more women judges, rather than more men, from people who have not been to public school. I am afraid that I do not have the comparative figures from 1998 and today on those who have been to public school, but I could perhaps find them and let the noble Lord know in due course.

The lesson that I draw from the figures that I have given is surely clear enough. If you want more diversity at the top, in the sense that Government and all of us want diversity, you must start at the bottom and work up, as we have already done and as the figures show. Women with family commitments are already being appointed in large numbers as part-time judges to the circuit Bench and below. In due course, the best of those women—and I can tell the Committee that from my experience the best are very good indeed—will, like the best men, reach the top via the High Court and the Court of Appeal. Yes, we all accept that it is a slow process, but there is no short cut to the top—a short cut implied in the proposal to allow women to sit part time in the Supreme Court—nor should there be such a short cut without infringing the overriding principle that the appointments must be solely on merit.

I have one last point. Introducing part-time judges into the Supreme Court would, on any view, be a major change. The court has been in existence only since 2010. It is surely too soon to effect such an important change without much more thought and further consultation. This is a point that I suspect will be developed by the noble Lord, Lord Goodhart. The answers given to question 13 in the recent consultative exercise would have been all but useless in relation to the Supreme Court, even if the basis on which that question was asked had been comprehensible, which it was not—to me at any rate. In contrast, the composition of the Supreme Court was given much thought by the Select Committee in 2004. The noble and learned Lord, Lord Falconer, was a member of that committee as Lord Chancellor and he played a full part. He will remember that there was much discussion about whether the Supreme Court should consist of 15 judges, as some thought, or nine, as others thought, so that it could sit en banc. However, it was never once suggested by the noble and learned Lord or anyone else that we ought to have part-time judges in the Supreme Court. Yet the diversity problem at that time was even greater than it is today.

Baroness Jay of Paddington: My Lords, I simply wish to ask the noble and learned Lord whether or not the strictures that he has applied to appointments to the Supreme Court would apply also to the High Court and the Court of Appeal, because—I speak in my capacity as chairman of the Constitution Committee, which the noble and learned Lord kindly cited—we recommended that the Senior Courts Act 1981 should be amended to allow flexible working to be included at a senior level, but not at the Supreme Court.

Lord Lloyd of Berwick: Indeed. I have to answer the noble Baroness by saying that I am certainly not at the moment persuaded that part-time judges should be appointed to the Court of Appeal. I simply do not see how it would work. I take the same view about High Court judges. The way to the High Court Bench for the sort of women whom the noble Baroness has in mind is via the circuit Bench. There is a clear way through for them. Indeed, one noble Baroness who is here today has taken exactly that course.

Lord Falconer of Thoroton: Perhaps I may follow up on that. I am not clear why the noble and learned Lord thinks that it is okay for there to be part-time circuit judges but not part-time High Court judges. I say that because I appointed High Court and circuit judges who had young children. I am completely unclear as to why the noble and learned Lord draws a distinction.

Lord Lloyd of Berwick: The noble and learned Lord, as Lord Chancellor, never appointed a part-time judge to the High Court. He quite rightly appointed plenty of part-time judges to the circuit Bench, and that was correct because they are obviously likely to be younger. We have to encourage young women with family commitments to come forward at that stage. The noble Lord will be the first to accept that not many such women apply to become members of the Supreme Court.

Lord Falconer of Thoroton: The noble and learned Lord will confirm that I was not legally entitled to appoint them to the High Court. That is the point of the amendment.

Lord Lloyd of Berwick: I confirm that the noble and learned Lord was not entitled to appoint to the High Court, but there was no need for him to do so because he could, and did, appoint to the circuit Bench, from which High Court judges would emerge. He knows that very well.

Lord Thomas of Gresford: Perhaps I may be permitted to intervene on this matter. The lifestyle of a High Court judge is of course very different from that of a circuit judge. High Court judges sit half the time in London and half the time on circuit. Circuit judges do what they are entitled to do; they sit on circuit. Looking after a family is far easier if you are a circuit judge than if you are a High Court judge.

Lord Falconer of Thoroton: I will not intervene on his intervention, but the noble Lord is wrong.

Lord Lloyd of Berwick: I beg to move.

Lord Carswell: My Lords, I support the amendment—

Lord Goodhart: I am sorry to interrupt, but it appears that in the order in which these matters are printed, I am the second and final person specifically connected with Clause 18 in this group, and it seems to me that this is the point at which I should be able to state my views on this matter.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall): My Lords, I believe that the amendment in the name of the noble and learned Lord, Lord Lloyd, has been moved, and the name of the noble Lord is not, I think, on that amendment. However, the name of the noble and learned Lord, Lord Carswell, is on it.

Lord Lloyd of Berwick: My amendment has been moved by me and supported by two other noble Lords who would like to speak to it.

Lord Falconer of Thoroton: I think that the noble and learned Lord, Lord Lloyd is correct that because the name of the noble and learned Lord, Lord Carswell is on the amendment of the noble and learned Lord, Lord Lloyd, the noble and learned Lord, Lord Carswell, should come next.

Lord Carswell: I am grateful to your Lordships, and I am sure that the noble Lord, Lord Goodhart, will give us the benefit of his wisdom very shortly. I support Amendments 115 and 116, moved by the noble and learned Lord, Lord Lloyd of Berwick. Your Lordships know him very well. You know his history and his distinguished attainments. Perhaps I may shortly explain where I come from, both literally and figuratively?

I was for 25 years a judge, first in the High Court of Northern Ireland, in the Court of Appeal. For seven years I was Lord Chief Justice of Northern Ireland, and very closely concerned with appointments at all levels. Then, for the final five years before I retired I was a member of the Appellate Committee of this House, sitting as a Lord of Appeal in Ordinary, and hearing a very wide range of appeals, including some of considerable significance in the public interest.

I also gave evidence to the Select Committee of this House on the constitution, and I regret rather that they did not see fit to accept all of my submissions. I do not say that out of any feeling of personal pique, but rather because of the strength of my belief that one must appoint the best persons to judicial posts. By best, I mean most fitted to carry out judicial functions. That must and shall always be, I hope, the paramount criterion.

It is vital to do that to preserve the quality of justice and of the legal system, to which other persons have paid tribute on other occasions. I accept without reservation that that requires a certain amount of diversity. First of all, diversity of skills and experience—that goes without saying—so that the Court may have the benefit of the best advice and participation of those who really know about a particular subject. Secondly—and this is a more delicate area—diversity of background, gender, ethnicity, and professional experience and background.

I also accept, quite unreservedly, that facilitating part-time working is highly desirable, to help women in particular to pursue their careers and combine them with family responsibilities. I am strongly in favour of this where it is achievable. The provisions of paragraphs 2 and 10 of Schedule 12 are designed to assist this admirable object. My point is that the intention is excellent but the method is wrong.

Part-time appointments at the higher level—High Court, Court of Appeal, and Supreme Court—simply will not work. First, judges in any of those courts have to be available to shoulder their share of the burden of long and complex cases. That is simply not possible for a part-time judge. That applies most obviously at trial court level, where you might have to take a six-month trial, or a long civil case. If you cannot take your share of those, you are obviously deficient and in default in some respect.

6.45 pm

Baroness Falkner of Margravine: I am very cognisant of the difficulties that might be involved in those scenarios, but has it never happened in the Supreme Court, or in its predecessor court, that a judge in the middle of a trial got ill for an extended period of time? I suggest that both the noble and learned Lords, Lord Woolf and Lord Carswell, are framing this debate in terms of part-time far too narrowly. There is far greater flexibility in the reality of part-time working than the noble Lord suggests.

Lord Carswell: Perhaps I might develop the point as I come to it. I have no experience myself of a judge taking ill and being unable to carry on, but I do not think that that really assists the argument.

It also applies—and I say this from my own observation—at trial court level, where it is most obvious. It is a significant factor in appellate courts. No doubt in the Supreme Court many cases are quite short—two days, sometimes even less—but there are many cases, and the most important and significant cases tend to be somewhat longer. If a part-time judge is unable to sit on these for practical reasons, and cannot pull his or her weight, then that judge is downgraded in the eyes of other people to being a second-string member of the court. That is no good for anybody.

Secondly, on the practical level a part-time judge would normally need some fixity of schedule, so that the rest of the judge's life can be arranged. That is why

[Lord Carswell]
a person is likely to want to be a part-time judge on, let us say, Monday and Tuesday of each week. The timetable would have to be juggled to ensure that the judge is able to sit on those regular days. Obviously difficulties would arise if for various reasons an appeal needs to be listed on the other days of the week, and of course that happens, in fitting in the appeals for which that judge's particular skills are required.

It is not as easy as turning up on fixed days and taking cases on those days. I fear that it is bound to lead to a feeling that part-time judges are not pulling their weight. This is highly detrimental to collegiality, which is of prime importance on an appellate bench. It may be viewed—however unfairly—by others that that judge is not a proper member of the court. The judge may also feel, subjectively, concern that she is not fully accepted as a full member. That, although it may not be exactly the feeling held by the others, would undermine the judicial confidence which is so necessary for high-class judicial work.

It is important that we try to find ways of accommodating this problem and of using the talents of able women, of which I am very strongly in favour myself. It is important that we can work out a way of not confining them to the junior ranks where it is easier in practice for them to carry out their functions part-time.

A suggestion has been mooted by the noble and learned Baroness, Lady Butler-Sloss, that one could do that by stages, for a woman. If she has family responsibilities at an earlier part of the time when she is ready for judicial life, then she could be appointed to a lower-tier court, with a clear assurance that when family circumstances change and she would be available for full-time work, she would receive proper and serious consideration for early promotion to the higher levels, and that that assurance should be fully honoured by those who are making the appointments. Paragraph 2 was a well intentioned attempt to facilitate women or other people by extending part-time appointments, but I fear that it did so in the wrong way.

Lord Woolf: My Lords, I spoke on the subject at Second Reading. What I said is on the record and I will not repeat it. However, I am most anxious that it should not be thought, as a consequence of my speaking in succession to the noble and learned Lords, Lord Lloyd and Lord Carswell, that retired members of the senior judiciary are against increasing diversity. I stress as forcefully as I can that the contrary is true. I know from the times when I was Chief Justice or held other senior offices that we did everything we could in co-operation with successive Lord Chancellors to improve the position. The message that became clear as a result of our efforts was that achievements would be brought by approaching the matter in stages.

The first step involved tackling those who were attending law schools in this jurisdiction and ensuring an egalitarian approach there. I am happy to say that if one goes now to the law schools of this country, one finds at least an equal number of women and men studying to become our lawyers and judges of the future.

The next stage is to make sure that any hurdle that can reasonably be removed is removed from the path of those who enter the legal profession. At the moment our task is to ensure that they realise that the opportunities for judicial appointments are greater today than they have ever been. The appointments system that we have will treat applicants on a totally equal basis irrespective of their sex and of any background that they might consider a possible handicap. The judiciary plays its part in ensuring that the message is heard by those entering the legal profession and by those within it.

On the issue raised by the amendment of the noble and learned Lord, Lord Lloyd, to which I put my name, it is no use putting something in legislation that will have no practical effect. I refer to part-time judges for the Supreme Court, because it seems it is here where the argument seems clearest. From my knowledge of those who might seek this judicial appointment, I can conceive of nobody who could not take a full-time appointment to the Supreme Court but might be able to take part-time employment there. Having made that proposition, I point to the nature of the Supreme Court and to its role in our legal system now that it has been established. It is the highest court we have, and it has the heavy responsibility of maintaining the reputation established by generations of Supreme Court judges, who in the past were called Lords of Appeal in Ordinary. The court is looked on internationally as one of the finest law courts that there is, and its decisions are treated with the greatest respect.

We must do two things. First, we must not fall into the trap of using legislation to make gestures. To put into this legislation a provision that refers to part-time Supreme Court judges, for the purpose of trying to give a message to those who might be coming through the system that they should seek to become a Supreme Court judge, would be unrealistic if it implied that someone of mature years—probably 60—who wished to be a Supreme Court judge could apply for the highest pinnacle of our judiciary on any basis other than full-time. If there is to be an educational process, it should take place at a lower level in the system. I urge the Committee not to put into the Bill a provision that will have the effect of offering part-time employment in the Supreme Court when there is no realistic possibility that there will be any candidate for that part-time post who could be appointed in the foreseeable future.

The result will be that people will say, "Look, in 2012 Parliament specifically passed legislation that was intended to make available to a woman the possibility to sit as a part-time Supreme Court judge—but nobody has done that". It will not happen because there has never been a candidate who could apply to be a Supreme Court judge under present circumstances.

Lord Goodhart: My Lords, I have proposed the removal from the Bill of Clause 18 and Schedule 12. I make it clear that this is not done to abolish the provisions that are dealt with in Clause 18 and Schedule 12. Instead I intend to enable the Government to provide, in proceedings that are separate from the Bill, a better system for the extremely important issue of judicial appointments. The provisions included in the Bill are inadequate and unsatisfactory.

The Constitutional Reform Act 2005 was of great importance. It modified the functions of the Lord Chancellor. In fact, it not only modified the functions but completely altered them. It created a Supreme Court to replace the jurisdiction of the House of Lords. The constitutional importance of the Act was recognised by those who negotiated it and by many others. I am well aware of this because I was one of the Members of the House of Lords who negotiated the matter in detail. Others included the noble and learned Lord, Lord Falconer of Thoroton, who I am very pleased to see in his place and who was then the Lord Chancellor, and the late and greatly missed Conservative Lord Kingsland.

As far as I am aware, the Crime and Courts Bill is the first Bill to make significant amendments to the Constitutional Reform Act. Significant amendments appear first in Clause 18—although all that the clause does is tell us to go and look at Schedule 12, which is tucked away at the back of the Bill. It starts on page 167 and continues to page 201. It starts with the provision that enables any number of judges to be appointed to the Supreme Court provided the judges serving on the court do not permit,

"the full-time equivalent number of judges of the Court at any time to be more than 12".

This is a very significant alteration to the 2005 Act. There should be no attempt to tuck alterations into the back of a much wider Bill such as this one. It is highly doubtful whether this particular alteration should be adopted at any time, and I agree with the proposal from the noble and learned Lord, Lord Lloyd of Berwick, to leave out paragraph 2.

7 pm

Section 26 of the 2005 Act is amended considerably in Schedule 12. Section 27 of the Act is also amended considerably by paragraphs 1 and 2 of Schedule 12. So it goes on for another 32 pages before we come to the end of Schedule 12. Schedule 12 is much too important to be stuck in as a long schedule, close to the end of Clause 18. Not everything in Schedule 12 is wrong, but the contents are important and should be rewritten and transferred into a separate Bill. Schedule 12, and the minimal Clause 18 that introduces it, raises important issues that need to be considered much more thoroughly and in a different Bill. This is too important a matter to be left as it now is.

I was unable to attend the Bill's Second Reading but a number of other noble Lords spoke in a way that I support to a greater or, in some cases, lesser extent. Those whom I support include the noble Baroness, Lady Jay of Paddington, at col. 993 of *Hansard*; the noble and learned Lord, Lord Lloyd of Berwick, whom we have already heard speaking, at cols. 996-997; and the noble and learned Lord, Lord Woolf, at cols. 1041 to 1044. However, those whom I draw most attention to are the noble Baroness, Lady Neuberger, at cols. 1016 to 1018 and the noble Baroness, Lady Prashar, at cols. 1024 and 1025. I would refer particularly to a passage from the noble Baroness, Lady Neuberger, except that she is here tonight and I hope that she will explain and put forward her views on this matter herself. I am in total agreement with what she said.

If the Government had been willing and able to pay attention to those objections before Committee stage, it might have been possible to reconsider them then. It is plainly not possible now. The rest of the Bill should of course proceed but Clause 18 and Schedule 12 should be put aside and replaced by a new Bill. Since I introduced my proposal that Clause 18 and Schedule 12 should be removed entirely from the Bill there have been a number of additional amendments to remove parts of them and to add some new parts. I welcome these changes, which would improve the Bill considerably. It remains my view that it would be better to take Clause 18 and Schedule 12 out of the Bill, because they involve some important constitutional changes. However, I have to face the fact that a good deal of work has already been put into Schedule 12 on both sides. In this case, I would be willing not to proceed with my proposal provided it is acknowledged that Clause 18 and Schedule 12 should be replaced by another Bill. Schedule 12 contains some important constitutional changes and it should be recognised that constitutional changes must be clearly identified and justified by those seeking to enact them.

I would be happy if Clause 18 and Schedule 12 went ahead provided that it was done with a reasonable degree of agreement between the parties. I would much prefer it if they went into another Bill, but it is even more important to make clear on this occasion that this has, to some degree, been a mistake. It is necessary to remember that in the future for different issues when we get important matters mixed up with matters which are much less important, as here. I would be willing to support the Bill—I am not saying what provisions I myself would put in it—but we must recognise that something of this kind should not be allowed to happen again and that provisions that make important changes in the constitution should be handled differently.

Baroness Jay of Paddington: My Lords, the Minister will undoubtedly reply to the broad-brush criticisms that the noble Lord, Lord Goodhart, has raised. I will just say, on one of his points, that the noble Lord, Lord McNally, and the Secretary of State, Mr Clarke, have been very kind in attending to the Constitution Committee since Second Reading. We have specifically discussed Clause 18 and Schedule 12 with them both, and I must put on record that their dialogue with the Constitution Committee at least has been productive.

I briefly return to the amendment of the noble and learned Lord, Lord Lloyd. Of course, I defer to him, his judicial colleagues and other noble Lords in their experience in the courts, but I would pick up the point made by the noble Baroness, Lady Falkner, about them addressing the issue of part-time working—or as I would more easily describe it, flexible working—in a perhaps somewhat narrow and therefore slightly more difficult way. The noble and learned Lords, Lord Woolf and Lord Carswell, gave evidence to the Constitution Committee during our inquiry into this matter. They said many of the things that they have said tonight and many more things as well. I hear precisely the issues that have been raised about the practical problems. As the debate has widened slightly into the general issue of diversity and appointments

[Baroness Jay of Paddington]
generally to the judiciary—which was why I asked my earlier questions to the noble and learned Lord, Lord Lloyd, about which particular aspect he was concerned with—it may be of interest to the Committee if I quote from the Lord Chief Justice. In evidence to us, he said that,

"we should be able to organise the sitting patterns for female High Court judges or male High Court judges who have caring responsibilities, so that during, for example, half term"—

which was just one example they gave—

"they can be at home ... I think those sorts of very small changes … will help".

I want the Committee to understand that there is not a uniformity of views among the senior judiciary, both past and present, about the absolute impossibility of trying to be more flexible in this way.

I also say, with some deference and temerity, that I wonder whether noble Lords and senior judges are perhaps looking exclusively at their profession and not looking more broadly at the ways in which other professions have adapted to flexible working over the past decade. I raised very briefly at Second Reading the example of the medical profession, which has had very entrenched working practices at the senior level, particularly in the surgical specialty, and has now adopted flexible working in a way that met with many of the same problems in theory as have been raised this evening and on other occasions about flexible working within the judiciary. The situation is, of course, different but some of the issues in principle were the same. The adaptation has worked, so that senior members of the medical profession are now much more broadly spread between the genders and there is a much greater sense of genuine diversity.

In this instance, perhaps I may refer the Committee to the evidence of the chairman of the Judicial Appointments Commission, who said to the Constitution Committee:

"This is the first profession that I have touched in my working life where there is not easy access to flexible working arrangements for senior positions. Having salaried part-time working in the High Court would be transformational".

As I say, I speak with some deference on these matters, but it is worth the Committee hearing the views both of the chairman of the Judicial Appointments Commission and the Lord Chief Justice.

Baroness Butler-Sloss: My Lords, I am sorry that yet another former senior judge is speaking. I recognise entirely the advantages of flexibility, but in this area there is a limit, and I want to say a few words about it. As a woman, I strongly support diversity on the Bench, particularly having been one of the earliest women judges. I also support encouraging those who leave either side of the legal profession in their thirties and forties for family reasons, very often to bring up young children, so that they can come back and sit on the Bench at a suitable level. To sit part time as a district judge or the judge of a tribunal is an excellent way of wooing back those who we would otherwise lose, to the detriment of the administration of justice. They are an obvious pool for promotion to more senior judicial posts. However, the point comes on the ladder to senior positions when a part-time judge inevitably will be less useful, and there would be some serious objections and disadvantages to part-time sitting.

I can see that it could be difficult for many centres where circuit judges try long and difficult cases, but it would be even more difficult for High Court judges and above. Perhaps I may give two examples. High Court judges, of which I was one for several years, often try—as one would expect—long and complicated cases that last for weeks, months or, occasionally, years. Listing officers would have real difficulties in listing cases if there were part-time judges. Further, as the noble Lord, Lord Thomas of Gresford, has already pointed out, High Court judges go out on circuit for six weeks or sometimes longer. They are a long way from home and return only at the weekends. As a High Court judge I went out on circuit and I can tell noble Lords that, as the mother of a teenager and two younger children, doing so was not easy. However, it is manageable. I felt that otherwise I could not be a High Court judge.

This leads to the second disadvantage. If there are part-time judges at the highest levels, the full-time judges in heavy cases would be likely to bear the heavier burdens. They would try the longer cases. That is because if there is to be any flexibility at all, and a case is going to last for six to nine months, it is unlikely that someone who wants to sit part time would actually be able to take it. That is particularly the case when going on circuit and there is a long case that may take the whole term. How on earth is someone who would prefer to work part time going to leave the family to take a long case? That would be certain to produce a certain degree of resentment among colleagues, who would be expected to take those cases because the part-time judge really could not take on the burden.

In the Court of Appeal, where I also sat, and in particular the Supreme Court, where I did not sit—and they are the purpose of these amendments—the idea of part-time sitting seems very difficult to achieve. How would it work in practice? However, most judges in the Court of Appeal and, perhaps I may say, even more so in the Supreme Court, are older. If candidates wanted the job at that stage of their lives, they would be able to give a full-time commitment, having given a part-time commitment when they were younger and had children to care for. I have to say that by the time I was in the Court of Appeal my children could manage on their own and I had to go home and worry less often about what they were doing—slightly less often since, as a mother, one does not ever stop worrying about one's children. I cannot understand, therefore, why those who start out as part-time judges at a lower level and who are clearly high performers and ought to rise up the ladder, as I went up having started as a district judge, cannot, when they are older, take on the full-time commitment that they were unable to bear when they were younger and had responsibilities for children.

I have to say also that if these clauses are intended as a gesture to underline the undoubted importance of diversity, and are not intended to be reapplied in the higher courts, I would not be too worried. If, however, as I fear, the Judicial Appointments Commission feels

that it is its duty to try to apply these clauses when and if they become law, feeling that it will be criticised if it does not do so, that will be very difficult to achieve. If it is achieved by the commission, I believe that it would create major problems. We have to think again about this. I really do not understand why older women, having got over the problems that required them to work part time, could not take on a full-time commitment in the Court of Appeal and the Supreme Court.

7.15 pm

Lord Pannick: My Lords, I find this a much more difficult issue than some noble Lords who have spoken. The noble and learned Lord, Lord Lloyd of Berwick, emphasised that we all agree about the importance of diversity, and the noble and learned Lord, Lord Woolf, emphasised his personal commitment to diversity, which I am aware of and, of course, I recognise. The noble and learned Lord, Lord Lloyd, referred to the statistics and said correctly that some progress has been made, but the position is still woefully inadequate. Some 16% of High Court judges and only 11% of Court of Appeal judges are women. These figures are simply unsatisfactory and urgent progress is desperately required.

As the noble Baroness, Lady Jay of Paddington, mentioned, the Constitution Committee, of which she is the distinguished chairman and I am a member, conducted an inquiry into judicial appointments and reported in March. We found that one of the reasons for there being so few women on the Bench at High Court level and above is the inflexibility of the working arrangements. At paragraph 112 of our report, we observed that one significant reason for the increasing proportion of women at senior levels in other professions in recent years has been due in large part to the greater use of flexible working hours. At paragraph 117, we recommended that allowing flexible working, certainly at the High Court and Court of Appeal levels, was the "minimum change necessary" to promote diversity. We said that:

"For the number of women within the judiciary to increase significantly, there needs to be a commitment to flexible working".

We need to recognise that many women will either want or need to take career breaks, or work part time or flexibly for family care reasons.

As I understand them, the noble and learned Lords, Lord Lloyd of Berwick, Lord Carswell and Lord Woolf, are essentially concerned about the practicality of part-time working, certainly at the Supreme Court level, but mention has also been made in this debate of the High Court and the Court of Appeal. In my experience, from the perspective of the Bar, I must say that the overwhelming majority of cases in the Supreme Court, the Court of Appeal and certainly in the administrative court occupy three days or less. Of course, there is much work to be done by judges out of court—I do not for a moment suggest that judges work only between 10.30 am and 4.15 pm—but actual time in court, which has been mentioned, occupies three days or fewer. Of course, there are longer cases, sometimes six or nine months, but they are unusual, exceptional or out of the ordinary. In any event—this is why I find this a more difficult issue than some noble Lords who have spoken hitherto—we ought to bear in mind that even at the Supreme Court level, judges have taken time away. They continue to do so, as I understand it, for a month at a time to sit in the Hong Kong Court of Final Appeal. As shown by a notorious example recently, judges at the Supreme Court level take time off, for very good public interest reasons, to sit on inquiries. We should not proceed on the basis that every judge works exclusively, full-time in a particular court.

The noble and learned Lord, Lord Woolf, mentioned—he is absolutely right to emphasise this point—the high reputation of our Supreme Court and, indeed, of our whole judiciary. It is a remarkable fact that as the public has lost confidence—regrettably—in many other institutions of our society, including, most regrettably, Parliament, but also the press and the City, the public rightly retain the utmost confidence in the judiciary. It is one reason why the public are quite prepared to listen carefully, as I am sure they will, to what Lord Justice Leveson will say about press freedom. However, we ought to bear firmly in mind that the confidence of the public in the higher judiciary is in danger of being undermined to the extent that the higher judiciary reflects and is composed of so high a proportion of men with such a small proportion of women.

The point was also made by the noble and learned Lord, Lord Woolf, and the noble and learned Baroness, Lady Butler-Sloss, that surely, when someone has reached their late 50s, or 60, when in the normal course of events they would be eligible for appointment to the Supreme Court, they ought to be prepared to sit full-time. However, surely one can envisage circumstances in which a women aged 60—slightly younger or older—may have a child aged 15 and may find it difficult to sit on the Bench during school holidays. She may also have an elderly relative for whom she is caring. These are not unrealistic examples.

In any event, I suggest that the provisions in the Bill which concern the noble and learned Lords who have spoken are merely permissive. They would obviously not be applied in relation to a Supreme Court appointment unless and until an occasion arose when it was practical to do so. I suggest to noble Lords that, given the importance of a real commitment to flexible working, it would be most unfortunate indeed if the Bill were to contain that commitment but exclude it in principle in any circumstances at Supreme Court level.

Baroness Kennedy of The Shaws: This is an issue close to my heart. When I was a young lawyer in the 1970s I contributed to a book called *The Bar On Trial*, written by a group of young lawyers seeking to address the nature of the Bar at that time. I wrote the chapter on women and I have been writing about women and law ever since. The issue of flexibility is the one that exercises women in the profession more than probably any other. It is the reason why women's careers look different—they are the people who have children and who are the primary carers.

Increasingly, women now at the Bar, perhaps unlike those of previous generations, have a different way of wanting to deal with their role as mothers. Their children are not going off to boarding school in their primary school years, they are not away from home,

[Baroness Kennedy of The Shaws]
they are still living with their parents and there is therefore the issue of who is the primary carer. Still, I am afraid, it usually falls to women, so I am grateful to the noble Baroness, Lady Jay, and the noble Lord, Lord Pannick, for emphasising that this is about flexibility. I regret that the words "part-time" are used. Can we find a way of reformulating this so that it is about flexibility?

I am concerned that often the ways of doing things are still championed by those who have gone through the system and come out at the other end—and I say that respectfully to those who are now retired as judges. We have to be capable of changing to deal with a changed world and the changed aspirations not just of women in the profession, but also sometimes of men in the profession and of the general public, if we want to see our judiciary change in its appearance.

It is right that we are talking first about the High Court. Currently, judges go out on circuit. It is a problem, and I do not know how to square this circle, because I think it is important that judges go out on circuit to try, for example, big criminal cases. It still matters because there is something wrong with the idea that there is a local High Court judge to deal with these things—local circuits can become too cosy and it is sometimes better that someone from outside comes in to try big, difficult cases in which a lot of public outrage might be involved. It deals with the question of whether there is too much cosiness or familiarity when the same judges are always trying the same cases.

I want to pick up the comments of my noble friend Lord Pannick. When it comes to the Court of Appeal and the Supreme Court, it is very rare that women still have very young children, but it must be possible for there to be flexibility when our children are adolescents, when they are taking exams or having time out of school. It must be possible to make arrangements so that judges can have time to deal with such domestic issues. It became an embarrassment even to raise those things at one time, but it is now possible and sets of chambers accommodate those men and women who want to have time for their families—that is how the working world has to be.

When it comes to the Supreme Court, of course it is right that at the moment, by and large, those who go to sit on the Supreme Court will be about 60—that is the sort of age we are looking at—but, as the noble Lord, Lord Pannick, said, sometimes a woman of 60 is the mother of adolescent children taking exams and going through important parts of their growing lives. It should be possible to find ways of accommodating that. There is something wrong with a system when, of 25 people consulted on the recent appointments to the Supreme Court, 24 were men. Is it any wonder that we only have one woman on that court? I can say emphatically that there are women who could have taken up those new appointments, but who were not considered. I hear retired judges, and even sitting judges, saying, "We only want the best". Of course, we only want the best, but I want us to open up what those ideas of "the best" are. Sometimes they are defined by men who have no idea about the contribution that highly intelligent women of a different experience might bring to those senior courts. That is why it is not good enough to stick with the old system. We have to embrace change if we want to see a different kind of judiciary. We should see the Bench as a whole, and not replicate the same people with those cut from the same cloth. I strongly endorse the efforts to change the arrangements and so am against the amendment of the noble and learned Lord, Lord Lloyd.

7.30 pm

Lord Lloyd of Berwick: Could I ask the noble Baroness a question? Much of what she said dealt with flexibility. I think that everybody in the House is in favour of maximum flexibility, both at the High Court level and above where it is possible. The real question is whether flexibility demands part-time judges. The view of some of us is that it does not.

Baroness Kennedy of The Shaws: If I may respond to the noble and learned Lord, it seems to me that it has to be one of the possibilities in the whole panoply open to those making appointments. I do not imagine that it would happen very often but it might be that someone exceptional could be appointed who would say, "I will sit during these parts of the year and will be available to you then". I do not believe that that would bring about resentment from other colleagues once they saw the quality of the work done by people of real ability.

Baroness Neuberger: Much of what I had wanted to say has been said by others, notably by the noble Lord, Lord Pannick, and the noble Baronesses, Lady Kennedy and Lady Jay. I chaired the Advisory Panel on Judicial Diversity and we took a great deal of evidence from both men and women who were either judges or interested in becoming judges. Of the many components needed to create a more diverse judiciary, flexible working was pretty near the top of the list. It was near the top of the list for people in their late 50s and in their 60s, who were not on the whole talking about looking after children—although, like the noble and learned Baroness, Lady Butler-Sloss, I think one ends up worrying about one's children for ever—but about caring for elderly parents.

Increasingly, because we are living longer, people in their 60s are caring for parents in their 80s and 90s. It is likely that people who are going to work as much as they possibly can in their 60s may still need to work more flexibly than was hitherto the case because they need to look after, or make sure that somebody else is looking after elderly parents. That point was made to me almost as much by men as by women and almost as much by solicitors as by people who came from the Bar. We must make provision for flexible working given the way that our population is ageing and that we are likely to look after parents in our 60s and 70s.

Therefore, the need to be more creative and flexible in how we think about these issues has never been greater. That was felt very strongly by people from whom we took evidence. Those people, including some members of the present High Court, also said that to them flexible working was not about working two days one week and three days the next, but about working possibly for nine or 10 months of the year and simply

taking slightly more holiday than other people. That holiday, which would in fact be to allow them to carry out their responsibilities, would simply have to be factored into the system. Sending out a message to the wider world that we are not prepared to consider flexible working for the judiciary when we consider it for every other profession in the country would look very strange indeed.

Baroness Northover: I suggest that the debate on Amendment 115 be adjourned and that the Committee does not resume again before 8.20 pm.

7.34 pm

Sitting suspended.

8.20 pm

Baroness Falkner of Margravine: My Lords, I apologise for not having spoken at Second Reading. I am sorry that the noble Baroness, Lady Kennedy, is not in her place. She would have appreciated that I was probably not able to speak at that stage of the Bill because I am a 50-something mother of an adolescent child who, in her words, was probably too busy supervising the child's exam-taking. For the purpose of declaring an interest, I should also say that I am a member of the Constitution Committee, but I was not involved in the report on judicial appointments. However, I was involved in the Constitution Committee's report on this Bill.

I want to pick up a few points that have been made. As I have already said, the framing of the debate is rather narrow. The past hour or so has involved a discussion of women serving as judges of the Supreme Court or the Court of Appeal. I want to inject a little pluralism into the debate about diversity by suggesting that there are other groups that are also affected by this: all the protected groups, people with disabilities, people from lesbian, gay and transgender backgrounds, but, particularly, people from ethnic minorities.

I think it was implied at some point in the debate that the clauses for flexible working would probably not be taken up by black and minority-ethnic community people, particularly men from that community, because at the age at which these jobs would be open to them, they would have no use for them. As a woman from that community, I have made it my life's mission to ensure that men from black and minority-ethnic communities take caring responsibilities for their children and their parents—in other words, be new men—and I do not intend to give up now. I do not see why that category of men or women would not be better served by provisions for flexible working. I would not distinguish them, and I would certainly not set them apart from women who might, or might not, have children.

I think it was also implied that the Supreme Court has a heavy responsibility for maintaining the high reputation that the Appellate Committee of the House of Lords built up over decades—probably centuries—and whose decisions were treated with the greatest respect. I completely agree with noble and learned Lords and noble Lords who have spoken in this debate that that is the case. I did quite a lot of work on the Latimer House principles for the Commonwealth which involved agreeing a balance on the principles of accountability and the separation of powers between the judiciary, the Executive and the legislature. It is absolutely true that the Supreme Court of the United Kingdom is held in extraordinary esteem certainly by 54 Commonwealth countries and beyond those shores, but I do not accept the implication of the debate that, because it is held in such high esteem and such great respect, if it were to move to a more flexible pattern of working, let us say, with the inclusion of perhaps more women or more ethnic minorities, that would inevitably diminish the quality and standard of the judgments it handed down.

It was also implied that this was gesture politics and that there would be no realistic possibility of any candidate capable of being so appointed to be able to do it or even want to do it. My answer to the critics of these proposals is that that may well be true. I have no evidence to show that it might work either way. But we know that the past has not delivered the diversity that we want, so perhaps changing this may well do so. Let us try it and see.

It is said that full-time judges would be left in a position where they would be trying the heavier cases—in other words that they would have a disproportionate burden put upon them by those who had a need occasionally to work flexibly, and that colleagues would resent this. Before I came into this House I worked in senior positions where successive employers granted me flexible working conditions in pretty full-on jobs. Most people who work flexible hours—there is evidence for this and I will get it for Report stage as I did not know the debate would go this way—tend to overcompensate for the fact that they are putting a burden on others and they therefore tend to work longer hours, be it on a Saturday or Sunday at home or elsewhere, in order not to allow an illusion to develop that they are not pulling their weight.

We have been debating in this House and will debate in the future options for increasing the targets of women serving on boards in the corporate world. As the noble Baronesses, Lady Neuberger and Lady Jay of Paddington, said, in the medical profession we have ample evidence of how difficult it was to convince people of this change, how well it works, and so on. In all other senior positions diversity has been found to add to decision-making and, if not positively to add to it, certainly to create a more plural set of inputs into decision-making. So it is extraordinary that for one category of professionals, some of the most esteemed professionals in the land, there is a question about having a change to slightly more flexible working. That does not mean, as many noble Lords have inferred, that the subject individual would say "I will not work on Mondays and Tuesdays, irrespective of what comes my way". That is not the meaning of flexible working and that is not the meaning of part-time working either, if we are being pedantic about words in the Bill. The meaning of part-time or flexible working is that people recognise or say openly to their employer that they will be occasionally needing flexibility in terms of their personal arrangements and will be taking that flexibility from time to time. The people who make it into those positions are usually dedicated to fulfilling the task that they are appointed to do in the best manner that they are capable of. That is the basis on which this clause should be debated.

Baroness Brinton: My Lords, I rise to speak on the important matter of improving the diversity of our judiciary. I start with an apology that a previous engagement elsewhere in Parliament meant that I was unable to attend and speak at Second Reading.

I oppose Amendments 115 and 120 and want to speak in support of the proposals put forward by the Government, specifically to the elements in Schedule 12(2)(3) on the appointment to increase diversity, assuming that all candidates are of equal merit. I refer to the excellent reports by the noble Baronesses, Lady Neuberger and Lady Jay of Paddington, and their committees. Both reports make the demand for change absolutely essential.

8.30 pm

Prior to addressing that, I will briefly take up the point on which much of the previous debate focused—part-time and flexible working. I regret somewhat that, with a couple of noble exceptions, the assumption has been that flexible working would only ever be accessible to or needed by women. That is absolutely not the case. One of the real benefits would be that male judges would feel that it was appropriate for them to take advantage of that as well.

Twenty years ago I was bursar of Lucy Cavendish College, which had the honour of hosting the Law Society summer schools for women. They tried to give women the tools they needed to achieve the promotions that they deserved. It may have taken 10 to 15 years to see real change in the senior members of the solicitor profession. We need to see that elsewhere. Clear action by the Law Society to support those young women in their aims had a significant benefit.

Much of the debate this evening has focused on the practical arrangements. Frankly, many other sectors have been resistant to change and have argued the same points that we have heard this evening. Perhaps we need to remember that the statistics demonstrate the problem of diversity in the judiciary. Unfortunately, encouragement from the sidelines alone has not improved it. Firm but careful steps need to be taken to protect the absolute principle of appointment by merit, while making sure that those from underrepresented groups—not just women—are given a full opportunity if all other skills and competencies are equal. The equal merit provisions safeguard the quality of members of the judiciary and ensure that no woman or black, Asian or minority ethnic judge feels that they have been appointed as a token gesture. This is vital.

Figures published only last week demonstrate why this measure is needed. Prospective women circuit judges for heavyweight crimes made up one-fifth of eligible candidates, but this was reduced to 14% of applications and an even smaller number of 8% were recommended for appointment. That is, nearly half of those recommended for interview were not recommended for appointment. The news of appointments for women during the year has been rather better, which is good, but there is still a long way to go. I understand that part of that issue relates to the number of women in the family courts.

The position for those from BAME groups was also mixed. Their appointment to tribunals was good, but not to higher salaried positions. No one from a BAME background who applied to be a deputy judge of the Upper Tribunal—the Immigration and Asylum Chamber—in 2011 was appointed. The figure for recorders showed a substantial rejection of BAME candidates, with 13% at application but 8% appointed.

There is a tendency in human nature to appoint those who look and feel like us. This is the main reason why women have often found it difficult to break through the glass ceiling in traditional areas. With women making up just over 50% of the population, the problem can be very visible. However, other underrepresented groups face the same problem and may not have the advantage of visibility if they represent an even smaller part of the population. My noble friend Lady Falkner of Margravine has already referred to them. Herein lies the problem. Those who do not want even these moderate steps argue, "Trust us. We will always appoint the best, and the best women and BAME candidates will come through". However, the best may not look or feel like us, and might therefore be excluded at an earlier stage, possibly even in the figures that I outlined earlier.

Last week, the former President Jimmy Carter was honoured by the Just the Beginning Foundation in Atlanta for his bold step in appointing 57 minority and 41 women judges in the late 1970s. These included federal and Supreme Court appointments. Nathaniel Jones, who was appointed by Carter to a federal appeals court position, said:

> "President Carter, by virtue of his core values, had a capacity to identify wrong and a capacity and the courage to correct it".

He later added:

> "You have given justice, American justice, a good name around the world".

Carter, typically modest, replied:

> "The credit doesn't go to me … It goes to the performance of the people I was honored to appoint".

I cite that example because, in addition to the excellent performance of these candidates, the American system became more flexible as a result. It is fair to say that the American way of affirmative action is not ours, but this example serves to prove that quality does not need to be compromised by providing support for candidates who otherwise would find it difficult to be appointed, because they did not look like those who came before.

In Canada, there has been a similar process in which the Commission for Federal Judicial Affairs passes the names of applicants on to advisory committees who are then charged with respecting diversity when making their recommendations—a process not dissimilar to ours. Ontario has the Judicial Appointments Advisory Committee, which is responsible for contacting individuals from underrepresented groups who might want to apply for judicial posts. This has seen a significant improvement in the number of women in the Canadian system. Unfortunately, only two out of 100 recent appointments were not white. The Canadian system can be described by ethnic minorities as opaque and this is much exercising the Canadian press at the moment—indeed just last week.

I believe that the measures that the Government propose in this Bill provide a mechanism that ensures merit and excellent quality, while ensuring that the

appointment of underrepresented groups improves, so that our judiciary begins to look like the nation. We have heard that call for our legislature as well, where we are still working at improving the diversity of both these Houses of Parliament.

Lord Falconer of Thoroton: My Lords, my understanding is that we are debating the part-time provisions relating to the High Court, Court of Appeal and the Supreme Court. I understood that the noble and learned Lord, Lord Lloyd, said that it might be sensible then to deal with the other amendments in this group. I have in mind in particular the tie break provision amendment and my amendment about whether or not the Lord Chancellor should remain involved in appointing circuit judges. As I understand it, what was envisaged was that the noble Lord, Lord McNally, would reply on the part-time issues, then, without going on to another group, we would move on to the tie break and maybe the other amendment as well. Although the noble Baroness, Lady Brinton, has dealt with the tie break, at this stage I will restrict my remarks to the part-time issue, following the lead of the noble and learned Lord, Lord Lloyd. I would envisage that the noble and learned Lord, Lord Lloyd, would open the debate on the tie break as well.

Lord McNally: We had better get this straight from the start. The noble and learned Lord, Lord Lloyd, said that he wanted to move Amendment 120. He did not mention the amendment of the noble and learned Lord, Lord Falconer. I will take advice from the clerk, but if we are discussing only Amendment 115, whether Clause 18 should stand part of the Bill and, presumably, Amendment 116, then in normal circumstances we would go on to Amendment 117, not Amendment 120.

Lord Falconer of Thoroton: Our problem is that if I talk about the tie break, it is before the noble and learned Lord, Lord Lloyd, has made his points about why the tie break is wrong. The natural sequence of events is that I speak, then the Minister, we do not put a question but go round again, which is perfectly okay in Committee. If everybody is happy, that is the right course that I would envisage. A preliminary point: initially, I thought the noble Lord, Lord Goodhart's, point was that the Constitutional Reform Act 2005 was such an important Act that it could never be amended. I tended to agree with that proposition. As I understand it, and I agree with this, he then went on to say that when a Bill makes a significant constitutional change, it is wrong to put it in the form of a schedule introduced by a section which does not, as it were, preview that it is a major constitutional change. The right way to make major constitutional changes, so that this House—which has a special responsibility in relation to constitutional changes—is aware of what is going on, is by an individual Act of Parliament.

I agree with the noble Lord, Lord Goodhart, in relation to this because here we are dealing with an important constitutional issue as regards the position of judges. Like the noble Lord, who is a practical and sensible Member of this House, I fear that we are where we are. We are in Committee and it is obvious that we will pass something along the lines of Clause 18 and Schedule 12. Therefore, it is necessary for us to debate the merits of those. But it is extremely important that the Government recognise that where one is dealing with important constitutional issues, it does not in any way inhibit any programme of constitutional change, it just means it is right that it is properly flagged up so that we know where we are.

Lord Goodhart: My Lords, I am very grateful to the noble and learned Lord. That is exactly the view I have taken today.

Lord Falconer of Thoroton: I support the noble Lord, Lord Goodhart, in what he says but, as a matter of practicality, I recognise that we have to move on. The noble Lord, Lord McNally, is much loved around the House and a genuine supporter of sensible constitutional change. He was a significant supporter of the Constitutional Reform Bill in that he allowed it to go through in circumstances where it might not otherwise have gone through, so I have a particular personal reason for believing that the noble Lord is a supporter of constitutional change. It would be worth while if he could say something in response to the noble Lord, Lord Goodhart.

We are dealing with three tiers of part-time judge: first, the High Court of England and Wales; secondly, the Court of Appeal of England and Wales; and, thirdly, the Supreme Court, which is part of the UK judiciary. The average age at which persons are appointed to the High Court of England and Wales is between 45 and about 60. In the Chamber tonight, we have two former High Court judges. The noble and learned Baroness, Lady Butler-Sloss, and the noble and learned Lord, Lord Woolf, were both appointed at the age of 45, which is at the youngest end of the range.

In appointing women between the ages of 45 and 50, it is extremely likely that they will have caring arrangements. I know that from my own experience as someone at the English Bar and as someone appointing judges. The difficulty for people is in making a choice as to what they put as their priority. As the noble and learned Baroness, Lady Butler-Sloss, rightly said, the current attitude is that it is "full on" if you join the High Court and there are no dilutions. The consequence of that in relation to the High Court is that a significant pool of people who would otherwise be willing to be appointed is being lost. I know that from my own experience in appointing judges.

Lord Woolf: Perhaps the noble and learned Lord will forgive me for making this point. I am sure that his experience was similar to mine. Where a case was made by an applicant who needed special assistance because of personal circumstances, the system that we have had has always been flexible enough to allow us to make those special arrangements and they worked satisfactorily. We should acknowledge that and I suspect that the noble and learned Lord will endorse what I have said. If I have understood him correctly, he was indicating the contrary, although I am sure that he did not mean to.

8.45 pm

Lord Falconer of Thoroton: I accept what the noble and learned Lord says and perhaps I may say that no one was more willing than he—his successor, the

[Lord Falconer of Thoroton]
noble and learned Lord, Lord Judge, was the same—to accommodate people as much as possible. So in answer to the point of the noble Lord, Lord Thomas of Gresford, if it was difficult for individual High Court judges to go on circuit then the Lord Chief Justice, in my experience, was always reasonable and understood the difficulties. However, there were limits. The main one was that you would not agree to have as a High Court judge somebody who wanted to have half term and school holidays off. As the noble Baroness, Lady Falkner of Margravine, said, we are not talking about working Mondays and Wednesdays but about whether someone could work for a period but have the children's school holidays off. There is currently a situation where a High Court judge gets three months off. Is it that much more different to say that school holidays could be taken off as well? That sort of flexibility would open the door to a group of people who currently would not feel able to accept appointment as a High Court judge.

The noble and learned Baroness, Lady Butler-Sloss, asked broadly why we do not do that at the lower judicial level. Absolutely not. Why should somebody who is 45 and has the quality to be a High Court judge be offered a part-time job only in a position that is essentially inferior to the one that they would otherwise merit? The noble and learned Baroness, Lady Butler-Sloss, then argued, and had some support from the noble and learned Lord, Lord Carswell, that it is very difficult if you have some part-timers to deal with cases that last for nine months. Again, with the greatest of respect to the noble and learned Baroness, who was equally a champion of diversity, there are a handful of those long cases. The idea that there would be resentment because a number of judges would be willing to do them and others would not is, in my experience, fanciful. With respect to the noble and learned Baroness, I reject that argument. I strongly support the Minister's proposal in relation to part-time judges for the High Court Bench because it improves and increases merit. It opens and widens the pool. It has no effect whatever on merit. I am strongly in favour of it.

The noble and learned Lord, Lord Lloyd of Berwick, said it was okay for the circuit Bench but not for the High Court Bench. Again there is no logic and no ultimate justification for that position. We should, as a Committee, endorse the proposal because it indicates that we understand the pressures on successful professional people. We should not say that the High Court Bench—unlike being a consultant doctor, a successful barrister, solicitor, or architect—is the only place where we will not be willing to allow that sort of flexible working. I am sorry that she is not in her place but the noble Baroness, Lady Kennedy of The Shaws, was right when she that it is about flexible working. Part time, as a piece of language, may be a slightly misleading suggestion. I strongly support the proposition for the High Court Bench.

The next tier is the Court of Appeal. I have indicated that the range of ages at which people are appointed to the Court of Appeal is between 45 and 60. Although there is no pattern, one could reasonably expect to go to the Court of Appeal after between six and 12 years at the High Court so we are talking about people in their early 50s, although there are some exceptions. I am quite sure that the noble and learned Lord, Lord Woolf, and the noble and learned Baroness, Lady Butler-Sloss, were in the Court of Appeal in their late 30s, but normally early 50s is the sort of range, although there are some people who go later. Think about what your responsibilities were when you were in your early 50s in relation to looking after children. Again, I know of people in the current Court of Appeal who have adolescent children and some with children under 12. What is more, as the noble and learned Baroness and the noble and learned Lord will testify, some of them live outside London. So in addition to the problem of having caring responsibilities for children, they have to travel from far away, which puts increased pressure on them.

Should people have the option of saying that they would like to go to the Court of Appeal but would like to do it when there are school holidays or on some other part-time basis? It is said by the noble and learned Baroness, Lady Butler-Sloss, and the noble and learned Lord, Lord Carswell, that this would cause great difficulty because there are long cases in the Court of Appeal. I completely agree with what the noble Lord, Lord Pannick, says. My experience with cases in the Court of Appeal is that they do not tend to last more than three days. I know from my own experience of a case that lasted two weeks in the Court of Appeal, but I imagine that that would be regarded as unusual. I cannot think of any other profession where it is said that two weeks cannot be accommodated for somebody who works flexible hours. So with the greatest of respect to the noble and learned Baroness and the noble and learned Lord, Lord Carswell, I would say that the idea that it will cause difficulties in the Court of Appeal is not right.

Finally, on the Supreme Court, the noble and learned Lord, Lord Lloyd of Berwick, started off by saying that there was no Supreme Court with part timers. First, there is the House of Lords, which has many part timers. The Lord Chancellor was a part timer as a Member of the House of Lords. It was also the norm for retired members to sit on the Judicial Committee the House of Lords, and indeed for retired members of the Supreme Court to sit in the Supreme Court. So the idea that the Supreme Court cannot deal with the arrangements of part timers is, with the greatest respect, wrong.

Secondly, in relation to the length of cases dealt with in the Supreme Court, my experience of cases in the House of Lords and in the Supreme Court is that they tend to be shorter even than cases in the Court of Appeal. There was one case that lasted over a week in the past few years, which was the Belmarsh appeal, but that was a very exceptional appeal. So in arrangement terms there would be no difficulty in having people in the Supreme Court who were part time.

The noble and learned Lord, Lord Lloyd, went on to another point. The proposal would make absolutely no difference, he said, because there is nobody whom he can envisage would be worthy of appointment who would want to be part time. First of all, we are talking about this being permissive, not compulsory. Secondly, how many people have caring responsibilities for elderly parents? I was describing earlier the fact that, when I

sought to appoint one High Court judge, she told me that she could not take the appointment because she had responsibilities for her own elderly mother and the mother of her husband as well. How many people would want to be in the Supreme Court and would be capable of being there but have other responsibilities? I do not know—but I look around the world and I see part-time Supreme Court members, such as the noble and learned Lord, Lord Woolf of Barnes, in relation to the Court of Final Appeal in Hong Kong, or Sydney Kentridge in the Supreme Court of South Africa. Have those courts benefited from those part-time members? My answer is yes.

So if we were to agree to a provision that allowed part-time or flexible working members of the Supreme Court in the United Kingdom, there would be two benefits. First, it would increase the pool of people who would be able to apply. Secondly, it would lead to a sense that we thought that flexible working was available from the top to the bottom of our judicial system. I cannot think of a better message for us to send—and it would be one that was not just a gesture but would have an effect on increasing merit. So I and these Benches enthusiastically endorse the brave and sensible proposal that the Government have made in relation to part-time working in the Supreme Court, the Court of Appeal and the High Court.

Lord McNally: My Lords, I feel like sitting down. The noble and learned Lord, Lord Falconer, was quite right; when he was Lord Chancellor and put through his constitutional reforms the Liberal Democrat Benches gave him full and consistent support. The brain power behind that support was my noble friend Lord Goodhart. I was the political organiser. As the noble Lord, Lord McAvoy, will attest, the triumph of ideals must be organised, so I share the pleasure in these reforms. I also think it is right—we will have lots of discussion about this—that the reforms, good as they were and are, are capable of being tweaked and improved in the light of experience. Therefore, I am grateful to the noble and learned Lords, Lord Lloyd and Lord Falconer, for setting the parameters of the debate, as it were.

Before I go into the detail, I wish to deal with the general point raised by my noble friend Lord Goodhart. I understand where he is coming from and the need to acknowledge the importance of constitutional reform. However, as the noble and learned Lord, Lord Falconer, found from his own experience, the difficulty is getting parliamentary time to tackle this. You sometimes have to accept the necessity of putting very important issues into a broader based Bill. The Government are always faced with the dilemma—this is true of all Governments—of choosing whether to put provisions together in one Bill, as is the case here, or of delaying legislation on important and necessary reforms. We have chosen the former approach but the fact that these provisions are in Clause 18 and Schedule 12 does not for a moment diminish their importance. Wherever they sit in the Bill, I would expect your Lordships' House to discharge its usual role in carefully scrutinising the Government's legislative proposals. If there was any doubt about that, it should have been dismissed by the thorough way in which the House has filleted these proposals for two and a half hours this evening.

I turn to the merits of our reforms to the judicial appointments process and answer the concerns raised by the noble and learned Lord, Lord Lloyd. His amendments would delete from the Bill the key measures to promote diversity and flexible working in the Supreme Court. As the noble and learned Lord, Lord Falconer, said, "flexible" is the right word, not "part time". Of course, we must ensure that the process through which our judges are appointed is fair, open and transparent. The longer I am in this job, the more I am in awe of the quality of our senior judiciary. They are a national asset and are respected throughout the world for their quality and independence, as the noble and learned Lord, Lord Falconer, said. However, this does not conflict with a requirement for greater diversity in the judiciary. Diversity in the judiciary is important to enhance public confidence in the justice system. The proportion of women and members of ethnic minorities is still too low, and this is particularly the case in the higher courts.

As the noble Lord, Lord Pannick, pointed out, progress in increasing diversity in the judiciary has been woeful and inadequate. We do not believe that we can rely on trickle-up. We consider that allowing flexible working in senior courts is an important reform to increase diversity, and that it will not detract from the principle of appointment on merit. I was recently asked by a very senior member of the judiciary, "Will our judiciary still be held in the same high esteem in 20 years' time as it is today, if your reforms go through?". I could look him in the eye and say "Yes, I believe that it will, but it will be a more diverse judiciary".

The arguments made by the noble and learned Lords, Lord Lloyd and Lord Carswell, and by the noble and learned Baroness, Lady Butler-Sloss, is that flexible working in the Supreme Court is simply not practical, and that all judges of the Supreme Court need to shoulder their fair share of the business by sitting full-time. I simply do not accept these arguments. It is a judgment call, but we have no reason to believe that it cannot work to the benefit of flexibility and diversity. Regarding the virtuoso performance by the noble and learned Lord, Lord Falconer, I can see how he earned an honest crust at that game. However, the noble and learned Lord made a good point. Flexible working will not be compulsory but will provide flexibility and, as has been pointed out by the noble and learned Lord, Lord Falconer, and the noble Lord, Lord Pannick, the merit test would still be there. It is not a dilution but a move to greater flexibility, which we believe will allow for greater diversity.

Many of the arguments we have heard from the sponsors of this amendment reflect an outdated view of the family. As the noble Baroness, Lady Kennedy, explained so eloquently, we need flexible working not just to enable a woman in her 30s or 40s to balance her career with her caring responsibilities, but to enable women in their 60s to carry out caring responsibilities for teenage children. Equally, such caring responsibilities can extend to grandchildren, a disabled partner or elderly parents. As my noble friend Lady Falkner pointed out, we are not just talking about women but about ethnic minorities, and some of this flexibility will also apply to men who find the present system too rigid.

[LORD MCNALLY]

We need to allow men and women of all ages to meet such caring responsibilities and balance them with flexible working patterns. The noble Baroness, Lady Jay, and others noted that such arguments were put forward in the past to oppose the introduction of flexible working in other professions. It has been shown in the medical profession and elsewhere that flexible working arrangements can be readily accommodated. As I have said in this House previously, if anybody asks me what is the biggest difference I have seen, having worked in the Foreign Office and Downing Street in the 1970s and come back to Whitehall now in 2010 to 2012, I would say that it is in the diversity of senior advisers. If our Civil Service can achieve such diversity, why can the law not achieve it?

That is not to say that there will not be challenges in implementing this, and practical issues to work through in, for example, the listing of cases. However, we agree with the noble Lord, Lord Pannick, and the noble and learned Lord, Lord Falconer, that these issues are not insurmountable. As he has indicated, most cases in the Supreme Court require hearings of only two or three days. As has been discussed, flexible working can take many forms, such as working during term times, or for nine or 10 months of the year, as the noble Baroness, Lady Neuberger, highlighted. Can I again pay tribute to her committee, which has not simply produced a report, but has kept on the case in terms of chivvying me and the Lord Chancellor in these areas? Moreover, if we are allowing flexible working in the lower courts, including the High Court and the Court of Appeal, the absence of flexible working in the Supreme Court could potentially deny an outstanding Court of Appeal judge the ability to consider applying for the Supreme Court.

I hope that the debate has, in a way, answered the concerns of my noble friend Lord Goodhart. These are important issues that are not to be taken lightly. I do not think that the House has taken them lightly but the case against the Government's proposals has not been made—in fact, quite the contrary. The balance of the debate has been on our side.

Lord Woolf: Before the noble Lord sits down, perhaps I should mention the position of the noble and learned Lord, Lord Carswell. He did not want to absent himself from the later parts of the debate, but he had to return to Northern Ireland and has sent his apologies. I said that I would convey them to the House.

Lord McNally: *Hansard* will note that, with the full understanding of the Committee.

Lord Lloyd of Berwick: My Lords, I will be brief because I do not intend to divide the Committee. I am grateful to the Minister for his reply.

The noble Baroness, Lady Jay, was quite right to refer to the Lord Chief Justice's evidence to her Constitution Committee. However, the point he was surely making was that there is already a great deal of flexibility in the High Court. That point was also made by the noble Baroness, Lady Falkner, during my speech. Indeed, it was made very recently by the noble and learned Lord, Lord Woolf. For example, if a judge is unable to go on circuit for family reasons or any other reason, he or she will of course stay in London and other arrangements will be made. That is already happening in the High Court. I say "he or she" because flexibility applies to both sexes; it applies to men as it applies to women. The thought seems to have been that somehow flexibility will help only women. That is not the case; it helps men also.

The noble Baroness, Lady Kennedy of The Shaws, also made a strong point on the importance of flexibility—as did the noble Baroness, Lady Neuberger. The truth is that we are all in favour of greater flexibility, just as we are all in favour of greater diversity. However, greater flexibility does not require the appointment of part-time judges. That is what this debate is not about. It is about whether part-time judges should be appointed not in order to give greater flexibility but to solve the never-ending problem of diversity—how to get more women into the higher courts. When the Minister said in his reply that flexibility and diversity for men and women were all one thing, he missed the whole point of this part of the Bill, which is intended to increase the number of women in the higher courts. All that I can say is that it will do no such thing.

Baroness Falkner of Margravine: I greatly appreciate the noble and learned Lord giving way. I again ask him to clarify whether he accepts that diversity encompasses more than just gender. It encompasses several strands, including disability, sexual orientation, ethnic minorities and so on. The Bill nowhere states that it is intended only to increase the number of women. It speaks in terms of diversity.

Lord Lloyd of Berwick: I could not agree more; of course we are not talking about women but about, above all in this context, black and ethnic minority judges, as I made clear when moving the amendment. As the noble Baroness made clear, we are also talking about other forms of minority, including people with disabilities, for example. However, the whole thrust of this part of the Bill is intended, as one can see from the history, to get more women, as well as ethnic minority judges, into the High Court.

I will not say any more about those who have supported the amendment, except to emphasise the extremely effective point that the noble and learned Lord, Lord Carswell, made regarding the collegiality of the Supreme Court. I certainly had a sense of that when I was in the Supreme Court, and I also felt it throughout my time in the Court of Appeal, although one obviously does not have that sense as a High Court judge. We were all members of one court. I do not think anyone can tell what the effect of the appointment of part-time judges will be on that essential concept of collegiality in both those courts.

I should mention the point made by the noble and learned Lord, Lord Woolf. He was unable to imagine a woman who would be willing to accept part-time appointment to the House of Lords but not full-time appointment. The question comes back to this: if that is the case, the purpose of this part of the Bill is not to cure the problem of diversity. Instead, the purpose is to send out what the noble and learned Lord called a

signal; a gesture. I am opposed to gesture legislation, which is what this amounts to. It will not make any difference in practice. Having said that, I beg leave to withdraw the amendment.

Earl Attlee: If the noble and learned Lord wants to speak to another amendment in this group, I would advise him not to withdraw his amendment. Otherwise the Lord Speaker will inevitably have to go on to further amendments in accordance with the Marshalled List.

Lord Lloyd of Berwick: I am very grateful to the noble Earl. I will defer begging leave to withdraw the amendment until I have moved the other amendment.

Earl Attlee: My Lords, the noble and learned Lord can speak to his other amendment if he wants. He cannot move it, but he can speak to it now.

Lord Lloyd of Berwick: My Lords, the second amendment in my name and the names of the noble and learned Lords, Lord Carswell and Lord Woolf, is concerned only with diversity. It affects the judiciary at all levels. The amendment would leave out line 27 of Clause 18 and Part 2 of Schedule 12.

The Government accept that judicial appointments must be solely on merit. However, the Government argue that there might be cases where two candidates were of exactly equal merit, like two candidates getting the same marks in an examination, in which case the woman or the black man should be preferred. At least, that is the idea. "Solely on merit" is thus to be given a special meaning.

How is it going to work? Let us suppose there is a vacancy in the Supreme Court. The candidates will almost certainly come from the Court of Appeal. Let us suppose that there are two candidates from the Court of Appeal. Their abilities will be well known to the selection commission. The Bill provides that the selection commission shall consist of an odd number of members, not less than five. Is it conceivable, I ask, that all five members would find the two potential candidates of exactly equal merit? The answer is no. I suppose it is just possible that two members of the selection commission might favour one candidate, and two might favour the other, and the fifth member of the commission might be unable to make up his mind one way or the other, but this seems so unlikely in practice that it should not be the subject of legislation.

I am not alone in taking the view that I do. The noble Baroness, Lady Neuberger—who is still in her place, I hope—the noble Lord, Lord Phillips, and the Lord Chief Justice, all doubted whether candidates for the Supreme Court would ever be exactly equal. So did Christopher Stevens, the chairman of the Judicial Appointments Commission.

The idea that the Equality Act might be used where there are two candidates of exactly equal merit comes from a recommendation of the advisory panel in its 2010 report. As the noble and learned Lord, Lord Neuberger, will recall, it was recommendation 21. In a progress report of May 2011, the Judicial Appointments Commission said that it had always been able to distinguish between the relevant merits of different candidates, and that it did not anticipate that the Equality Act would ever be relevant in practice. Therefore I suggest that the idea should have been dropped then and there; it was nothing but an idea.

The members of the Judicial Appointments Commission operate in the real world. Part 2 of Schedule 12, which is based on the idea that one can have exactly equal candidates for these posts, is a good example of the sort of make-believe world in which Governments so often seem to exist.

That leaves only one argument. It is said that even though Part 2 of Schedule 12 would be useless in practice, it would send out a strong signal that diversity is of importance. This was the view of the Constitution Committee, stated in paragraph 101. It was also touched on by the noble and learned Lord, Lord Mackay, at Second Reading.

I do not believe that legislation should be used for the purpose of sending out signals. Moreover, in this context the signal is surely rather demeaning. We would be saying to highly intelligent women lawyers, "You may not have been the best but be of good cheer, you were first equal". If I were the first black judge to be appointed to the Supreme Court, I would want to know whether or not I had been the best candidate, as I would under the existing law. Under the new law, I would not know. If I was only equal first, surely I would want to know who the other candidate was—and no doubt the other candidate would want to know who I was. Moreover, if I were a black judge, what would happen if the other candidate were a woman? How would the equality principle apply in those circumstances? I have formed the view that the Equality Act is of no assistance in this context. Of course it is of great importance in many other fields, but in appointments to the Supreme Court and the Court of Appeal it is of no assistance at all: indeed, it could do nothing but harm in the manner that I suggested. I beg to move.

Earl Attlee: My Lords, the noble and learned Lord made a slight mistake. He did not beg to move; we can just carry on debating the amendments in this group.

Baroness Falkner of Margravine: My Lords, I will comment briefly on this point. In his closing remarks the noble and learned Lord, Lord Lloyd of Berwick, asked an interesting question that is posed frequently: where there is a tie-break, as I would refer to it, what should be done if there are two candidates of supposedly equal merit, one of whom is a woman and the other, for example, is from an ethic minority? I note that the report of the Constitution Committee gives a lot of assistance in how we should define merit but makes the point that, certainly in large-scale selection processes, there could conceivably be candidates who end up in a tie-break: in other words, who are assessed to be of equal merit.

It would be quite straightforward to apply the test in those circumstances. You would look to see which group is more underrepresented than the other group and, in the case where there are two from underrepresented groups, appoint the one that was not to be found there. That would be fairly straightforward. With more senior appointments, it is entirely conceivable that it would

[Baroness Falkner of Margravine]
be much clearer. We have heard that there is one female and no ethnic minority member of the current Supreme Court. In that case, it would be fairly straightforward, if the candidates were tied and came out equally in an assessment, you would go for the ethnic minority candidate. Although you would want to increase the gender diversity, on such an occasion, you would need to increase the diversity overall.

I also make the point to the noble and learned Lord that blatantly nobody is seeking to have the senior judiciary reflect the people they serve, because the people they serve on the whole are there, particularly in criminal cases, because they have done wrong. Nobody is suggesting that. However, the Constitution Committee's report makes clear, as do a lot of other reports, that in senior positions in life it is terribly important for an inclusive society to have people who are representative of different strands of society as a whole. I rest my case there.

Baroness Jay of Paddington: My Lords, I will just make one rather straightforward point. I think the noble and learned Lord, Lord Lloyd of Berwick, said in relation to the previous amendment that he felt that this was simply gesture politics and somehow the phrase that we used in our report, which the noble Baroness, Lady Falkner, has now repeated, about sending out "a strong signal" by adopting this part of the Equality Act was simply inappropriate in legislative terms. I only say that the experience that we heard, particularly from abroad, about the way in which change had been brought about in judicial systems in other countries—I would cite particularly Canada—was that it came from very strong leadership from the top. That may be either in practical terms or, quite importantly, in terms of what the noble and learned Lord, Lord Lloyd, if I may say so, refers to, in a slightly deprecating way, as gestures but which I regard as importantly symbolic of a change of attitude at the top. In these terms, that means both ministerial and judicial and therefore conveys what I hope would be a change that would percolate down through the system.

Lord Falconer of Thoroton: My Lords, I am in favour of the amendments proposed in paragraph 9 in part 2 of Schedule 12 and am therefore opposed to the amendment that the noble and learned Lord, Lord Lloyd of Berwick, advances.

I speak from my experience of being engaged in judicial appointments as Lord Chancellor, which is not the same as that of the noble and learned Lord, that there is always somebody who is the best candidate. My experience of judicial appointments is that you are very often comparing people who came with completely different experiences and particular specialities, who are both aiming to fill the same position. You could have a solicitor who was very experienced in dealing with general litigation, widely admired for his wisdom and sense, and a criminal barrister widely admired for her advocacy skills. The idea that one was better than the other and that one should approach judicial appointments on the basis that one was trying to grade the candidates for an Oxford First as 1, 2, 3 and 4 was not remotely my experience.

I am always suspicious of people who advance arguments along the lines of, "I live in the real world". The real world involves making comparisons between people where it is essentially not possible, in any meaningful way, to grade them as 1, 2, 3 or 4. You will find that there are people applying for jobs who are of equal merit. That is the position, whether you are dealing with an appointment for one position or with a wider appointment, for example encouraging people to fill 15 posts as circuit judges—

Lord Lloyd of Berwick: Would the noble and learned Lord explain why his experience as Lord Chancellor is so very different from the experience of the Judicial Appointments Commission, which has said quite clearly that it has never found people to be of equal merit and does not anticipate that this clause will help in the future?

Lord Falconer of Thoroton: I do not know who the noble and learned Lord is referring to. If he is referring to Mr Christopher Stephens, I have had no conversations with him. All I can do is set out my own experience in relation to this.

Baroness Prashar: My Lords, perhaps I may help the Committee, having been the inaugural chairman of the Judicial Appointments Commission. My experience is the one that the noble and learned Lord, Lord Falconer, has described. Let us take two candidates about whom we can say that, although no two people are equal, there is merit. People are assessed against the criteria that have been set out. There may be two candidates who could equally do the job. You then have to assess them against the criteria, and that is where choice and judgment comes in. It is how that choice and judgment is exercised which makes the decision. People may be of equal merit, but they may not necessarily be equal in the sense that has been described.

The noble Baroness, Lady Falkner, was right to say that this became easier when vacancy notices were sent out and we had to appoint a number of judges to the circuit Bench or the district Bench. There were some candidates who were clearly grade A and presented no difficulty, and there were others who were below the line. However, there was a lot of discussion about the people who were in the middle, and they were always assessed against the criteria. I sat on a number of appointments to the senior judiciary, and there were robust debates about merit. What this proposal does is focus the mind by saying that one of the considerations that has to be taken into account is this: what else would the candidate bring to the post? The description given by the noble and learned Lord, Lord Falconer, is absolutely accurate.

Lord Falconer of Thoroton: I am grateful to the noble Baroness, Lady Prashar, for explaining that our experiences are the same. One can test this simply by looking around the Chamber. If one had to make a choice between the noble and learned Lord, Lord Woolf, and the noble and learned Baroness, Lady Butler-Sloss, I think that everyone would agree that they bring totally different characteristics to a particular

job. Would we be able to say that one is better than the other? No, in my view they are of equal merit. This is a serious point.

If we assume that the argument is right, the question is then: is it open to the person appointing a judge—because this does not apply just to the Supreme Court, but from the top of the judicial system to the bottom—to say, for example, "We have one woman and 25 men in this job and we have before us people of equal merit. It might be sensible to increase the group with one more woman"? Apart from the judiciary, I cannot think of any other organisation in the world that would consider that to be a bad approach. It also involves moving on from an artificial approach that people have to be graded as number one and number two. I support the approach taken in the Bill and I do not support the approach of the noble and learned Lord, Lord Lloyd.

Lord McNally: My Lords, again I am extremely grateful to the noble and learned Lord, Lord Falconer, for his contribution. I will not labour the point, but there is a difference of opinion. Most of the contributors to the debate do not believe that merit is something that can be pinpointed with laser-beam accuracy. That is not the real world, as both the noble Baroness, Lady Prashar, and the noble and learned Lord, Lord Falconer, have so vividly illustrated. I must also say that we must be very careful to ensure that collegiality does not morph into "chaps like us".

9.30 pm

The Government believe that merit can be more holistic than the noble and learned Lord, Lord Lloyd, suggests, and I take the point of the noble Baroness, Lady Jay, exactly—this is not about gesture politics, this is about leadership, and I am very proud that the present Lord Chancellor is giving that leadership. I should also say, since the noble and learned Lord, Lord Lloyd, called in aid the Judicial Appointments Commission, that the commission chairman, Christopher Stephens, said on 11 May:

"The JAC welcomes the Government's proposals. These include many very positive changes … We also welcome the introduction of a specific provision to clarify that where two persons are of equal merit, the JAC can select the more diverse candidate".

So I do not accept that there is support there for this view. It is, as I say, much too narrow a view of what we are trying to do and I hope, just as I am often asked to listen to what the House has said on this matter and think again, that the noble and learned Lord, Lord Lloyd, will listen to the voices around the House and think again, because I think that he is on the wrong track on this. I am sure that after careful consideration, when we get back to Report, he will be an enthusiastic supporter of the Government.

Lord Lloyd of Berwick: Of course, having listened to the noble Lord, I am bound to think again and I shall. At this point all I will do is agree with the noble Baroness, Lady Falkner, that this question does not arise at the lower levels at all. At the lower levels there will usually be a large number of vacancies and a large number of applications, so there will be no question at all of putting candidates into any sort of order. However, it clearly does arise where one has one or two candidates from the Court of Appeal applying for the Supreme Court, or one or two candidates from the High Court applying for the Court of Appeal. At that level I say that there has never been any difficulty in choosing between them, so once again, this is a provision which will not help in practice.

To those who say the opposite, I shall read how the recommendation of this advisory panel was dealt with—it all comes from that recommendation. When that recommendation was considered, again, in 2011, the answer was as follows:

"The JAC will always select on merit and has to date been able to distinguish between the relevant merits of different candidates based on a careful assessment of an applicant's entire profile and background".

Certainly, background is taken into account as the noble Baroness, Lady Prashar, would stress.

Lord Falconer of Thoroton: My understanding is that the Judicial Appointments Commission does not appoint to the Court of Appeal and the Supreme Court. I understand that the noble and learned Lord, Lord Lloyd, is saying that there is no problem with this provision in relation to the appointments that they do make—so he appears to be disagreeing with Mr Stephens—and in relation to the area where he is disagreeing, that is not a matter for the Judicial Appointments Commission. So I am not quite clear what point he is making.

Lord Lloyd of Berwick: The point is whether it arises in practice that it is impossible for whoever is making the appointment to choose between two equal candidates. The noble and learned Lord, Lord Falconer, says he often had that difficulty. If that is a real difficulty, it is very surprising that the Judicial Appointments Commission, which has made innumerable appointments, has never found that difficulty in practice, and it says that it does not anticipate, therefore, that the provisions of the Equality Act will ever be relevant in practice, either at its level or at any other level.

Baroness Prashar: Let me explain this by giving an analogy. When you make senior appointments, let us say to the High Court, you make a selection. It is like knowing that you want fruit: do you want apples, pears or whatever? That is the point at which you make a judgment. What the noble and learned Lord read from basically explains that you judge the candidate against those criteria. You will take all those considerations into account before making that selection. The distinction is that you will never get two equal candidates. As the noble and learned Lord, Lord Falconer, said, let us say that the noble Baronesses, Lady Jay and Lady Neuberger, applied. It would be a question of equal merit but against the background of what was needed you would go for one particular noble Baroness because they would match the merit criteria. I think that the confusion is that they are not absolutely equal but they are of equal merit.

Lord Lloyd of Berwick: I regret to say that the difficulty of that is that when one talks about equal merit one is in danger of infringing the very first requirement that all appointments must be made solely on merit and the view that has been expressed over

[Lord Lloyd of Berwick]
and over again that that is not a threshold. That view was rejected by the Constitutional Commission, which said that it is wrong to regard merit as a threshold, which the noble Baroness appears to have done—and perhaps the noble Baroness, Lady Neuberger, too. It is not a threshold. You have to get the best person.

Baroness Neuberger: Can I make clear what the advisory panel said on this matter? We were quite clear that the principle of selection on individual merit remains. The point that we were trying to make is that that depends on how you define merit. Your definition of merit may not be identical with mine or with that of the noble Baroness, Lady Prashar. We have a way of dealing with merit. The Judicial Appointments Commission has merit criteria against which we measure. Those criteria have recently been changed in relation to some of the things that may help in these diversity questions. We said that where people were of equal merit and you could not distinguish to say that one was better than another, you could then use the tipping point. Some people have liked that and some have not. Since we now have the availability of that in legislation, all six of us—without being able to put a sheet of paper between us—agreed that that was the right way to go.

Lord Lloyd of Berwick: I am still replying to the debate and the debate is still going on but it is quite apparent that I will not persuade the noble Baronesses. In those circumstances, I beg leave to withdraw the amendment.

Lord Falconer of Thoroton: Do not withdraw it. There is more in the group.

Lord Lloyd of Berwick: From you? I am sorry.

Lord Falconer of Thoroton: I am very grateful to my noble and learned friend for not withdrawing his amendment because it allows me to deal with the final set: Amendments 123A, 124A and 126A. I congratulate the Minister on the complicated group that he put together. None of us objected to it so we all are to blame for this particular procedural mess.

I think that this is the last thing we will deal with tonight. These amendments very respectfully question the wisdom of the Bill in replacing the Lord Chancellor with the Lord Chief Justice in relation to the appointment of a number of specified appointments. As noble Lords will recall, in relation to a number of specified judicial appointments, including circuit judges and recorders, the Judicial Appointments Commission makes recommendations to the Lord Chancellor and the Lord Chancellor can ask the Judicial Appointments Commission either to think again or to reject a particular appointment. If the Judicial Appointments Commission then comes back with another appointment, the Lord Chancellor is broadly obliged to accept it. We put together this type of arrangements because those of us involved in the Constitutional Reform Act 2005—I have in mind in particular the noble Lord, Lord Goodhart, and the noble and learned Lords, Lord Lloyd of Berwick and Lord Woolf—all believed that it was extremely important that the Executive remained involved in the appointment of important and significant judicial appointments.

What is in effect being legislated for now is that the Lord Chancellor, the Executive, should only remain involved—put aside the question of the Court of Appeal, the Supreme Court, the Lord Chief Justice and heads of division—only in the High Court. I suggest to the Minister that that is a big mistake. The reason that the Lord Chancellor was given the residual power is that he is able, as an external force to the Judicial Appointments Commission and to judges, to say, "Think again". The areas where the Lord Chancellor could say "think again" in a way that the Lord Chief Justice—the chief judge—might not be as willing to do might be, for example, in relation to diversity issues or to criteria adopted by the Judicial Appointments Commission.

I suspect that the main thinking behind this is that the Lord Chancellor is fed up with looking at lots of names of people to be appointed circuit judges. If that is the reason, it is a discreditable, bad reason for making the Lord Chief Justice, who does not have the resources that the Lord Chancellor has, look at them, and it removes the Lord Chancellor—the Executive—from the important position of appointing judges.

I ask the Minister to think again. This is an important issue. It reduces the stake of the Executive in the appointment of circuit judges, who are the major criminal judges in this country, and recorders, the major stepping stone from being a part-time judge to being a full-time judge. Those are the two most important appointments. To suggest that the Lord Chief Justice makes them adds nothing to the process. The pressures on the office now are huge. In my respectful submission, it is a big mistake to do that.

I have dealt with paragraph 27 about judges. Paragraphs 28 and 40, with which my other two amendments deal, are about replacing the Lord Chief Justice with the Senior President of Tribunals, who is basically a Court of Appeal judge. The Government are replacing the Lord Chancellor with a senior Court of Appeal judge in the context of senior appointments to the Tribunals Service. The Tribunals Service now covers a huge range of administrative matters and its judges are just as important in relation to involving the state as those other judicial appointments. I hope that the Minister thinks about removing the Executive from these roles and placing the burden on people who cannot carry it for administrative reasons. If one is serious about the Executive having an influence on criteria and diversity, this is the way it would be achieved. I invite the Minister to think about that.

9.45 pm

Lord Woolf: Will the Minister bear in mind that it is very important that there is someone who can speak on behalf of the judiciary in Parliament? One of the changes that took place in consequence of the Constitutional Reform Act was that the right of the Lord Chief Justice, which had existed hitherto, to speak to Parliament on behalf of the judiciary on matters that affected the administration of justice went and we have this business of putting in a statement. That illustrates that the Lord Chancellor will be the

spokesman who has to take parliamentary responsibility for the appointment of all judges. We know that sometimes it is very tempting for a Minister or even a very senior Minister to refer to unelected judges. It causes the judiciary grave offence that that should be said because judges may not be elected but they are appointed in accordance with the process laid down by Parliament and by Members of Parliament who, certainly in the other place, are elected. That responsibility means that Parliament is a place where in regard to these matters somebody has to be answerable. We do not want to see the Lord Chancellor no longer having responsibility for these appointments.

Baroness Falkner of Margravine: I have agreed with almost every word that the noble and learned Lord, Lord Falconer of Thoroton, has said this afternoon but I am now surprised at his explanation for why he wishes to move these amendments with respect to what I think he implied was an abrogation of responsibility by the Lord Chancellor for the judiciary. I wonder whether he is familiar with those parts of the Constitution Committee's report.

For other noble Lords who might not be, I will take just a minute or two to point that out. Looking at this part and pages 14 and 15, the Constitution Committee in taking its evidence found:

"This argument was supported by the previous Lord Chancellor, Jack Straw MP, who described his role in relation to the lower tiers of the judiciary as 'ridiculous'. The Lord Chief Justice, Lord Judge, also stressed that the Lord Chancellor 'has no input at all to make other than to be there to look as if he is making an input ... It simply suggests there is political involvement when we have tried to get rid of it'".

The committee goes on to make the point at paragraph 32 that,

"The Lord Chief Justice has day to day responsibility for the judiciary of England and Wales: he knows what is required of judicial office at all levels. He is therefore better placed than the Lord Chancellor to make an informed assessment of whether a nominee put forward by the JAC should be appointed. Transferring the Lord Chancellor's power to request reconsideration or reject nominations to the Lord Chief Justice would strengthen the appointments system".

In conclusion, the committee finds that,

"there is indeed a need for the legal framework for appointments to reflect both the extent to which the Executive should be involved in individual appointments and the reality of that involvement".

The committee makes one point which the noble and learned Lord, Lord Falconer, made, that,

"The Government should consider whether the Lord Chief Justice will need additional support in order to take on this role".

I think that point is well made.

Lord Falconer of Thoroton: The noble Baroness asked me whether I was aware of that. I most certainly was. With the greatest respect to the chair of the committee, my noble friend Baroness Jay of Paddington, it was wrong. It is such a misunderstanding of the importance of the role of the Executive. I admire the judges more than anyone but I do not want the judges to be completely in control of the process of appointment. It is a siren song to say "let the Lord Chief Justice do it". He is a splendid person but what a mistake it would be to remove the Executive and say "hold on minute, I am not sure that is right". Yes, I was aware and, my goodness me, she was led astray in what she said.

Lord Deben: My Lords, it always surprises people that non-lawyers such as me sit through long periods of Bills such as this one. It is mainly because some of us think that no profession should be left to make its own decisions about its own set-up. Therefore, I hope the Committee will allow me to say just two things.

First, I entirely agree with the noble and learned Lord, Lord Falconer. It is necessary for the protection of judges that someone should make an interjection of this sort. Secondly, the noble and learned Lord who argued against the question of equal merit ought to learn a lesson from the rest of his life. I know perfectly well what I have to do when I choose people to work for me in my businesses. I often get a large number of people of similar merit. Then I get it down to people of equal merit. What do I say to myself? I say, "I can't run a business in which I have too many women and too few men. I can't run a business in which I have no gays. I can't run a business if I don't have some kind of different ethnic minority representation when I could". It is a very simple thing and I am a bit tired, if I may say so, of the legal profession talking as though it was a unique operation—as though it somehow has nothing to do with how the rest of us work.

That is why I sit through these debates from time to time—to say occasionally, "For goodness' sake, realise that you are in a world that operates in a particular way. When you talk about representation, it is about being sensible of and sensitive to the way the world works". I found the previous discussion bewildering. It is manifestly true that you often find people who are of equal but different merit. The issue then is about what mix works, given that you have 25 other people of equal but different merit. How do you fit that person in? Anybody who has chosen people for a team or run anything finds that to be true. I cannot understand why judges are supposed to be different or, in particular, why they become more different the more senior they become. I find that extremely odd.

Therefore, I ask the Committee to learn a lesson from those of us who are not lawyers. The nature of our legal system is accepted partly because people feel that, in general, the way in which it operates has some parallels with how everything else operates. If it operates in a totally different way, frankly, we have got it wrong. Let us try, in those areas where parallels are obvious, to make the system parallel. Where it is not parallel, we should be able to defend why it is unique. In neither of the cases that we have talked about in this curious group of amendments is it possible to claim uniqueness. In both cases, it is better to do what the noble and learned Lord, Lord Falconer, suggested, and to disagree with the well argued but fallacious point made by the noble and learned Lord, Lord Lloyd.

Baroness Butler-Sloss: My Lords, I do not dare to follow what the noble Lord has just said. I want to make a slightly different point, which is to agree very much with the noble and learned Lords, Lord Falconer and Lord Woolf. There needs to be somebody in Parliament who speaks for the judges. That is probably the most important point that is being made and the major reason why the Lord Chief Justice should not have the final say.

Lord McNally: My Lords, we should first thank the noble Lord, Lord Deben, for what in the film industry is called a cameo performance. It was none the worse for that. I am under strict instruction from the Box not to say anything rude about the judges, so I can take pleasure at one remove.

This is an interesting little debate. At this time of night, I am sure that the noble and learned Lord, Lord Falconer, will not press his amendment. However, I will take this back to the Lord Chancellor. If a former Lord Chancellor gives the kind of powerful warning that the noble and learned Lord has given this evening and is supported by people of experience, the least I can do is say, "They don't think this is such a good idea".

I would, however, say two things. Working with the present Lord Chancellor, I am absolutely convinced of his belief in the separation of powers. He is convinced of it, as am I and as is the noble and learned Lord, Lord Falconer, and he is very careful to try to ensure it.

The other thing I know from direct experience is that the Lord Chancellor is extremely robust in defending the independence of the judiciary and has reminded colleagues at the highest levels of government about the limits of criticising the judiciary. On those counts, we can be secure. The Lord Chancellor also retains overall responsibilities to answer to Parliament, which should not be underestimated. As the noble Baroness, Lady Falkner, pointed out from the report of the Constitution Committee, the evidence was that there is no real input from the Lord Chancellor on this tranche of appointments. Jack Straw said that and, in the robust language of the present Lord Chancellor, appearance and reality diverted where names were going past him that he did not know and he was supposed to give approval for. It was a paper exercise that he felt uncomfortable with. He felt that it was more sensible to give this responsibility to the Lord Chief Justice. I take the point, again made by the noble Baroness, Lady Falkner, about whether there are resource implications. Knowing the Lord Chief Justice, I suspect that he will call that in aid.

What the Bill provides is that for many judicial offices below the High Court, the Lord Chancellor's powers in relation to selection decisions and appointments are transferred to the Lord Chief Justice, for courts in England and Wales, and to the Senior President of Tribunals for appointments to the First-tier Tribunal and Upper Tribunal. Where the appointment is made by Her Majesty the Queen, the recommendation for appointment will still come from the Lord Chancellor, but he will merely transmit the decision taken by the Lord Chief Justice or the Senior President of Tribunals upon the selection of a person for office following a selection process carried out by the Judicial Appointments Commission. The Lord Chief Justice and Senior President will be constrained in the same way as the Lord Chancellor currently is, in that they will receive one name from the Judicial Appointments Commission and either have to accept the selection, reject it or ask the commission to reconsider its selection.

These amendments would undo that transfer of such responsibilities from the Lord Chancellor to the Lord Chief Justice and Senior President of Tribunals. While we consider that it is important for the Lord Chancellor to retain accountability and ownership of the judicial appointments process as a whole, and a direct role in appointments at a senior level, we do not consider that there is a need for the Executive to be involved in each individual appointment below the High Court. It is not practical for him to have knowledge of judicial officeholders at a more junior level and his role in the appointments process, at this level, becomes a rubber stamp. We therefore consider it appropriate that for many judicial offices below the level of the High Court, selection decisions and appointments are made by the senior judiciary, but that the Lord Chancellor retains accountability for the appointment system as a whole. This measure also received the support of the Constitution Committee in its report on judicial appointments. However, I will draw to the attention of the Lord Chancellor the fact that a former Lord Chancellor has spoken so strongly on the issue, and we will ponder what has been said in this debate tonight.

10 pm

Lord Woolf: In taking that message to the Lord Chancellor, will the Minister also convey the message that, with great respect to the Lord Chief Justice, the Lord Chief Justice does not know all the people who will be appointed. He will know possibly a few more than the Lord Chancellor, but I suggest that just as the Lord Chancellor would have to rely on advice, so would the Lord Chief Justice.

Lord McNally: Certainly, I will make sure that the Lord Chancellor reads today's *Hansard*. The point is that it is advice that comes from the process of the Judicial Appointments Commission. Just as the noble and learned Lord, Lord Falconer, wants the Executive still involved, I am not so convinced and, even more importantly, nor is the Lord Chancellor. As I have said, we both take a view about the separation of powers of which this could and should be a useful symbol: the Lord Chancellor of the day would not be holding on to a rubber-stamping exercise, he would be leaving it with the Lord Chief Justice of the day. This has been an interesting mini-debate, which I will raise with the Lord Chancellor for further consideration.

Lord Falconer of Thoroton: I am grateful to the Minister for saying that he will raise this matter. Perhaps I may say that the Minister's arguments were much better before he moved on to his written notes, which were of poor quality. On the point made by the noble and learned Lord, Lord Woolf, as regards the Lord Chief Justice knowing the candidates to be Admiralty Registrar better than the Lord Chancellor, I agree that that is an unlikely assertion. The implication of what the Minister said was that, unlike the circuit Bench, the deputy registrars and the Masters, the Lord Chancellor would be aware of all the candidates who would be going up for High Court appointments.

Speaking for myself, when I came from the Bar to being the Lord Chancellor, I was not aware of all the candidates. I would imagine that as regards the current Lord Chancellor—who I greatly admire and I believe utterly, with no doubts at all, to be a defender of the

independence of the judiciary—90% of the people, if not more, who are being considered for the High Court Bench are equally unknown to him in relation to the circuit Bench. The judicial appointments system is not supposed to be on the basis that the Lord Chancellor knows the people and therefore has some input, but on the basis of him looking at the way in which the system works.

I found the friendly Minister saying, "I will give this a thought", more attractive than the unsatisfactory nature of what was said in defence of the argument. Let me give the Minister two pauses for thought. First, if as Lord Chancellor you had not appointed one woman circuit judge for a year, you might want to ask about that in a way that the Lord Chief Justice would not be in a position to do anything about it. Secondly, let us suppose that the Judicial Appointments Commission said that in relation to circuit judge and recorder appointments it is going to award those appointments only to those people who have a 2:1 from Oxford or Cambridge. The Lord Chancellor can do something about that in the way in which the Lord Chief Justice cannot because the Lord Chancellor has a role in judicial appointments. Those two points are in aid of and additional to the point made by the noble and learned Lord, Lord Woolf, which I had not made but which is just as important; namely, that when there is a question mark about what a circuit judge has done, which there is very frequently, there needs to be someone in Parliament who has had some responsibility for appointing that judge and can say that the appointment was made in a sensible way. The idea of shuffling that off to the Lord Chief Justice is a mistake which will weaken the judiciary in our constitutional arrangements, without in any way improving the separation of powers. I hope that we will think about this issue again.

Lord McNally: I think that that is called extra time. So as to make it clear, I and I alone take responsibility for anything that I say from this Box. Just to give the noble and learned Lord, Lord Falconer, some idea of how deep the Lord Chancellor and the Lord Chief Justice go, having sat in on a number of meetings, I now have a full knowledge of the working of the Midlands Circuit 1970. I will take those points back.

Lord Falconer of Thoroton: I cannot resist the temptation to ask how many people who were on the Midland Circuit in 1970 are now being appointed judges. Their age, if they were on the circuit then, would now be 68.

Lord Lloyd of Berwick: I beg leave to withdraw Amendment 115.

Amendment 115 withdrawn.

Clause 18 agreed.

Schedule 12 : Judicial appointments

Amendment 116 not moved.

House resumed.

House adjourned at 10.06 pm.

Grand Committee

Monday, 25 June 2012.

Arrangement of Business

Announcement

3.30 pm

The Deputy Chairman of Committees (Baroness Andrews): My Lords, if there is a Division in the House the Committee will, of course, adjourn for 10 minutes.

British Waterways Board (Transfer of Functions) Order 2012

Considered in Grand Committee

3.31 pm

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

That the Grand Committee do report to the House that it has considered the British Waterways Board (Transfer of Functions) Order 2012.

Relevant documents: 58th Report from the Merits Committee, Session 2010-12; 43rd Report from the Joint Committee on Statutory Instruments, Session 2010-12; 1st and 4th Reports from the Secondary Legislation Scrutiny Committee.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Taylor of Holbeach): My Lords, I hope that we will be able to debate the Inland Waterways Advisory Council (Abolition) Order 2012 at the same time as this order.

I am pleased that we have the opportunity to debate these two orders in Grand Committee today. As noble Lords will know, they are very important for the future of the leisure industry and as a national resource. The transfer order transfers the function of the British Waterways Board in England and Wales to a new charity, the Canal and River Trust, which I will refer to from now on as the CRT, and makes a consequential provision in Scotland. The British Waterways Board will continue to operate as a Scotland-only body and will be accountable to Scottish Ministers.

The second order abolishes in the Inland Waterways Advisory Council, an independent advisory committee to the UK and Scottish Governments. The Scottish Parliament has given its consent to the transfer and abolition orders, and the National Assembly for Wales has given its consent to the transfer order. Both orders have been subjected to the enhanced affirmative procedure and examined by the Secondary Legislation Scrutiny Committee here in the Lords—I shall have to get used to the committee's new name; we probably remember it as the Merits Committee—and by the Environment, Food and Rural Affairs Select Committee in the other place.

I shall now briefly summarise the aims and objectives of these orders and pay consideration to the points of interest that were raised by these committees. The background to this project began under the previous Government, and I am grateful for the cross-party support it has received. It is no exaggeration to say that it would not have made the rapid progress that it has without the broad consensus that has been reached across Parliament. I pay tribute to my noble friend Lord Goodlad and the members of the Secondary Legislation Scrutiny Committee for their constructive engagement in scrutinising these orders. We have read the committee's report carefully and I shall respond to its recommendations during the course of this debate.

The transfer of the waterways will give those who are passionate about them increased opportunities to get involved and influence the way in which their waterways are managed. We have consulted widely in preparing for this transfer. I am confident that the clear public support for this change will make CRT a successful charity. The Government have agreed to provide a 15-year grant agreement worth around £800 million, a settlement which the CRT has described as tough but fair. The grant agreement will give the waterways a level of financial certainty that will enable them to plan for the long term, as we would wish, realising efficiencies and achieving best value for money. As was requested by the Secondary Legislation Scrutiny Committee, I have arranged for a draft of the transfer scheme to be laid in the Libraries of both Houses in advance of today's debate. The scheme provides for the transfer of British Waterways' assets and liabilities and is the counterpart of this order.

In order to allow for scrutiny of the financial development of the new organisation, I am happy to agree to the committee's recommendation that Defra should provide Parliament with a Written Statement setting out the financial position of the CRT two years after the draft order is made.

In its consideration of the draft order, the Environment, Food and Rural Affairs Select Committee in the other place questioned the Government about property and charitable income projections for the new charity. I assure noble Lords that while there is a degree of uncertainty with any projection of future income, the CRT has undertaken extensive due diligence and is confident in the projections.

The estimates of charitable fundraising were finalised in 2011 and reflect recent attitudes to charitable giving. They are based on evidence-based market research, expert judgment and benchmarking by a leading consultancy in the sector. The CRT has recruited a fundraising team that is motivated, not daunted, by the challenge ahead.

The CRT trustees believe that the projections for growth in commercial income are prudent. British Waterways has a proven track record in property management and has outperformed industry benchmarks. It has shown itself to be an excellent custodian of the commercial property portfolio, which has become vital to the sustainability of the waterways. Its careful management of the property portfolio and the safeguards that we have put in place through this transfer will ensure that these assets continue to supply the waterways with much needed revenue.

We have also received a number of questions about volunteering. I am confident, indeed excited, that the move to the charity sector will significantly increase

[Lord Taylor of Holbeach]
volunteering on the waterways. Indeed, the creation of the CRT has already boosted volunteering numbers—a sign of the public's enthusiasm for the move ahead. This is a good thing for a society at large and for the waterways, but let me assure your Lordships that the CRT will not be using volunteers to replace existing staff. Volunteers will be used only to undertake activities that British Waterways cannot do at current staffing levels.

During the 60-day procedure in Parliament, Defra received representations from two separate groups of private boaters. One group asked for reassurance about the consultation procedures to be followed for making orders under Sections 104 and 105 of the Transport Act 1968. Such orders concern changes to the classification of a waterway or to the prescribed navigation dimensions to which a waterway must be maintained. My officials have given the requested assurances, and the consultation process will be set out in the memorandum of understanding between Defra and the CRT, which I shall publish in due course.

The second representation was from the National Bargee Travellers Association, from whom many noble Lords will have received communications. This is one of a number of organisations that look after the interests of boat dwellers. The NBTA has already issued responses to our two consultations in 2011 and submitted reports to the EFRA Select Committee and the Secondary Legislation Scrutiny Committee. We addressed the NBTA's concerns about human rights and the application of the Freedom of Information Act 2000 in our evidence to parliamentary committees.

In response to its most recent representation, I can give the NBTA an assurance, on behalf of the CRT, that the CRT will not exercise its powers to remove a vessel that is thought to be someone's home without first taking the matter to the county court and obtaining a declaration from the court that the removal is lawful.

Further, I assure the Grand Committee that the transfer order does not create new enforcement powers for the CRT. The CRT, as statutory undertaker, will have the same powers to manage the waterways as British Waterways has now. The existing safeguards that apply to the use of these powers will continue to apply to any enforcement action taken by the CRT.

In response to a recommendation from the Secondary Legislation Scrutiny Committee, I am also happy, on behalf of the CRT, to assure the Grand Committee that the Canal and River Trust will take into consideration the specific needs of all stakeholders, including itinerant boat dwellers, in the development of all future by-laws. My honourable friend the Waterways Minister, Richard Benyon, will write to the NBTA in due course to set out our position on the other points it has raised.

The creation of the CRT will significantly improve our national dialogue about the waterways. The CRT's governance model will bring some 200 people into the business of running the waterways, whether as trustees or as members of the council or the waterways partnerships. With all this expertise and engagement, the CRT will become the Government's principal, although not our only, interlocutor on the waterways in the years ahead.

The creation of the CRT means that the Government will no longer need an independent statutory body to advise on the waterways. The proposed abolition of the Inland Waterways Advisory Council is part of the department's simplification of our very complex delivery landscape. In addition to improved accountability arising from the creation of the CRT, the abolition of the IWAC will lead to greater efficiency, effectiveness and economy. It will, for example, save £200,000 a year.

I should acknowledge that the abolition of the IWAC has proved mildly controversial. There were only 35 responses to our formal consultation—less than a tenth of the responses to the consultation on the creation of the new charity, for example—but most of those who responded wanted to keep the IWAC, at least until the Environment Agency navigations transfer to the new charity from 2015-16. We have considered those views carefully. However, I believe that the practical work to prepare for the transfer of the EA navigations is better carried out by our officials, working very closely with our engaged and committed stakeholders. To the extent that we may need independent advice from time to time, it is more cost-effective to commission such advice as needed, rather than have a standing body, which, in the way of the world, would find work to do.

In moving the Motion to consider the abolition of the Inland Waterways Advisory Committee, I should acknowledge the very valuable knowledge and expertise of its current members. They have made a useful contribution to the development of government policy on inland waterways, and my honourable friend the Waterways Minister wrote to them all to encourage them to make their knowledge and expertise available to the CRT.

In conclusion, moving the waterways to the new waterways charity and abolishing the Inland Waterways Advisory Committee will bring many benefits. This transfer will enable waterways users to have the opportunity to play a role in the governance of the waterways and bring their passion and expertise to the waterways they cherish. Local communities will have a greater say in how their local canal or river is run. This is localism in action.

Volunteering will increase, benefiting society, heritage and the environment. The financial footing of the waterways will be sustainable into the long term. New commercial and private income streams will become available. The long-term grant agreement offers the security that the new project needs. Fifty years after British Waterways was created, it is time to move on. With that in mind, I commend these draft orders to the Committee and beg to move.

3.45 pm

Lord Grantchester: I thank the Minister for his introduction of these two orders. If the Committee will allow me, I shall make a few remarks, reserving the right for my noble friend Lord Knight to respond from the Front Bench. I apologise and ask the Committee to forgive me if I have an eye on the clock and do not stay quite long enough to hear the Minister's full response to the debate. I have pressing duties elsewhere.

From the perspective of south Cheshire, where I live and which along with neighbouring counties has extensive canals across it, the abolition of the IWAC is greeted mostly with resignation, neither receiving widespread support nor opposition. This would be in keeping with the low number of responses received to the consultation. In the past, I have been approached on several waterways issues, although on this one the Minister can be relaxed by and large. However, this lack of enthusiasm seems to be because there is a feeling among IWAC members that this order is a fait accompli, as evidenced when Defra announced the abolition of IWAC ahead of announcing the findings of the consultation about IWAC. I know that the Minister in the other place, Richard Benyon, had to issue apologies to Graham Evans MP for John Edmonds, the chairman of IWAC. Having said that, the arrangements, protections, appeals processes and so on will very much remain as before, so the change is viewed as largely cosmetic.

I know that all members of IWAC are very passionate about waterways and will always have their best interests at heart. I urge the Minister and his department to make full use of the knowledge and expertise of IWAC members, especially on such issues as volunteering, environmental protection, tourism and restoration, all of which will need to be addressed by the new Canal and River Trust. I know that members of IWAC, which is an independent, advisory and unpaid body, will give their time and expertise freely and would have gladly continued under the umbrella of IWAC. No doubt they will continue to do so. I am sure that the Minister would wish to confirm that his department recognises that that will continue to be the case, as these members would provide an excellent conduit to the CRT on behalf of all waterways users on all matters concerning the waterways.

Baroness Parminter: My Lords, I thank the Minister for his clarity in setting out a number of issues around this order. Given that there are quite a few speakers, I shall focus on one issue and invite the Minister to say a few more words at the end.

The issue that I wish to raise is how we will ensure that the new charity—the Canal and River Trust—reflects the full duties and responsibilities entrusted to the British Waterways by Parliament. I refer specifically to the duty towards those who live on waterways without a fixed mooring. I have checked the Charity Commission website and can find no mention for the new charity of duties to those whose homes are on the bodies of water that the charity will control. As such, the new charity's purposes and responsibilities do not reflect some duties that currently exist in legislation and which British Waterways undertakes. This is not a newly contentious matter as, at the beginning of the 1990s, British Waterways sought to remove the rights of boat dwellers who did not have a permanent mooring. Parliament took a different view and the result was Section 17(3)(c)(ii) of the British Waterways Act 1995, which enables boats to be licensed without having a permanent mooring as long as they do not spend more than 14 days in one place. The committee is concerned that people who have had the right to live on the waterways but without a fixed mooring might lose those rights.

As my noble friend mentioned, the Lords Secondary Legislation Scrutiny Committee produced an excellent report on this recently. The evidence from Mr Evans of British Waterways to the committee says that the Canal and River Trust,

"will be a much more engaged organisation that will reflect the will of the people".

However, reflecting the will of the people is not at all the same thing as recognising historic duties and responsibilities.

Having met representatives of the proposed new charity—as a former chief executive of a small conservation charity, I wish it well and know just how difficult it is to meet all the competing needs of stakeholders—I have no doubt that it intends through its council, its waterway partnerships and its specialist advisory groups to construct a far more open constitution than ever before on the waterways. However, engagement with some stakeholders is not always easy. Itinerant boat dwellers, for example, do not have a representative body, but their needs need to be considered alongside those of all other waterway stakeholders. To that end, it is illuminating that in the Government's own explanatory document for the transfer, paragraph 7.16 highlights the "greater involvement" of,

"communities which live alongside waterways",

and "waterways' users" in how the waterways are to be managed in future, but excludes any mention of communities that actually live on the water.

I understand that any future by-laws from the charity will be subject to ministerial confirmation and I am grateful for the clarity from the Minister on that point. However, I would like it to be explicit on the record that the department will write to the CRT to ensure that the new charity must take all specific needs of stakeholders into account in developing future by-laws.

Further, it should be explicit that the grant agreement, which my noble friend also mentioned and which I think is for £800 million, accompanying the grant will set out the terms of the final agreement, and that it will make clear that the safeguard to consider the specific needs of all stakeholders, including itinerant boat dwellers, will be part of a condition for the grant being given.

To be clear, the House has a long history of ensuring that the rights of all stakeholders are upheld on the waterways. In the absence of any duty towards those people who live on the waterways in the new charity's charitable remit, the Government must by other means ensure that this duty is safeguarded in the future. I welcome what the Minister has said, but I would like to be absolutely clear on the specifics of how the Government will assure that.

Lord Smith of Finsbury: My Lords, I begin by declaring my interest as chairman of the Environment Agency. I very much welcome the transformation of the British Waterways Board into the new Canal and River Trust and I am grateful to the Minister for the helpful way in which he introduced our discussion. I particularly welcome two things about what is happening. First, I welcome the encouragement and facilitation of increased public and community participation in decision-making about what happens to our waterways. I very

[Lord Smith of Finsbury]
much hope that the Government's intentions in this respect will come to fruition in the way in which the new CRT operates. Secondly, I very much welcome the funding package which the Government have put in place to enable the transfer. In the spirit of the times, it is a somewhat generous package but it will enable a really good start to be made on the work of the new trust.

It is, of course, the Government's ambition to go a bit further in two to three years' time and to include the Environment Agency's navigation responsibilities in the new Canal and River Trust. I welcome that ambition and we in the Environment Agency will do everything that we can to assist the process. At the moment, we have responsibility for something like 1,000 kilometres of statutory navigation. This includes, crucially, the River Thames and the River Medway, Rye Harbour, the Great Ouse, the River Nene, the Stour in Suffolk, the Wye and the Dee conservancy in Wales—substantial navigable rivers of iconic importance. Our responsibilities for those waterways include a duty to maintain them in a condition in which people can safely enjoy the statutory public right of navigation that exists on them. We will continue to endeavour to fulfil those responsibilities to the very best of our ability in the run-up to any transfer to the new trust.

We should remember how popular our waterways are. In 2009-10, the last year for which we have accurate figures, there were approximately 70 million visits to our waterways. There are 32,000 registration holders—boat owners and operators—on our navigations alone, let alone on the canals and waterways that will come under the new body. In the current financial year we will be investing around £10 million of grant in aid and £7.5 million of income, a considerable amount of that coming from boaters, in managing and operating the navigation structures on these waterways.

As we prepare for the further handover, and as we bear in mind the responsibilities that the new trust will have, a few points need to be borne in mind, and I very much hope that the Government will do so. First, on rivers in particular—this differs to a certain extent from canals—there are different traditions for different rivers; they do not all operate in exactly the same way with the same expectations for boat operators and users. Including an appreciation of the subtle differences between different waterways in any assessment of how things move forward is going to be important.

Secondly, and with the events of the past weekend weighing heavily on my mind, we need to bear in mind the need always to manage rivers for flood risk management. The importance of marrying navigation responsibilities with the continuing flood risk responsibilities that the Environment Agency will continue to have in waterways that transfer will eventually be an important part of what happens. Thirdly, it will be important that the money is there for any enhanced responsibilities that the new trust has when transfer occurs in a few years' time.

Fourthly, in looking at how the new trust operates, both in its initial phase and in the second phase after the transfer of EA responsibilities, it is important that the new trust all the time bears in mind the interests of boat owners and users and the people who want to use our rivers for recreation, for quiet enjoyment and for the solace that very often our rivers can bring. It is being accorded an important responsibility. I have every confidence that the team and the arrangements that are being put in place will enable that to happen, but I hope that the Government will keep a wary eye on making sure that it does.

Lord Hodgson of Astley Abbotts: My Lords, I also thank my noble friend for the explanation of this order. I share the enthusiasm of the noble Lord, Lord Smith of Finsbury, for this good and imaginative proposal. I do so for practical reasons. One is that, as it says in paragraph 8.12 of the Explanatory Memorandum,

"one of the benefits of moving out of the public sector will be that it should enable and encourage more innovation and diversity in the way the new charity grows its income".

There is also an emotional reason: the first holiday I ever spent, aged 16, with three friends from school, was to hire a canal boat and travel the Shropshire Union Canal and over the Pontcysyllte aqueduct on the way to Llangollen. I doubt that you would be allowed to take a boat out now aged 16, but in those days we did not have as much health and safety as we do now. When one compares and contrasts some of the things that one sees on the waterways now with what was going on then, one sees that a lot of the developments and improvements have been made by voluntary labour, so this is a welcome extension of a trend that is already present in the waterways movement.

The putative board very kindly had a briefing meeting on 6 July last year. It explained its plans for the future, and exciting indeed they were. However, one of the questions that I would like to funnel to it through my noble friend regards the enormous cultural shift that there is going to have to be within the organisation in order to pick up and respond to the challenges of working in the private sector. As some noble Lords know, my life is in the City. When I said, "Just tell me a bit about the return on capital and post-investment appraisals", and those sorts of things, there was an answer but not one that I would describe as being of sufficient crispness if this organisation is to hold its own against the very sharp commercial operators with which it will have to carry out joint ventures to develop its various assets. It was slightly hazy. It is important that this very imaginative proposal should succeed. Therefore, I very much hope that this body will be able to up the game, if that is the right expression.

4 pm

I shall give an example as of today. I support these orders very much and because I felt that the organisation might feel that I was being slightly disobliging in my remarks, this morning I decided that I should ring the chairman and explain that what I was going to say this afternoon was important and constructive—it might be critical but I was trying to help him on his way. If you ring his private number, you get a recorded message saying, "Are you ringing about a boating mooring? If so, hang on. Otherwise, press 2". After some time, you get through to a switchboard operator and ask to speak to the chairman. I was put through to the

chairman but there was no answer and no one to take a message—nothing. I am all for people having boating moorings and I am sure it is a very important part of their life, but this is going to require a change of culture. When dealing with the private sector, the board will have to be a great deal sharper than that. I may have found the only weakness in its whole approach but I cannot help feeling that this is symptomatic of something that is going to need a fresh approach.

I turn to two other points. I was very grateful to receive my noble friend's reassurance about the NBTA. I have received the letters, as I am sure have other noble Lords.

Finally, in the same spirit of constructive criticism, I ask my noble friend about pensions, which are covered on various pages of the explanatory document but in particular on pages 48 and 49. There is a reference there to historic public sector pensions. I assume that TUPE has played its role and that therefore those who are being transferred out of the public sector and into the Canal and River Trust will have access to the public sector pensions with which they began their employment. The word "historic" is used. Does that mean that future changes in the public sector that would otherwise have applied to these people will or will not apply? If they are going to apply to them, the board needs to realise that it is going to find itself having to answer for decisions in which it has played no part. It is important to be clear about that.

There is a feeling here of the board saying, "We've got the pensions sorted. There is a £65 million deficit and we are going to have it sorted by 2025", or whenever it is. However, I urge it not to rest on its laurels as far as that is concerned because the great weakness or difficulty over pensions is longevity. Longevity is increasing, which for the individual is exceptionally desirable but collectively for a pension fund is financially disastrous. Therefore, I hope that the board will think carefully about this issue. A great deal can be done to unpick pensions by looking at individual groups of pensioners with different longevity estimates and, in that way, to transfer some of the risks to the balance sheets of major life companies, which not only are expert at this but will probably provide a better credit risk and therefore greater assurance to the Canal and River Trust. Slicing and dicing the pension liability to reduce that liability and to free up the balance sheet is a critical—possibly the most critical—part of the things that the board will undertake in the short term.

I may have sounded critical but I think that this is a great idea and I hope that it will be very successful. However, I hope that the organisation understands what it is taking on and how it needs to move forward. If it can, and when it does, it will certainly have my support.

Lord Berkeley: My Lords, when I first heard about this transfer by way of what I still call the quango cull Bill, I welcomed it. I agree with the noble Lord, Lord Smith, that the settlement seems pretty good. The Parliamentary Cycling Group, of which I am a member, was taken along the towpath from Islington to a very nice cycle repair café on the canal called lock 7. We were given a very interesting briefing about the changes taking place on the waterways. It was an excellent presentation and I came away thoroughly impressed. It is a great place to pedal along in the winter because there is a high-voltage cable under the towpath, so when everything else is snowy you can still go along without slipping into the canal.

The Minister said that the British Waterways Board had a prudent track record in property management, but that is not the view of the people who sent me e-mails—other noble Lords may have received similar messages—which I presume reflect the tenants' view. The National Bargee Travellers Association, many of whose questions the Minister sought to answer, states:

> "These families live on the waterways lawfully by virtue of s.17(3)(c)(ii) of the British Waterways Act 1995".

Will the same rights of occupancy exist even if those families have to move under the new trust? They are clearly worried, saying:

> "The assurances given by British Waterways of greater public accountability exclude itinerant boat dwellers".

That is quite worrying, because there is no way in which they can seek parliamentary discussion as they could when BWB was state-owned. I hope that the Minister can give an assurance that nothing is going to change in that regard, even if there is less parliamentary scrutiny.

I heard also from a man who is one of apparently some 200 people who are in litigation with the British Waterways Board. I do not want to go into the detail of individual cases, but there are allegations of "criminally extracted licence fees" during the past 20 years on the Grand Union Canal and talk of costs reaching £500 million, which seems surprising. What will happen to cases that are pending or currently being heard in court when the transfer takes place? It is clear that people are worried about that. The Minister said that the Government would provide a Written Statement on the Canal and River Trust in two years. It might be useful to include in it a progress report on outstanding court cases from the old regime. I hope that these matters can be resolved without any more uncertainty. I look forward to the Minister's response.

Lord German: My Lords, I, too, welcome the orders, which I believe are the result of long and very hard negotiation. If the preparedness of the new trust to handle the financial affairs of our waterways is an issue, satisfaction should be drawn from the number of noble colleagues and noble Lords opposite who have congratulated it on the amount of money that it has been able to extract from the Government. It is indicative of the robust way in which the new trust has engaged that it has brought to a conclusion financial matters that started some way back from the £800 million which the Minister mentioned. That protection over 15 years will enable the new trust to make plans, and the asset base along with that will provide it with a very useful way of driving forward change.

The issues I am slightly concerned about, and about which I seek some clarification from the Minister, concern the way in which the new governance structure will run and the ability of the new trust to ensure that it is inclusive and serves those who use our waterways. From the documents before us, it appears that the trust has decided not to go for a membership-base as

[Lord German]
an organisation, unlike the National Trust, which some people have suggested fulfils a similar task. Could my noble friend tell us what was the reasoning behind not going for a membership organisation, when this is clearly an opportunity to develop the users of our waterways both for leisure and health purposes—not to mention the tourism benefits, which are obviously very important to us? The current structure of the organisation is that we have trustees, a national council and 12 waterways partnerships. I would like to congratulate those involved in the negotiations to secure an all-Wales waterways partnership in addition to that—and here I declare my interest as president of the Monmouthshire, Brecon and Abergavenny Canals Trust, part of which is affected by this order, part of which is not because it remains in local authority and other ownership.

The third issue I would like to raise, apart from governance, is that of safeguarding for the users. Paragraph 8.5 of the Explanatory Memorandum to the British Waterways Board (Transfer of Functions) Order 2012 talks about access to towpaths and refers to an explicit safeguard in the trust's obligations. While it states that the transfer protects the status quo, a sentence or two further on it states:

"As the majority of towpaths are not currently public rights of way and access is permitted at British Waterways' discretion, this is a significant new protection".

There seems to be a contradiction here in that the status quo may prevail, but it is not clear whether it is the intention of this order to extend towpath access or simply to transfer the status quo and give the Canal and River Trust discretion over access? I would be grateful if my noble friend could explain this.

The other safeguarding issue relates to the by-laws, which I believe my noble friend referred to earlier. It is a requirement that they should be approved by the relevant Minister. Could my noble friend explain the publication procedure that the Canal and River Trust will undertake prior to these by-laws being submitted to the Minister and what the process will be for ensuring that this happens?

My final question, which again is a bit of a cheeky one but I am going to ask it anyway, refers to paragraph 8.13 of the same memorandum, which reports that the Government sought views on a name for the new charity. The most popular was the National Waterways Trust, "waterways" being the most popular word in the consultation. The trustees subsequently named the charity the Canal and River Trust. However, in Wales it will be known as Glandwr Cymru, meaning Waterways Wales, which seems an unusual choice when it is to be called the Canal and River Trust. I do not understand whether Canal and River Trust/Glandwr Cymru is the title of the new trust in its entirety, or whether waterways in Wales will come under a trust that is a subset of the Canal and River Trust known as Glandwr Cymru. Perhaps my noble friend could explain the translation, and indeed why the word "waterways" will be used in Wales but not in England.

I have one further point, which the noble Lord, Lord Smith, reminded me of: the Environment Agency transfer of navigation rights, which, as the noble Lord says, is part two of the agenda here. The Canal and River Trust as it now stands does not manage large-scale infrastructure in our waterways or large-scale weirs. Is that a necessary part of the exercise in this interim phase on what that transfer should do and where the expertise should come from in order that the Canal and River Trust can then manage these larger structures, which, like Teddington lock, are very important to the security and safety of our land in this country?

4.15 pm

Lord Framlingham: My Lords, I am not sure whether my remarks relate directly to the transfer functions, but this is an opportunity for me to get rid of the bee that I have had in my bonnet for some time now about the relationship between waterways and youth unemployment. Some months ago I was studying a map of British waterways and it struck me that they wind throughout our country and are never very far away from centres of population. They could well be combined with an imaginative and, I hope, simple scheme to help our young unemployed. Many years ago I worked for British Waterways. This is not such a mad idea; I ran it past the Prime Minister, although admittedly on a social occasion and he did not hang around for long, and he thought, at least initially, that it sounded like a very good idea.

Think about it for a moment. The skills required to renovate and maintain our waterways include everything from pulling out Tesco trolleys to skilled bricklaying, piling and digging—all sorts of skills. I would have thought that it ought to be possible to invent a scheme that allowed young people to use their talents across that whole range of skills and give them something to do. At the end they could be given some kind of certificate or qualification that would benefit both them and the waterways. It would have to be kept simple but I envisage something really quite formal, with jobcentres throughout the country linking the whole thing together. Initially this might perhaps sound a little imaginative, but think about the geographical relationship of the waterways to centres of unemployment and the jobs requirement. A whole variety of jobs could be found for young people, and they could be given different kinds of qualifications, allowing them to start very simply and then build up their portfolio of qualifications as they went. I do not know whether they would need money; I would like to think that young people would work for the benefits that they were already getting, but I appreciate that that is a little controversial. They might well be prepared to do that, though, to get the value out of the schemes that they were being offered.

I put that on record as a suggestion but I will also follow it up in other quarters as best I can. I hope that the Minister might at least log it and give it some thought.

Lord Greenway: My Lords, I apologise for coming late to the Grand Committee, and I apologise if I say something that has been said already. It is especially pleasing to see the Minister back on maritime affairs in some form or another. He will recall that we spent many hours dealing with the Marine and Coastal Access Act some two or three years ago.

I welcome the proposed measures. As the noble Lord who sat down just now has said, as no doubt have many others, they were subject to extensive negotiations. I know full well that the British Marine Federation was very worried when they were first mooted but, as a result of the negotiations and especially of the welcome funding, its fears have been allayed. I certainly wish the new organisation a slightly better start than the Marine Management Organisation had. That was set up by the Marine and Coastal Access Act and the first few months, to put it mildly, were somewhat disturbing. Since then I am glad to say that things have improved enormously. I wish the new organisation well.

Finally, and rather flippantly, the Shropshire Union Canal was mentioned by the noble Lord, Lord Hodgson of Astley Abbotts. Most noble Lords will know that I am a boating man, but I am very much a deep-sea boating man. I am afraid that I am a bit of a stranger to canals. However, I did once find myself standing above a bridge on the Shropshire Union Canal during the annual yachting shoot. It was a glorious, frosty, autumn morning, and never have I more wanted to be on a canal boat travelling along that most inviting-looking stretch of water. I might add that the only pheasant I saw all day craftily flew under the bridge beneath me, so the score was pheasant 1: Greenway nil.

Lord Martin of Springburn: My Lords, I, too, apologise for being late to the Committee. Monday is a day for travelling from Scotland, and I travelled within yards of the Forth and Clyde Canal, which I wish to talk about. I am dependent on trains and other modes of transport to get here. I declare an interest as I know that that is important in this place. I am a card-carrying member of the Forth and Clyde Canal Society, which was started at a time when people saw no value in the canal that runs from the west of Scotland to the east. At one stage in the 1960s, part of the canal was filled in to accommodate a motorway, but because of the good people in that organisation, that has been rectified and it is now navigable from the west to the east.

I remember from reading the history of the canal, which is absolutely fascinating, that the Member of Parliament who was responsible for putting the legislation through—we know that canals need parliamentary legislation—was a Mr Lawrence Dundas. I do not think he declared the fact that he owned land in the east coast in an area called Grangemouth, for which he was a Member of Parliament. However, I declare my interest here. I feel that British Waterways Scotland does an excellent job. Through the co-operation of everyone, including central government, the Scottish Government and the local authority, we have built the great Falkirk wheel—a fantastic piece of technology that lifts the barges from the Forth and Clyde on to the Union Canal. I understand that no more energy is used than would be used for 10 electric toasters. The early pioneers of canal building were fantastic surveyors, builders and civil engineers—Telford being one of them.

Over the years, the tow-paths of the canals have been used like a public park. They have become very safe places for dog-walking, cycling and running, so it is not only those who have a boat or a barge who can enjoy the canal. It should also be remembered that within our cities, the canal is the one area where young people, who are perhaps living in housing estates that could be improved, have the ability to see our wildlife without necessarily having to go into the countryside.

I know that this is not written into this order, but I put it to the Minister that if he is speaking to anyone in British Waterways, a major advantage of the Caledonian canal is that seagoing shipping can cross from Europe through to the west coast of Scotland because the waterway is very big and there is no worry about tides. However, at its east side the Forth and Clyde Canal ends at the River Carron, which goes into the River Forth and is tidal. That means that it is not so easy for anyone who has leisure or sea-going yachts to negotiate their way into the Forth and Clyde canal. I understand that there might be proposals to canalise, in the technical jargon, that part of the River Carron. I hope that that can come about because leisure and tourism are very important for our canals.

In my former constituency is an area called Port Dundas, which is a canal port. A great warehouse there was lying derelict but developers came along and developed in a very positive way. As a result, one of the poorest municipal wards in Britain, if not in Europe, then had very wealthy people staying in that ward. That was a positive thing because it meant that there were then people in the community who could look at their neighbours' problems and see what they could do to help. Many of them got involved in community projects in adjoining housing estates such as Possil Park and Hamiltonhill, which I do not expect other noble Lords to know about. My point is that that development helped other people socially. Those buildings were of course built very solidly and have become attractive flats. Other developers then came along and said, "Well, if it can be done at Port Dundas, it can be done along the banks of the canal".

I hope I might be allowed to say that some development can be positive, such as the warehouses at Port Dundas, but that some other developments are not too attractive. The developer might come along in good faith and with the best of intentions. However, the community always has to have a say in what developments should go on because people are very proud of their canals and the environment thereof. I hope that whenever consultative bodies are consulted, it is borne in mind that the local communities, which have been there for years, should never be overlooked when it comes to the concerns that they might have about development.

4.30 pm

Lord Knight of Weymouth: My Lords, it is a pleasure to contribute to this debate. We on this side of the Committee support these orders, but I shall qualify that as I go along, as is my job. It has been a debate in which some good points were made. I will not rehearse all those points, however good they were, for the sake of saving time.

It is a pleasure to follow the noble Lord, Lord Martin, not only because I heard him say the word "order" again, which brought back many happy memories from my time in the other place, but because, given that he talked about how well British Waterways was

[Lord Knight of Weymouth]
operating in Scotland through development and the various uses of the canals to which he referred, implicit in his speech was the question of whether as a result of this transfer, which does not apply in Scotland, British Waterways will have the capacity to continue doing that work in Scotland: and, indeed, given the demise of the Inland Waterways Advisory Council, whether a voice is being lost in Scotland for the users of waterways.

The ideas of the noble Lord, Lord Framlingham, around youth unemployment would have been ideal for the former future jobs fund. I shall be interested to hear whether the Minister thinks that the new youth contract will latch on to those interesting ideas about how the waterways and work around the waterways may be used.

The main point I wish to make is that these orders come from a cross-party consensus, and I was pleased that the Minister acknowledged that at the outset. I have heard from various interest groups and stakeholders about these proposals and, with the notable exception of the National Bargee Travellers Association, the feedback on the transfer has been very positive, particularly from the Inland Waterways Association and the British Marine Federation.

As we have heard, the diligence and strength already shown by the trustees of the Canal and River Trust in negotiating its 15-year funding agreement with the Government is a positive sign of things to come. It also demonstrates that many of the building blocks for the new trust are now in place and ready for the transfer. Clearly there is good potential now for improved governance and for new income sources to be developed for our waterways with, I hope, a reduced cost base and, as we heard from the Minister, an increased engagement by volunteers.

I also pay tribute to the work of the Secondary Legislation Scrutiny Committee and, in particular, to its first report, which went into these issues in some detail. It reminded us of the tests that we should deploy when considering these orders, which arise from the Public Bodies Act, including the tests of efficiency, effectiveness, economy and accountability. The report ran through those issues in a helpful way. As the committee has set out, the tests of efficiency and effectiveness broadly revolve around how well stakeholders will be engaged. As I have said, I am comfortable with that.

However, we have now heard from a number of speakers in the debate about the concerns that have been raised with me and many others by the 5,000 to 10,000 itinerant boat dwellers who live on our canals. I look forward to what the Minister has to say on that issue because it also touches on the third test of accountability. The deputy chair of the National Bargee Travellers Association, Pamela Smith, in her e-mail to me—which I am sure many others have received—set out some of the details of the transfer of powers. She said:

> "If the transfer takes place, the Canal and River Trust will have powers to make subordinate legislation; powers of forcible entry, search and seizure; powers to compel the giving of evidence and powers whose exercise will necessarily affect the liberty of an individual. Our homes will be at greater risk after the transfer".

She said that they have no legal recognition or protection for their homes and that the transfer of British Waterways to the Canal and River Trust will remove the minimal protection of their homes that derives from the parliamentary scrutiny of British Waterways. It is obviously quite serious if that group of 5,000 to 10,000 people feel that there will be less accountability as a result of these transfers.

When the Minister responds, I would be grateful if he could comment on the role of the Waterways Ombudsman in helping to deal with some of these matters. Given that we are about to go into Committee tomorrow on the Groceries Code Adjudicator Bill, has the Minister given any consideration to a code of conduct for the new trust in respect of its relationship with this group of boat dwellers? With such a code, the ombudsman could then police for us. Would that help to give that community some reassurance about the operation of the trust?

The third of the tests that the committee reminded us of was that of economy. I was pleased to hear the Minister give a commitment to meet its request for a Written Ministerial Statement on the financial position of the new body two years after the trust has formed.

Finally, I should not let the passing of the Inland Waterways Advisory Council go without comment. Reading between the lines of the committee's first report, I noted that it did not see that much of a case had been made for its abolition and looked forward to the Minister setting out more detail, which to some extent he has already done. I will be interested to know how stakeholders will be heard from in policy-making. However, I shall not die in a ditch over IWAC because, in my single year of being the Canals and Waterways Minister at Defra, I do not recall getting any real input from it. It can perhaps pass, therefore, without too much mourning. I look forward to the Minister's comments.

Lord Taylor of Holbeach: My Lords, it is always good to hear from a former Minister about his experience of his portfolio. I understand the points that noble Lords have made, but I am also gratified by the fact that these statutory instruments have received widespread support in what they seek to achieve. That is a reflection of the fact that Parliament has felt that there is a role for a new form of governance for British Waterways, and the CRT represents just that.

I have a number of points to make, which I could rattle off in one go but it might be better to refer to them as best I can as I summarise the debate. There may be some things that I miss, in which case I hope that those behind me will remind me of them so that I might at least write to noble Lords.

The welcome given to the orders by the noble Lord, Lord Knight of Weymouth, reinforced the view of the Grand Committee that they are proper orders to be presenting to Parliament. It was good to hear from the noble Lord, Lord Smith of Finsbury, his understanding of what the Government are seeking to achieve. We are looking at the possibility of bringing the Environment Agency's waterways into the Canal and River Trust. I spent Friday afternoon at Black Sluice on the South Forty-Foot Drain, which is an example of the way in which the agency has provided for waterways users.

It has built a lock at that sluice, and plans for that area and the Haven at Boston will mean that there should be increased use.

The Fenland waterways partnership represents important recognition that the Fenland waterways, which have relatively underused water courses, can be developed in this way. There is logic in that development, and we look forward to working with the Environment Agency and the noble Lord on achieving that. He was right, too, to tell us that there are important elements of flood risk management in the management of canals and, if we dare cast our minds back three or four months to when we talked about this, water management and supply. It is important that these elements are part and parcel of that. Leisure use is of course very important and will be the way in which most people judge these developments, but other aspects of policy will look to the waterways for other reasons.

On the creation of the CRT, I reassure the Committee about its transparency and openness; that is what it is about. We have set up a governance structure through the board of trustees, the council and the waterways partnership that is inclusive and gives all interested parties an opportunity to be represented and have their voices heard. I reassure my noble friend Lady Parminter that the council has four directly elected voters within its ranks. It is not designed to be an exclusive body; it is inclusive in its very essence.

A number of noble Lords mentioned the NBTA. I understand that this group has been vociferous in trying to bring its particular concerns before Parliament, but I hope that it in turn is reassured, as the Committee will be, that the CRT is actually setting up a small advisory committee to advise senior managers responsible for boating and navigation matters—on a less permanent basis than the IWAC, I might say, but it will include at least one voter without a home mooring. I hope that his or her understanding, and the campaigns that they will be able to bring to that advisory committee, will be in the interests of itinerant live-aboard boaters.

It is important to emphasise to my noble friend Lady Parminter and indeed others that the rights of boat dwellers will not be removed or weaken as a result of this transfer order. The Human Rights Act, the Equality Act and the Freedom of Information Act will all apply to the CRT as it carries out its statutory functions. It will be a charity that seeks to engage with all its stakeholders, and there will be opportunities at every level of the organisation for stakeholders to be involved. It will be up to members of the public who are passionate about the waterways and want to get involved to get engaged with the CRT through its governance structure. I have already mentioned the advisory committees, which will have the responsibility for advising on boating and navigation matters.

I think that I have covered the point about resident boat owners. Their rights are contained in statute in the British Waterways Acts, not the charity's articles of association. A number of noble Lords asked if I could reassure them on that; I believe that the noble Lord, Lord Berkeley, made that point.

The noble Lord, Lord Knight, discussed the question of the Inland Waterways Advisory Committee. His personal anecdote reinforced the Government's belief that we are doing the right thing in abolishing it, and his noble friend Lord Grantchester, who cannot be in his place now, made the same point. While it is right that the IWAC is abolished, though, I thank its members for their commitment and service. I hope that they will, as other noble Lords have suggested, engage with the CRT to enable the trust to benefit from their expertise in the future.

4.45 pm

I welcome the cross-party support for the transfer of the CRT that has been expressed in this debate and over the past two years. That has helped to make it easier to present this legislation to Parliament, and we have been able to do so in a very short space of time. Moving the functions and assets of British Waterways in England and Wales to the charitable sector through the creation of the CRT will further liberate the potential for the waterways to provide benefits to the public, as a number of noble Lords mentioned, as it will enable local communities to have a greater say in how their local canal or river is run.

Parliamentary approval of the transfer order is really the final building block. Many are already in place, and it will make the new charity a reality. The board of trustees, the council and the waterways partnerships are all in place. As noble Lords have said, agreement has been reached on a tough but fair funding package that will extend over the next 15 years. The length of that commitment shows just how important it is.

My noble friend Lord Hodgson of Astley Abbotts said that he hoped there would be a cultural shift within the organisation. To the extent that that is necessary, I believe it has already taken place. Operating under a board of trustees and with the pressures of being responsive to community interests, I do not believe that it will be possible for the trust to create an ivory tower as a safe haven, if I may put it like that—or perhaps I should say "a safe mooring".

My noble friend asked specifically about pensions, and I shall come to that at the end of my comments.

A number of noble Lords asked about tow-paths, recognising that much public benefit from canals comes not for the people in boats or narrow boats on the canals but for those who have public access. For the first time, there will be free public access for all pedestrians. Noble Lords may not be aware that currently there are not many places where the public have a right of way to tow-paths. Now, such public access will be assured. Indeed, there may also be access for bicycles, although probably on a permissive basis. I think that the noble Lord, Lord Berkeley, will understand that bicycles and horses may not mix in all circumstances, but access on a permissive basis may be possible. Of course, the CRT's waterways partnerships will put in place localism strategies that will address just these sorts of issues.

Perhaps I may go through some of the points that were raised. All litigation currently under way will be continued by the Canal and River Trust. In fact, it will be transferred to the CRT, which will inherit all the duties and obligations of British Waterways. The great majority of litigation enforcement concerns are about the non-payment of licence fees, although a minority

[Lord Taylor of Holbeach]
concerns noise. None the less, these will be part and parcel of the process. The noble Lord, Lord Berkeley, who I think raised this issue, suggested that there might be an update on any outstanding inherited issues.

My noble friend Lord Hodgson of Astley Abbotts made a very good point about pension funds. I want to get through these questions, but I think it is important that I try to answer noble Lords' concerns. The pension funds will be transferred, as will all public sector characteristics, and the rights to pensions will transfer under the transfer scheme. In other words, TUPE will apply to these things. The Government have paid £25 million into the pension fund to help manage its deficit, as the noble Lord mentioned to the Grand Committee. They have also guaranteed up to £125 million of pensions liability in the very unlikely event that the CRT should become insolvent. The British Waterways Board has prepared for the future viability of the scheme by adjusting its terms: the scheme is closed to new entrants and the defined benefits have been modified. New employees have access to a defined contribution scheme.

My noble friend Lord German asked why the Canal and River Trust is not a membership scheme. Well, that is up to its trustees. They decided that that was not an appropriate way of doing things, although it will have a friends of CRT group and will probably have the opportunity to elect members to the council.

My noble friend also asked about by-law consultation. I should explain to him that the CRT consults on the drafting process; that is statutory. The draft is discussed with the responsible departments, and once agreement is reached in principle it has to be published for statutory consultation. Representations to the Minister are then considered, but the Minister has to approve by-law changes.

Perhaps I can also answer my noble friend's comment about Glandwr Cymru. My Welsh is not that good but, as I understand it, it means Waterside Wales. I cannot say why it was dealt with differently, but it was named following market research in Wales and obviously we are particularly sensitive about trying to achieve harmony with Welsh users of the waterways.

The noble Lord, Lord Knight of Weymouth, alighted upon my noble friend Lord Framlingham's comment. I thought he made a very useful point about the opportunities that exist in the new CRT, and I shall make sure that my honourable friend John Hayes, the Skills Minister, is aware of the comments that he made in debate here today—

Lord Knight of Weymouth: I have since discovered that the future jobs fund did provide jobs for a number of people, including 56 young people who worked on the Leeds and Liverpool Canal, for which the fund won an award. Perhaps the Skills Minister will be pleased to learn of the success of that previous scheme and will look at ways for it to be replicated using the Groundwork charity.

Lord Taylor of Holbeach: Here was I thinking we were in the vanguard of new ideas, but now I discover that we are actually trundling along behind. None the less, I shall still make sure that that is done.

Finally, I am delighted that HRH Prince of Wales has agreed to be the trust's patron. It is wonderful that the CRT canal boat was in the jubilee pageant, along with 60 others. I believe that we are achieving something very different and exciting for our historic and much-loved waterways, and that they will be cared for by future generations as result.

Motion agreed.

Inland Waterways Advisory Council (Abolition) Order 2012

Considered in Grand Committee

4.54 pm

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

That the Grand Committee do report to the House that it has considered the Inland Waterways Advisory Council (Abolition) Order 2012.

Relevant documents: 58th Report from the Merits Committee, Session 2010-12; 43rd Report from the Joint Committee on Statutory Instruments, Session 2010-12; 1st and 4th Reports from the Secondary Legislation Scrutiny Committee.

Motion agreed.

Electoral Registration Data Schemes Order 2012

Considered in Grand Committee

4.56 pm

Moved by ***Lord Wallace of Saltaire***

That the Grand Committee do report to the House that it has considered the Electoral Registration Data Schemes Order 2012.

Relevant document: 2nd Report from the Joint Committee on Statutory Instruments.

Lord Wallace of Saltaire: My Lords, the order will provide the legal basis for a second electoral registration data-matching trial by enabling the sharing of specified data between the DWP and local authority electoral registration officers. An initial round of data-matching schemes took place in 2011 and, in the Government's response to pre-legislative scrutiny and public consultation on individual electoral registration and amendment to electoral registration law under Command Paper 8245 of February 2012, the Government announced that they were minded to use data matching to simplify the transition to individual registration for the majority of electors, subject to further testing this year.

Before I set out what the order does, perhaps I may provide the Committee with some background, with which I think most noble Lords present will already be familiar. All sides of the House agree that we need to improve our electoral registration system. We need to make the register both more accurate and more complete

than it is at the moment. We need to ensure that it is not vulnerable to fraud but that people find it as easy as possible to register and are encouraged to register.

The Committee will recall that an initial round of data-matching schemes took place last year. The initial trials involved comparing the electoral register against other public databases in order to identify people who were missing from the register, which would then give an electoral registration officer the chance to contact them and find out whether they wished to be added to the register. The 2011 data-matching schemes were also aimed at identifying potentially inaccurate and/or fraudulent entries on the register. The electoral registration officer would then be able to take the necessary steps to remove them.

The evaluation of these schemes told us that further piloting work was required, and I shall say more about that in a few minutes. An unexpected benefit of last year's pilot schemes was the discovery that it might be possible for a significant majority of existing electors to be confirmed as accurate to an acceptable standard by matching the electoral register against data held by the DWP. We hope that this will address one of the criticisms of some of our individual registration proposals, but there may be a risk of a reduction in the number of registered eligible voters. In the transition to individual registration, those electors whose details were confirmed through data matching would therefore be automatically placed on the new individual electoral registration register without having to make a new application.

We want to test this proposition in the pilots run under the order, but with a larger sample so that we have good, robust evidence. The instrument before us now will enable us to test the capability of the data-matching process to confirm existing electors on the register. It will involve a range of areas in England, Wales and Scotland. The results of the trial will be evaluated by the Cabinet Office and the Electoral Commission and will enable us to confirm that this matching process will assist the transition to 2014 and enable us to find a process for carrying it out. I should add that the reason for not including Northern Ireland in this pilot scheme is that Northern Ireland already has moved to individual electoral registration.

5 pm

The order enables the DWP to provide electoral registration officers with the data necessary for the data-matching schemes. The 14 local authorities planning to take part in the trial are listed in the schedule to the order. I should express my thanks and appreciation to them, and to the Department for Work and Pensions, for their constructive work to date.

The Committee may notice that there are 17 local authority areas in the schedule. Guildford and South Ribble are included not to take part in the confirmation testing but to pilot online electoral registration. It will not be piloted end to end, including the final verification process, as that would trespass on the House's forthcoming deliberation on the Electoral Registration and Administration Bill, but we will look at front-end data collection. That will enable us to get some idea of how many electors might wish to take up an online method of electoral registration. We will also be able to see whether there are particular segments of the population for whom that method of registration would be most attractive. That will enable local authorities to gain a better idea of the different channels that people will use to register, and it will help some segments of the population that are currently not as well registered as they might be. This includes young people, who we suspect are much the most likely to wish to register online.

Since the draft order was laid, Colchester council has, unfortunately, had to withdraw from the pilot schemes. That does not affect the validity of the order, because inclusion in the schedule does not compel authorities to take part. Nor will it affect the validity of the eventual results of the pilot schemes, because there are enough local authorities taking part in the pilots for the results to be robust from a research perspective.

The draft order stipulates that before any data can be transferred, a written agreement must be in place between the ERO and the DWP setting out the requirements as to the processing, transfer, storage, destruction and security of the data concerned. It also sets 30 June 2013 as the date by which each of the schemes must have been evaluated by the Electoral Commission. After the pilots have ended and the evaluation has been completed, the personal information and data created and held for the purposes of the pilot schemes will be securely destroyed.

The Information Commissioner's Office has been consulted on the draft order and has commented that if the schemes carried out under it confirm the results of the previous pilots, the transition to individual registration will be simplified and many individuals will not be required to provide additional personal information.

As mentioned earlier, the evaluations of last year's pilot schemes also concluded that further trials were needed to ascertain the potential of data-matching to identify potential electors who are missing from the register. The order will also enable such schemes to be carried out in some areas, but if it is decided to extend the schemes to include further areas or datasets, a separate order will be laid before your Lordships at a later date.

With regard to the order before us today, I hope that Committee Members see the merits of this second trial and the benefits that it will have for strengthening our electoral registration system and ensuring that it is complete as well as accurate. I hope that the Committee will approve the order.

Lord Rennard: My Lords, I wonder at the outset whether the Minister might be prepared to make a short statement of principle about the purpose behind the orders. What I want to hear particularly is that the underlying purpose is at least as much about the completeness of the electoral register as it is its accuracy. That will be crucial in approving the direction in which the Government are travelling.

Perhaps I may ask him specifically about the decision not to provide a full regulatory impact assessment of the orders. The Government state that there should be no impact on the private sector, but potentially reducing

[LORD RENNARD]
significantly the completeness of the electoral register could have a big impact there. I know that the credit reference agencies have made a number of representations to the Government on this issue. We think nowadays about the way in which many businesses do business. They do it online over the internet; they provide goods and services to people to addresses that people fill in online. If they are unable to check the accuracy of those addresses, as they generally do on the electoral register, there could be a detrimental impact on business if we fail on the key issue of completeness of the electoral register.

It seems to me that the success of the transition to individual electoral registration will be hugely important for elections post the general election due in May 2015. It will be less important for the election of May 2015 because of the carry-forward provisions, but will be hugely important for elections in future. It will be hugely important to the boundary review process for future boundary reviews—not the present one, based on the current registration process—but for those due to begin on 1 December 2015. Will the Minister confirm that it is crucial to have independent verification of the success of the move towards independent electoral registration, of which these instruments are a part, before it is considered safe to proceed either with elections under the new system or with future boundary reviews?

I have a question on a detail that emerged from the previous pilots which the Minister now suggests will be addressed in future pilots. It was discovered in the initial pilots that quite a few people were eligible to be on the electoral register. The DWP database showed clearly beyond any reasonable doubt that these people were entitled to be on the electoral register, but they were not on it. I understand from the order that in future pilots, if people are entitled to be on the electoral register and it is clear beyond the shadow of a doubt that they should be on it, they will be chased to get them on to it. That would seem to be commendable, but if we know beyond a shadow of a doubt that someone should be on the register, why should we chase them to get them on to it?

I can see that if we followed models that I have advocated in the past that require a signature as part of the registration process, you could chase these people for a signature. However, if the DWP database has their national insurance number, name and address, and all satisfactory methods show that they should be on the electoral register, why chase them? If they are to be chased, how do we know that they will be chased effectively and consistently? It would be a great shame if, in chasing these people, some individual electoral registration officers sent a very cursory letter and left it at that, while others used best practice and perhaps sent a series of repeat letters or e-mails pointing out the likely future sanctions if people failed to comply with what will be a legal requirement. In making sure that this works effectively, there will probably be a requirement for ring-fenced funding for local authorities to make sure that they do their job in relation to this. I very much look forward to the Government's and the Electoral Commission's evaluation of these pilots.

Lord Kennedy of Southwark: My Lords, I am delighted to have this opportunity to speak in this Grand Committee debate on the Electoral Registration Data Schemes Order 2012. I say at the outset that I agree with the comments of the noble Lord, Lord Rennard.

I advise the Committee that I am a member of the Electoral Commission, which commented on this order earlier this year and which will evaluate the pilot schemes when they come to an end. I hope that the Government are in listening mode today. It is fair to say that they did not listen very much last time, which is part of the reason why we are back here today with a second set of orders. The last set of pilots was unclear. The pilots did not have a common methodological framework, which made it difficult to evaluate their effectiveness as a data-matching tool to prove complete accuracy of the register.

As has been said, the Government decided to speed up the IER process. Let us be clear, IER is already on the statute book. It was brought in by the previous Labour Government. The Minister needs to provide the Committee with proper assurances that everything is being done to make the register more accurate and complete. These powers will assist the process and action can be taken following the process. My concern is that these proposals may well improve the accuracy of the register but that completeness will suffer, with the register being less complete. As has been said, accuracy and completeness are different things.

I ask the noble Lord to clarify a few things in his reply. Can he explain the methodology behind the pilots? Will they test the processes that will be made available to local authorities if they are rolled out nationally? Can the Minister comment on the management of the pilots, as well as on the staff and budget provisions? What are the proposals for communication between the pilots, data holders and the Cabinet Office? Perhaps I may also ask him to comment on how he sees the data-matching process being used to confirm the identity of existing electors and how he sees the confirmation process working.

I would not say that the Government have wrapped themselves in much credit on these matters so far. These are serious issues and I hope that the noble Lord will give a commitment to write to me in detail on the points I have raised today. I do not want to have to raise them again when the order reaches the Floor of the House, but I give him notice that I will do so if necessary. With that caveat, I look forward to his response.

Baroness Hayter of Kentish Town: My Lords, I thank the Minister for introducing the order. I guess that if I have one word of advice for him, it is, "Listen to the last two speakers". I know that my noble friend Lord Kennedy was an agent and could get votes where no others were found. Sadly, to our detriment, the noble Lord, Lord Rennard, also had a great ability for doing that—something for which I have never quite forgiven him. However, both noble Lords have a lot of wisdom and experience behind them in these matters.

We welcome this second set of pilots. Their aim is to ensure both the accuracy and, we hope, the completeness of the register, as both the noble Lord,

Lord Rennard, and my noble friend Lord Kennedy have said. I think that we all rather bemoan low turnouts in elections, but of course the true level of participation would be lower if we took into account the votes of those who would be eligible to vote if only we could catch them all. Clearly the Government have a responsibility to act to ensure that we find and register all those for whom our predecessors, particularly of my gender, fought so hard for the right to vote. Just a few days ago, we heard of the great yearning of the people of Burma for the right to vote, and that puts an onus on all of us to make sure that those who have won that right have the ability to cast their vote and to do so easily.

The order is part of the process of checking on the proposed way of building up individually compiled electoral lists so that everyone, with the minimum of difficulty, is able to cast a vote, and we welcome that. I do not have 20 questions for the Minister but I am afraid that I do have a dozen.

First, and most importantly, is the fact that we will not have the evaluation of these pilots until after the Electoral Registration and Administration Bill becomes law. Therefore, what happens if the pilots demonstrate real concerns over the process used, such that we doubt whether the 2015 register will really be complete and accurate? What happens if they suggest that there are still adjustments to be made so that, although the system could eventually work, it will not be robust in time for that election or indeed for the boundary review that comes just after it, to which the noble Lord, Lord Rennard, referred?

Secondly, the evaluation will be held by both the Electoral Commission and the Cabinet Office, but what if their assessments vary? What discussion will take place in this House or the other place before individual registration continues, regardless of the outcome of the pilots?

Thirdly, there is still scope for additional pilots, but who would authorise them and would they be done in time?

Fourthly, what if the pilots were to indicate that extra resources were needed, either in particular localities or among particular age or other groups, to increase completeness? Will the Government respond to such an indicated need or will the pilots simply demonstrate the problem but not lead to solutions?

Fifthly, is the Minister satisfied that the spread of authorities is sufficiently varied to produce robust findings? The one that pulled out would obviously have had many students in its area, so some assurance about the student population in the others would be useful. Are there any provisions for any sort of understudy in case one of the remaining 14 was to pull out?

Sixthly, when this was debated in the other place, the question of a register for a Scottish referendum was raised—needless to say, by a Scottish Member of Parliament. Being equally parochial, on Friday I had been planning to ask the Minister whether the new register would be available in time for a referendum on the reform of the Lords, especially one on the electoral system to be used in selecting the new senators, given that the Government gave us a referendum on the election system for the House of Commons. However, having heard over the weekend that there is, I gather, going to be no referendum, either on the electoral system or on this major, significant constitutional change, I have a more minor question to ask instead. Will the Members of your Lordships' House be able to vote for the elected one-third of the House in May 2015 and, if so, will we be caught by the data-matching pilots?

5.15 pm

Seventhly, the impact assessment for the individual electoral registration Bill suggests that the,

"accuracy of the register … in the long run",

should increase to 95% and its completeness to 85%. Are the Government content with 85%?

Eighthly, what do the Government estimate that the 2015 figure will be, in the light of likely results from these pilots? The worst-case scenario in that impact assessment is for the register to be less complete in the short term, with accuracy falling in 2014-15.

Ninthly, is this order the limit of the work going on to improve individual registration or are the Government also looking at Royal Mail, schools or other data which may be far more complete? Maybe the Government are now regretting pulling out of ID cards; I am sure that the Minister will not want to comment on that.

Tenthly, the Minister may well be aware that the Electoral Commission has continuing concerns about the current round of pilots, as was partly outlined by my noble friend Lord Kennedy of Southwark, and whether those pilots will be robust enough for the commission to undertake its statutory role of evaluation so that it can inform policy and practice on electoral registration. As has been mentioned, this is particularly about methodology. Can the Minister assure the Committee that the pilots will be delivered to an agreed methodology?

Eleventhly, are the pilots sufficiently and appropriately staffed to undertake, report on and analyse the exercise? I know that the commission is also concerned about whether the schemes will allow for a definitive assessment of the confirmation of lists of DWP data, given the complexity of the task. Can the Minister give some assurances that further work will be undertaken if needed as a result of the pilots?

Finally, should anything like the worst-case scenario occur and the register become less complete, what steps would the Government take to mitigate this fall, whether by ongoing data matching or by other means? I hope that the Minister, or people close behind him, will be able to respond to most of those questions.

Lord Wallace of Saltaire: My Lords, I am tempted to start by saying that I now have writer's cramp from attempting to write down all those questions as they were thrown at me. I remind the Committee that we all share an interest in this and I hope that it is very much an all-party concern that we should have as accurate and complete a register as possible. I think that we also all share an awareness that our electoral register has been becoming less accurate and complete, for a number of reasons. Young people have been moving around more and, in particular, I fear that a number of them are not actively interested in getting themselves

[Lord Wallace of Saltaire]
on to the register. It has also been rather more difficult, particularly in some inner-city areas where people are in multiple accommodation and moving relatively quickly, to keep up with people as they move.

I think that we also all share an awareness that the issues about which people hold what data are moving very fast. The Government now collect a great deal of data that were not available for collection before. Private sources, from Experian to Google to Tesco, also collect a great amount of data, and there are some very large issues that we will have to deal with over the next few years about how that is handled and what privacy guarantees are introduced to hold on to the individual's rights against what I see from one of my notes is regarded as the data-collecting state. In revising the register, we have to take all these different issues into account.

The purpose of the pilots is to ensure that individual electoral registration is as complete as possible. In answer to the noble Lord, Lord Rennard, the issue of the impact on business and credit checks is one that we are aware of, but it is not something that many young people are aware of. When the Bill comes before the House we will have to discuss that in detail, because a lot of young people do not understand that your credit registration and the way in which business can operate with you partly depend on whether you are on the register. That is part of what may need to be an information campaign on all this.

There certainly will be independent assessment of the effectiveness of these bilateral pilots. I liked the question about what happens if the Cabinet Office and the Electoral Commission come to different conclusions on this; if they did, clearly they would have to discuss and reconcile their evaluations of the schemes. Actually, it is highly desirable that there should be two different forms of evaluation. I remember going to talk, when I worked at a think tank, to the new research director of a major international company and him asking his predecessor, who was introducing me, why they needed advice from a think tank when the company had its own research department. The former head of the research department said, "Because you might want a second opinion", and the same is true in this case. Involving both the Electoral Commission and the Cabinet Office is a good way of making sure that there is a second opinion and, if the second opinion is different, that will have to be reconciled.

I think that I understood the noble Lord, Lord Rennard, as saying that we might even think about putting people on the register automatically if they were found on the DWP database or, alternatively, only if they responded to follow-up letters or visits. Again, that is something that we will be discussing when the electoral registration Bill hits the Lords. It is an important and difficult issue, because it raises questions about citizen involvement and responsibility as opposed to individual privacy when it comes to this public database—indeed, one of the most important public databases that we have.

I should say to the noble Lord, Lord Kennedy of Southwark, that local authorities manage registers, and electoral registration officers work for local authorities. With these pilots, we are very much concerned to look at the completeness dimension. Last year's pilots looked rather more at accuracy and I assure the noble Lord that it is very much a concern of ours that this should be as complete as possible. Combining my answer to him with at least one of the dozen or so questions from the noble Baroness, Lady Hayter, that I wish to answer, I remind noble Lords that electoral registration officers already make use of a number of data sets that are available to local authorities. These include the register of births and deaths, council tax records, registers of households in multiple occupation, local land and property gazetteers, housing benefit applications, lists of persons in residential and care homes and, when allowed, details of attainers—those aged 16 or 17—held by education departments.

In Northern Ireland, the move to individual electoral registration has led to an improvement in the completeness of 18 year-olds coming on to the register because authorities have worked actively with Northern Irish schools to encourage 16 and 17 year-olds to come on to the register and to check names as they arrive. There are problems in some English local authorities where there are district and council authorities and the ERO belongs to one authority and the schools belong to another. That, again, is a question we might wish to discuss further when the Bill comes to the House. However, in looking at completeness, we hope that the use of secondary schools and 16 and 17 year-olds will help to ensure completeness in one of the precise areas where we are worried about the number of people who put themselves on the register.

Are we confident that the methodology in place this time is sufficiently robust to deliver successful pilot schemes? We are confident. We have adopted a more prescriptive approach to the pilot methodology than was possible last year. There is clear guidance for each of the pilot areas, on the basis of which we hope to draw robust conclusions from the evidence. We have developed the methodology in liaison with the Electoral Commission and we have asked all the pilots to agree to the methodology before they start work. That means that we have started work on developing a more sophisticated algorithm to reduce the resource intensiveness of the process for electoral registration officers.

As to the purposes of these orders, the impact is limited to the pilots and not beyond. Again, we will return to many of these issues when we are discussing the Bill. Are more pilots needed? This is an on-going process in consultation with the Electoral Commission and if more pilots are needed—and the area of young people is one that we are particularly concerned about—we will continue to a further pilot. Are we satisfied with the spread of authorities? We are satisfied that we have a sufficiently robust spread of authorities. One or two extra rural authorities might have been more appropriate—in the other place, the question of Scottish rural authorities was raised—but this is a fairly good spread across all three countries and across a range of different authorities. We are confident that this will give us a fairly strong result.

I am afraid that I am unable to say at the moment whether Peers will be able to vote in 2015 for the third of this House that will be elected. I was happy to hear

the noble Baroness say "will be elected in 2015". I promise to buy her a drink after she and I have been to vote on that occasion—if and when we have been allowed to do so.

Are there any other questions that I should have answered? Will further work be undertaken? We have said yes, it will. On the question of whether the new register will be ready for the Scottish referendum, we are determined that the same basis for the register will be in place throughout the country for each election. The impact of the pilots will not be used for a different foundation for the electoral register from one local authority to another. The purpose of these pilots, which have been worked on with the Electoral Commission and others, is to ensure, as far as possible, that everyone in the country and in different political parties has the maximum confidence that the new register is both as accurate and as complete as possible. We shall return to this issue if we need more pilots—it would require another order—and when we discuss the individual electoral registration Bill in the House.

Motion agreed.

Office of Qualifications and Examinations Regulation (Determination of Turnover for Monetary Penalties) Order 2012

Considered in Grand Committee

5.30 pm

Moved by Lord Hill of Oareford

That the Grand Committee do report to the House that it has considered the Office of Qualifications and Examinations Regulation (Determination of Turnover for Monetary Penalties) Order 2012.

Relevant document: 2nd Report from the Joint Committee on Statutory Instruments.

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): My Lords, I am grateful to the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee for their careful consideration of this order. Noble Lords will be aware that neither committee commented or thought that the House's attention should be drawn to the order.

First, I shall give a little bit of history. Noble Lords will recall that it was as a result of concerns raised by Members of this House that we introduced a provision into the Education Act 2011 giving Ofqual new powers to impose financial penalties. That was against the backdrop of the errors in exam papers during last summer's exam season. That power was commenced in May this year. It addresses the gap in Ofqual's range of sanctions, as previously there was nothing between a power to direct and the ultimate sanction of withdrawing the awarding organisation's recognition. This change brings Ofqual into line with similar regulators and is consistent with the Regulatory Enforcement and Sanctions Act 2008.

At the time, last year, the Government accepted the argument that a strong regulator needs a range of powers, including the ability to impose financial penalties. Fining is a flexible sanction which we expect to act as a deterrent to awarding organisations breaching regulatory requirements. In many circumstances it would provide a more proportionate response than the most severe sanction of withdrawing recognition. At the other end of the spectrum, as we have seen with other regulators, fines give a stronger public signal about the significance of the breach than giving a direction to take corrective action or public censure.

It is of course important that there should be limits on any fine. For that reason, we agreed that Ofqual's power to fine should be subject to a cap of no more than 10% of the awarding organisation's turnover. We also agreed that the definition of turnover for these purposes would be set out in an order made by the Secretary of State and subject to the affirmative procedure.

A wide range of awarding organisations operate in England: Ofqual currently recognises 179. They possess very different characteristics, including in relation to the way in which they derive income and the relationship between their regulated activity and any other activities that they undertake. In order to gauge the balance of views on this issue, we undertook a 12-week consultation on the draft statutory instrument, which ran from December to March this year. Parallel consultations were carried out by Ofqual and by the Welsh Government in respect of a similar power that has been introduced in Wales.

When we discussed this matter last year, I explained that it was our intention to define turnover in relation to activity that Ofqual regulates, rather than using a broader definition based on all an awarding organisation's activity, which could include unregulated activity and activities beyond the United Kingdom. However, when it came to drafting the statutory instrument, it was clear that this would prove difficult to achieve, because in fact a number of awarding organisations have no income from regulated activity. Sticking to our original proposals would have resulted in those awarding organisations being able to operate without threat of this sanction. That could have led, for example, to an awarding organisation that charges for proprietary qualifications being treated differently from an employer awarding body that awards its own, very similar, qualifications to its employees without charging. For that reason, we consulted on an order that defined turnover in relation to all an awarding organisation's activity in the United Kingdom.

The 35 responses that we received to the consultation were broadly in favour of the power to fine in principle, of the geographical scope of the power and of the proposal to calculate turnover on the basis of a business year. However, concerns were expressed over the inclusion of all income in the definition of turnover, rather than limiting the definition to income from regulated activity.

We understand the concerns of both large organisations and small charities, especially those that generate none or very little income from regulated activity. We have considered those concerns carefully and looked at a number of different options, including one proposed by Pearson that we should adopt a two-tiered approach,

[Lord Hill of Oareford]
using one definition based on regulated activity where appropriate and a second based on all activity when an organisation does not derive income from regulated activity.

Set against these concerns, we have had to take account of the importance of establishing a regulatory regime that is simple, fair and consistent in its treatment of awarding organisations. Having considered the alternative options, we were not persuaded that any of them met this test. We think that calculating turnover must be done in a way that treats all awarding organisations equally. As the scope of regulated activity is narrow, being concerned only with the award or authentication of qualifications to which Part 7 of the ASCL Act applies, income from related activity, such as the publication of textbooks, would have been excluded from any definition that uses regulated activity as its basis. A differential approach could therefore have the effect of limiting the exposure of an awarding organisation that derives income from regulated activity, while placing no such limits on one that does not.

The order that is before us for consideration today defines turnover in relation to all of an awarding organisation's activity in the United Kingdom. That approach mirrors the one already agreed by Welsh Ministers, following consultation and debate. If agreed by Parliament, this order will provide a consistent framework for awarding organisations operating across England, Wales and Northern Ireland. That matter was important for respondents to the consultation.

Alongside the consultation on the statutory instrument, Ofqual consulted on its policy on fining. That policy was published in May and makes clear the factors that Ofqual will consider in determining whether an awarding organisation should be subject to a fine. It will consider the harm done and whether a fine is likely to improve compliance with regulatory conditions in the future. It will also consider whether another regulatory body, such as the Welsh Government, has already imposed a financial sanction in relation to the breach.

Having decided that a fine is appropriate, Ofqual will take account of a range of factors in determining the amount of that fine, to ensure that it represents a proportionate penalty. This includes the likely impact of the fine on the awarding organisation's provision of regulated qualifications and its turnover from regulated activities in relation to its total turnover, to avoid a disproportionate impact on awarding organisations with multiple business interests. Ofqual is required to give notice of its intention to fine, setting out reasons, and then to have regard to any representations received in response. Should Ofqual decide following any such representations to confirm the fine, the awarding organisation has a right of appeal to the First-tier Tribunal. Appeals may be made on the basis of the imposition of the fine and on the level of the fine imposed. While the independent appeals arrangements are in train, any fine is suspended.

There is no financial incentive for Ofqual to impose a monetary penalty. All money received in the payment of a fine will be paid into the Government's Consolidated Fund. The definition set out in the order allows Ofqual to have a flexible monetary penalty policy that can take into account the diverse nature of the qualifications market. We set out to define turnover in a way that is fair, transparent, relatively easy to administer and consistent with the approach taken by the Welsh regulator. I believe that that is what we have done. I also believe that Ofqual's commitment to act in a way that is proportionate, accountable, consistent, transparent and targeted, and the safeguards that are in place, should reassure awarding organisations that the fining power will be used proportionately and appropriately. I therefore commend this order to the Committee.

Lord Sutherland of Houndwood: My Lords, I support the order and commend the Government for bringing such a sensible conclusion to a complex inquiry. In doing so, I declare an interest as being currently and for the next month chair of one of the bodies mentioned in the supporting papers, the Associated Board of the Royal Schools of Music. I mention that body also to illustrate how complex the measure is, because it probably means that the department, or certainly Ofqual, would have to check reasonably regularly that the way in which it had constructed the annual turnover figure was accurate. The figures for ABRSM given in the supporting paper show the turnover as being just over £31 million, which was probably the figure for two years ago. That turnover is based not simply on the 300,000 candidates in this country but on 300,000 candidates overseas and shows the complexity involved in determining turnover for activity in the UK. I know that it is simply an illustrative figure in an illustrative paper, but it makes the point that there would have to be accurate checks and agreement with the organisations in question. I do not think that the eventuality will arise, but, if it did, one would need to know in advance on what figure the 10% cap was based. Another slight complexity, again illustrated by the case of ABRSM, is that the figures are to be examined in Scotland as well as in the other three jurisdictions named in the paper. I am not sure whether that makes a difference, but it is the kind of detail that should be checked out. However, I support warmly the direction in which we are now moving.

Lord Lingfield: As noble Lords will remember, I brought up this issue during the passage of the Education Bill, so I shall not rehearse the list of difficulties that we all saw in the newspapers during 2011 and in previous years—the noble Lord, Lord Sutherland, told us a lot about those, too. The principle of giving Ofqual powers to fine awarding bodies that have been in dereliction of their duty seems entirely proper and necessary, which is why I support the Government. Their proposals seem entirely fair. The awarding bodies are a disparate group and it was always going to be difficult to devise a scheme that coped with all the differences, but the decision to limit turnover for the purposes of Ofqual regulation to all activity within the UK seems appropriate. Sufficient safeguards are built in: there will be an appeal mechanism; Ofqual will be required to state its reasons for using its powers, as the Minister has told us; and there will be a review of the order and Ofqual's activities. Those are enough. A great deal of needless distress was caused to pupils

and their parents, and a lot of difficulties were created for colleges, schools and universities. I hope that the order will be used to alleviate those problems. We shall see whether it does, because it can be reviewed.

Baroness Jones of Whitchurch: My Lords, I thank the Minister for his explanation of the reasoning behind the order and for his earlier letter to the noble Lord, Lord Lingfield, providing an update on the steps taken since we last discussed this matter during scrutiny of the Education Bill.

We share the Government's determination to drive up standards in the conduct of examinations and to ensure that Ofqual has the suite of tools necessary to hold awarding organisations to account for any mistakes made, particularly if they have a wider impact on overall public confidence in the exam system. We therefore approach scrutiny of this order with the positive view that it is in our interests for Ofqual to demand, and ensure, the highest possible standards in the administration of the exam system.

I could of course begin by questioning whether this order is already out of date given the Secretary of State's apparent decision, leaked last week, that from autumn 2014 O-levels will be revived and the current exam board free-for-all replaced by a single exam board for each subject. Yet I realise that however short-lived this order turns out to be, we have a responsibility to deal with it as best we can. However, in one sense the Secretary of State's announcement has a common cause with the order here today because the fact that there are so many different awarding organisations of every shape, size and constitution, as we have heard, is the central cause of the headache for Ofqual about how to regulate them fairly and consistently. I suppose that it begs the question as to whether we have allowed too many bodies to spring up to enable consistent marking and proper qualification comparisons to be achieved. In this context, however, I have a few specific questions.

5.45 pm

First, as has been said, the enormous disparity in size between some of the awarding bodies poses a central challenge: how can we ensure that the proposed fines are proportionate, particularly when we are comparing large commercial companies with charities or not-for-profit providers? Our concern is whether there is a danger of unforeseen consequences, with some of the smaller niche providers being driven out of the sector by the threat or reality of fines. In applying the rules of proportionality, even when limited to a 10% cap, can Ofqual assure us that it will not use these powers to squeeze the smaller players out of the market?

Secondly, on how the scope of a fine should be determined, we accept that the dilemma of the 10% cap being on regulated or total turnover is real. I know that some awarding organisations were concerned about this, as has been commented on, but on balance we share the view expressed by noble Lords around the Committee that the latter—the total turnover—should be accepted as the fairest way to proceed, in all the circumstances that have already been discussed.

Thirdly, does the Minister agree with one of the sample comments in the Ofqual consultation? It made the point that,

"Ofqual should … publish full and clear guidance about fines, its fining procedure and what specific listed breaches of conditions of recognition will attract fines".

Will Ofqual have clear procedures in place to address another of the consultation concerns: the danger of double counting, or being penalised for the same breach more than once?

Fourthly, these steps we are taking today do not fundamentally address the causes of the recent high-profile errors that have occurred. I realise that these are the subject of a separate investigation, but can the Minister assure me that as well as putting in place measures to punish failure in quality we are, in parallel, putting in place the drivers for improved standards? For example, the training of senior examiners needs to be improved. It should no longer be possible for exam papers to be set by individual examiners and not then checked by others. The pre-testing of exam papers should be encouraged and more rigorous cross-referencing of marking schemes introduced. These are the kinds of actions that would re-establish faith in the UK's exam system, which has become battered and discredited in recent years.

Finally, can we be assured that protections will be put in place to ensure that any fines to awarding organisations are not simply passed on to schools and pupils in the form of higher exam costs but instead will impact on the profits of the organisations concerned? It would be an irony if the pupils and schools that had been disadvantaged by the mistakes of an awarding body simply ended up passing on the cost of the mistakes to the next generation of pupils within that school. Those are my only questions this afternoon and I look forward to hearing the Minister's response.

Lord Hill of Oareford: I am grateful for the brief comments that have been given in support of the steps we are taking. I am particularly grateful to my noble friend Lord Lingfield for originally raising this issue. We are glad to have been able to address it. I am also grateful for the support from the noble Lord, Lord Sutherland of Houndwood, who rightly pointed out the complexity and disparate nature of these organisations, to which the noble Baroness, Lady Jones of Whitchurch, also referred. That is what has driven us to the conclusion that we have reached.

The noble Baroness, Lady Jones of Whitchurch, raised specific questions. First, I was grateful for her general support of these moves, and I agree that the desire behind them is to raise standards and confidence in our exam system. I know she shares that goal. I also agree with her concern that we need to guard against the unforeseen consequences of some of these moves. I shall try to respond to her specific questions.

Her first question was about the concern that smaller awarding organisations might inadvertently be driven out. I said earlier that the safeguards that Ofqual has put in place, on which it has consulted, are designed to ensure that the power is used in a way that will, I believe, be both appropriate and proportionate. In particular, Ofqual will exercise its discretion regarding

[Lord Hill of Oareford]
whether to impose a fine and the level at which to do so. If the imposition of a fine would be likely to render the awarding organisation unable to provide regulated qualifications in future, I do not believe that Ofqual would use its fining powers. The case that she raised of the small or charitable organisation is guarded against in Ofqual's discretion. At the other end of the spectrum, it is also the case that larger organisations might be concerned about the danger of a disproportionately large fine. As has already been said, the 10% figure is there as a cap; it is not a guide to the appropriate level of fine.

The Ofqual guidance makes clear the factors that it will take into account. Ofqual will certainly take into account the relationship between an organisation's total turnover and its turnover from regulated activities, thereby protecting awarding organisations with multiple business interests. The noble Baroness, Lady Jones, asked whether Ofqual will publish its policies so that we can see that in black and white. It published *Taking Regulatory Action* last month, section 6 of which sets out its policy on fining. I will make sure that a copy is sent to the noble Baroness. The document sets out all the various stages and processes in a very open way. She also raised the important question of safeguards against passing on fines. In its enforcement policy, Ofqual has set an expectation on awarding organisations that the cost of fines must not be passed on to users. If an awarding organisation's fees do not represent value for money following the issue of a fine, Ofqual has a power to cap them, so I agree with her.

The noble Baroness raised concerns about potential double-counting and the need to guard against an awarding organisation being penalised twice for the same breach. One of the factors that Ofqual will have to consider when deciding whether a fine is the appropriate sanction is whether another regulatory body, such as the Welsh Government, has already imposed a financial sanction in relation to the same breach. It has a duty to be proportionate and will look at the circumstances in each case but this sanction is intended primarily for serious and persistent breaches. If all is going well, it will not need to apply these sanctions at all so awarding organisations should not fear being penalised twice for the same breach.

The noble Lord, Lord Sutherland of Houndwood, asked specifically in passing about Scottish qualifications. The order covers turnover based on all activity in the United Kingdom so it is the case that qualifications awarded in Scotland would count.

I certainly take the point on which the noble Baroness, Lady Jones, ended, that fining punishes failure and does not in itself improve standards, which is the key issue that we want to address. Ofqual has a range of measures in place to drive up standards and qualifications. It set these out in its published approach *Taking Regulatory Action*, which includes imposing general conditions of recognition on all awarding organisations and employing a risk-based approach to regulation. That has been set out and was published in the same document in May. I shall ensure that the noble Baroness has it.

I hope that that addresses the main concerns that were raised. I am grateful for the support for this measure and particularly to noble Lords who first brought it to the Government's attention and urged us to move on it. I am happy to have done so.

Motion agreed.

Broadcasting (Local Digital Television Programme Services and Independent Productions) (Amendment) Order 2012

Considered in Grand Committee

5.57 pm

Moved by ***Baroness Garden of Frognal***

That the Grand Committee do report to the House that it has considered the Broadcasting (Local Digital Television Programme Services and Independent Productions) (Amendment) Order 2012.

Relevant document: 3rd Report from the Joint Committee on Statutory Instruments.

Baroness Garden of Frognal: My Lords, this instrument is part of a series of measures that have been introduced recently to help a new generation of local TV services emerge across the UK. The UK is more or less alone in Europe in not having a developed local TV sector. The Government are seeking to address this anomaly. Parliament has already provided the communications regulator, Ofcom, with fit-for-purpose regulatory powers to license local TV services. Ofcom will select a strong infrastructure provider to support individual local TV services, and media businesses now have the freedom to enter new markets at local level.

Local TV will provide communities with relevant and targeted content and contribute towards the local democratic process. With the launch of Ofcom's licensing bidding process in May, an initial 21 localities across the UK are in the running to get a local TV station, the first of which we hope will be up and running from next year. While the Government have already taken significant steps towards making local TV a reality across the UK, there is more that can be done to ensure the sustainability of this new market.

The instrument before the Committee is a deregulatory one. It seeks to remove a regulatory burden on new local TV services while ensuring that there is a diverse range of applicants participating in the licensing bidding process. The existing regulatory framework in respect of independent producers is designed to encourage investment in production at the national level through a national quota system, mitigating the dominance which large-scale broadcasters previously had in the production sector. However, these rules do not need to apply to local TV. Indeed, imposing a quota on new local TV services starting up for the first time could pose cost and compliance burdens.

In addition to imposing a production quota, the existing rules prevent independent producers holding a majority stake in a new local TV enterprise, unless they forfeit their independent status. The measure

before your Lordships deals with both matters. This instrument will result in two changes. First, it will exempt local TV broadcasters from the requirement under Section 309 of the Communications Act 2003 to source 10% of qualifying programme content from independent producers. The quota and its compliance requirements could be a significant burden on local TV services, which are likely to have small programme budgets. It might be difficult for a local TV broadcaster to find independent producers to deliver suitable programmes against the quota obligations without distorting its programming strategy and commercial decisions. Local TV is a market which has historically faced a number of barriers preventing its success, so the Government would like to keep the regulatory burdens to a minimum.

The UK's independent production sector is, of course, a very successful part of our media market and its growth has been partly due to the 10% commissioning quota. Removing the quota will not prevent local TV providers sourcing content from independent producers but it does relieve the local TV services from the potentially significant cost obligation of having to source at least 10% of their scheduled output when they are just emerging in a new market. Local TV providers can look to independent producers to provide high-quality and diverse content. We are saying that there should not be a legal requirement for local TV broadcasters to ring-fence a specific amount of content for independent productions. The proposed measure will apply only at the local level. The quota system will remain in place for all national and regional broadcasters.

6 pm

The legislation which imposes the 10% commissioning quota was designed in the absence of a local TV market in the UK. Given that the legislation was designed with national and regional television production in mind, it would not be appropriate for the quota and ownership cap regulations to be applied in this context.

Further, removing the quota obligation for local TV service providers is entirely consistent with the European audiovisual media services directive 2010, known as the AVMS, which also requires member states to adopt an independent production quota system. That quota system, which exists independently of our domestic independent production quota system, requires that member states ensure that broadcasters source 10% of qualifying content from,

"producers who are independent from broadcasters".

However, the AVMS directive specifically permits member states to disapply that rule in relation to local TV. Under European law, local TV services are therefore considered to be a special case when it comes to the independent production and quota rules, and this is what we are now implementing in UK law.

The second change which this order will make relates to the Government's desire to maximise the number of potential entrants into the local TV market, allowing as many interested parties as possible to compete in the process, thereby increasing the quality and output of local TV. This change eliminates a difficulty which, at present, could discourage independent producers from taking up ownership of a local TV licence. At present, independent producers are unable to bid for and hold local TV broadcast licences without forfeiting their independent status. If an independent producer holds more than a 25% stake in any broadcaster, including a local TV broadcaster, it can no longer be classed as "independent". Loss of independent status is commercially undesirable because broadcasters will be less keen to commission work from a producer whose work will not count towards the national and regional quota. It is therefore clear that, as things stand, independent producers may be discouraged from bidding for or taking up a local TV licence. This instrument addresses that difficulty by amending the definition of independent producer in the Broadcasting (Independent Productions) Order 1991 so that an independent producer may hold up to 100% ownership in a local TV broadcaster without losing its independent status, as long as that producer's "main activity" is not broadcasting.

It is right that independent producers should have the same opportunity to bid for and own local TV licences as other potential operators. This measure provides independent producers with a much greater opportunity to be involved in this new market than is available at present, while protecting the integrity of the overall production quota system.

The Government are removing the ownership ceiling so that producers can hold a local TV licence without losing their independent status. However, it is important that the distinction between broadcaster and independent producer remains clear to ensure that we continue to comply with the EU independent production quota obligation. That obligation, as I have already noted, requires that member states ensure that broadcasters source 10% of qualifying content from producers that are independent from broadcasters. Being able to ascertain whether a producer, whether or not it holds a local TV licence, is independent of broadcasters is therefore important because broadcasters must be satisfied that the work that they are commissioning is indeed independent and can thereby count towards both the domestic and EU production quotas. The instrument therefore enables Ofcom to obtain from local TV licence holders that are also producers such information as may be required to determine whether such licence holders are independent producers.

I hope that the Committee agrees that these deregulatory measures are proportionate and necessary. Without these changes, unnecessary regulatory and cost burdens remain on new local TV providers. It is essential that we help to create incentives for independent producers to invest in local TV and simultaneously reduce regulatory barriers. I assure the Committee that the order is compatible with convention rights. I beg to move.

Lord Stevenson of Balmacara: My Lords, I am grateful to the Minister for giving us some context for the order. It is a pity that so few of our colleagues have turned up to debate and enjoy the discussion, because this is an interesting topic. I am even slightly surprised to see that the Minister has managed to lose her civil servants as well. They must have tremendous confidence in what she is proposing and I quail at the prospect of trying to put down a few points that she might consider.

[Lord Stevenson of Balmacara]

I apologise if my voice gives out; I have a sudden summer cold and I am struggling to get my points across.

As we have heard, the proposals are part of a package to get local TV up and running. These provisions remove the 10% independent production content quota from applying to local television services and remove the ownership ceiling for independent producers to have full ownership of local TV services without losing their independent status.

The UK independent production sector is a great economic and cultural success story. In less than 10 years it has grown from a cottage industry to the world's biggest exporter of TV programme formats. Sector revenues have grown from £1.6 billion in 2004 to £2.3 billion in 2010, with companies of global scale emerging, and it is heartening that production companies can be found right across the UK, not just in London. The independent sector now makes around 50% of qualifying UK television programmes and employs more people than the combined TV divisions of the BBC, ITV, Channel 4 and channel Five. However, it would not be so successful—indeed, some people would argue that there would not be an independent sector at all—if it had not been for the 10% independent production quota. It is that simple.

The proposals that we are discussing today have been subject to a public consultation. However, we need to do a reality check here on several grounds. First, the consultation had a very limited reach. The DCMS confirms that a total of 12 responses to the consultation were received from a range of organisations, including potential local TV providers, independent producers, industry bodies and other interested parties. This is from one of the best resourced and most vibrant TV economies in the world. What, I wonder, does that tell us? Secondly, the limited number of responses received raises questions about what other parts of the industry think about these proposals. There was nothing from advertisers, nothing from ITV, nothing from Channel 4—although S4C responded—and nothing from regional newspapers or other media interests in localities. Scotland is represented, but what of Wales and Northern Ireland? Local government is not present, despite the ostensible impact that this will have on its initiatives.

Thirdly, although there are responses from the BBC, the trade union BECTU and PACT, which represents some 500 producers in the UK, the report does its best to reduce all responses to numerical equivalents across the 12 responses, with very little attempt to differentiate producer interest from public interest or potential licence holders from competitor interests at a regional or national level. I should be very grateful if the Minister would comment specifically on how she justifies basing her proposals in the order on this very flawed and inadequate consultation. Can she explain how the department considers it to have been a sufficient exercise? Can she also let us know whether it considered any other ways of getting a better sense of the industry's views, which would have allowed it to draw meaningful conclusions about why these methods were rejected, if they were?

I thought that this Government accepted the need for evidence-based policy, but I struggle to see what compelling evidence exists on the 10% quota, for example, when I read:

> "Of those who responded, three respondents supported removal of the quota, one suggested a quota increase, five did not comment and three were opposed to a change".

The DCMS consultation response goes on:

> "One industry body stated that there is a strong demand from independent producers to provide content for local TV services, so local TV licence holders should not have difficulties in finding independent producers willing to make content for them in order to meet the quota. However, other respondents (including potential local TV providers) suggested that a 10% quota would be a significant burden for any local operator, given the local TV station cost assumptions, and could present an administrative barrier to long term sustainability".

One can, without much difficulty, assert that those bidding for a licence are likely to support the lifting of the quota as much as PACT, the independent film and TV-makers' trade body, are likely to oppose it, but what evidence was produced to back up the Government's assertion that a quota would indeed be a significant burden and should be refused? Perhaps the Minister could enlighten us later.

To be frank, this consultation was a complete failure. The fact is that there is nothing in the published responses to justify the decision that the Government want to take today. If you take the trouble to read the submissions made to the public consultation, as I have, you are left in no doubt that, despite the paucity of response, the general feeling is that there is no case for removing the 10% quota and there is a real danger in lifting the 25% ceiling on ownership by independent producers.

It is probably too late to revise this order, particularly as I understand that Ofcom is currently advertising local TV licences, so I will end by suggesting some things that the Government might wish to consider. There is strong evidence of a willingness by independent producers to provide local content for local TV services. The strength of the sector undoubtedly derives from the 10% quota applying elsewhere in the system and, if it ain't broke, why fix it? I suggest that the Government should consider, as PACT rather generously, in my view, suggests, the introduction of a grace period of perhaps two or three years during which the quota would not be enforced at a local level.

Secondly, the Government should require Ofcom to publish the percentage of independent productions that has actually been transmitted by licensed local TV stations each year, so that we have an evidence base. The department should commit today to making local TV services compliant with the quota in, say, three years' time.

There is concern in the production community that the removal of the quota in the case of local TV will be the thin end of the wedge as far as regional and national production is concerned. Therefore, I suggest that the Government confirm today that this is a truly exceptional case which is being considered only because the AVMS European directive permits member states to disapply the 10% quota in relation to television broadcasting intended for local audiences that does not form part of a national network. Also, in line with

the AVMS directive, the Government should confirm that they have no intention of relaxing quotas for other broadcasters.

In relation to the proposal to remove the 25% ownership ceiling on independent producers owning a local TV licence, the Government should recognise and be sensitive to the fact that this will be seen as opening the door to pressure from other bodies to amend the definition of independent producer in other contexts. In particular, there is concern that this would reopen calls from Channel 3 licensees, such as STV, to qualify for independent producer status. We therefore suggest that the Government take this opportunity to confirm that they will not amend the current definition of independent producer more generally.

Finally, given that as a result of these and other changes one or more independent production companies would be able to own one or more local television stations, the Government should recognise that this undermines the fundamental rationale for the current distinction between independent production companies and broadcasters. These proposals, together with the Media Ownership (Radio and Cross-media) Order 2011, which removed all local cross-media ownership rules, would appear to suggest that a single media organisation will be able to run a majority of news services in a local area while at the same time potentially having a large interest in national news provision. I suggest that the Government take this opportunity to confirm that they are very concerned about media plurality and will require Ofcom to review the impact of these changes on that fundamental issue within three years of the first licence being awarded.

The Minister called this a deregulatory order and suggested that we should support it for that reason. However, I fear that it will cause quite a lot of damage to the independent production sector and will not be appropriate invigoration for local media activity. I apologise for my voice, which is just about to give out, and thank noble Lords.

6.15 pm

Baroness Garden of Frognal: I thank the noble Lord, Lord Stevenson. I am grateful that his voice did not give out—although, in the absence of any officials, if it had given out a little earlier it would have made my task slightly easier. However, I shall attempt to respond to some of the questions he raised.

The noble Lord commented on the small number of responses to the consultation and their limited range and he asked why that was. The consultation was widely publicised and therefore the replies that came in were from people who were interested in coming back to it. I like to assume that the small number of responses was due to the fact that the proposals were widely acceptable within the industry. The order has met with positive responses from the people who responded to the consultation and from other people who were aware that it was going on but chose not to respond.

I share the noble Lord's enthusiasm for the independent sector and I am grateful for the positive comments that he made on that issue. We certainly have a very lively independent television sector and we would not wish to do anything to disadvantage it. Part of the purpose of the order is to ensure that it can continue as a lively and vibrant sector.

The noble Lord asked about the relaxing of the 10% quota. This is purely for local television stations; there is no intention of relaxing the quota more widely. We recognise that the quota has been a significant factor in ensuring that independent television remains as well supported as it is. He indicated his concern about media plurality and we share his concern. Media plurality is an extremely important aspect and we would not wish this order in any way to impact on it.

The noble Lord made a number of other points which we will take away for further consultation. This is an ongoing issue. We know that 21 stations will be involved in the first pilot and that there will be more developments in due course. We will have time to review and amend if any of the proposals within the order do not work out as the Government intend them to.

I reiterate that the legislation will support the long-term success of the local television market by reducing the regulatory burdens and creating commercial incentives to invest, particularly at a local level and for smaller providers.

Motion agreed.

Armed Forces Act (Continuation) Order 2012

Considered in Grand Committee

6.18 pm

Moved by Lord Astor of Hever

That the Grand Committee do report to the House that it has considered the Armed Forces Act (Continuation) Order 2012.

Relevant document: 3rd Report from the Joint Committee on Statutory Instruments.

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): My Lords, I am pleased to speak to the Armed Forces Act (Continuation) Order 2012. The purpose of the order is to continue in force the legislation governing the Armed Forces for a further period of one year, until November 2013.

I should like to say a few words about the legislation that the continuation order is set to continue—that is, the Armed Forces Act 2006 as amended by the Armed Forces Act 2011. The 2006 Act made significant changes to the legislation governing the Armed Forces and established a single system of service law for the first time. The single system applies to all members of the Armed Forces, wherever in the world they are serving.

The 2006 Act was fully implemented and came into force on 31 October 2009. I am pleased to say that the services say that the 2006 Act is doing a good job—the modest scale of changes made to it by the 2011 Act is testament to that—so I am confident that the 2006 Act will continue to serve the Armed Forces well for many years to come.

[Lord Astor of Hever]

Your Lordships' House has enjoyed full and interesting debates on matters of great importance to the Armed Forces, none more so than during last year's passage of the Armed Forces Act 2011, which received Royal Assent on 3 November last year. That Act continued the Armed Forces Act 2006 for a further year, allowed it to be continued by annual Order in Council until 2016 and made various provisions to amend the Armed Forces Act 2006.

I should also like to say a few words about the 2011 Act. Although it is modest in size, its provisions are wide-ranging, partly as a result of the Ministry of Defence normally bringing forward primary legislation only every five years. I am pleased to report that over half the provisions in the new Act have been commenced, and an implementation programme for the remainder is well under way. Our aim is to complete the largest part of that work by spring 2013. Notably, for the first time, and as a result of this Act, the Armed Forces covenant is now recognised in legislation. The 2011 Act places an obligation on the Defence Secretary to report annually on progress made by the Government in honouring the covenant. The first report will be published at the end of this year. The Armed Forces covenant makes a clear commitment by the Government on how service people should be treated. Now, this and future Governments will be held to account on what they deliver on the covenant.

I should make a further observation about the order that we are considering today. Previous Governments have given an undertaking that Ministers moving instruments subject to the affirmative procedure will tell the House whether they are satisfied that the legislation is compatible with the rights provided in the European Convention on Human Rights. We believe that the order that we are considering today is compatible with the convention rights. I welcome this opportunity for another interesting debate. I beg to move.

Lord Craig of Radley: My Lords, I thank the Minister for his introduction. The Armed Forces Act 2011 introduced into law the concept of the Armed Forces covenant, as he has mentioned, and the particular requirement for the Secretary of State to prepare an Armed Forces report. I was pleased to note when that report is due to appear.

As the Minister knows, I have also tabled a Question for Written Answer about compulsory redundancies. I asked whether, in selecting personnel for compulsory redundancy, consideration was given to their immediate pension point. For the record, is the Minister able to answer this question now? There has been considerable anxiety and press coverage. There is a feeling that the Government are solely focused on achieving financial savings rather than showing understanding for the effect on the individuals involved of a sudden abrupt end to their aspirations of a lifetime career in the Armed Forces. Equally, it is a difficult time to find alternative employment in civilian life.

The effect is of course not confined to the individual but spreads to their immediate family and friends, who are as shocked, taken aback and worried about the future as the individual being made redundant. What steps is the Ministry taking to help those who are being sacked? There seems to be little in the public domain to give confidence that these individuals are being looked after with sympathy and real understanding for their plight. It would underline the value of the military covenant, and show that personnel should be considered, if a more proactive approach to the impact of redundancies on the individual were to be taken by the Ministry of Defence.

Lord Rosser: My Lords, lest any of the points I wish to make should be construed as meaning otherwise, I make it clear at the outset that we of course support this order, which enables our Armed Forces to remain in existence, by law, for at least a further year by providing that the Armed Forces Act 2006 will not expire on 3 November 2012, as currently scheduled, but instead will continue in force until 3 November 2013. As the Minister has said, the 2006 Act also brought together various orders of discipline in the Armed Forces while the 2011 Act enshrined the Armed Forces covenant in legislation.

Depending on one's point of view, this order is either a piece of archaic ritual bearing no relevance to the way that we should be conducting the affairs of our nation, or indeed the affairs of our Armed Forces, in the 21st century or an essential constitutional prop, ensuring that anyone who might be tempted to think otherwise knows that our Armed Forces remain in existence to perform their role not because they think—or anyone else thinks—they should, but only because the representatives of the people in Parliament have decided that that should be so, with that decision having to be renewed and restated each year. As I understand it, the order that we are discussing stems from the Bill of Rights Act 1689, or 1688 by old-style dating, which restated in statutory form the declaration of right presented by the Convention Parliament to William and Mary in March 1689, inviting them to become joint sovereigns of England while further restricting the powers of the sovereign by laying down certain constitutional basic rights, in respect of which the Crown was required to seek the consent of the people as represented in Parliament. Among those basic rights was that no standing army could be maintained during a time of peace without the consent of Parliament.

I am not sure that the people of this country are quite as suspicious, in the 21st century, of a reigning monarch deploying a standing army as they were in the 17th. While other countries have suffered and do suffer from military dictatorship, I am not convinced that it is the existence or knowledge of the requirement for this Armed Forces Act continuation order to be agreed each year by Parliament that is preventing or deterring a takeover of this country by the military. There may just be other, rather more powerful and influential factors and considerations at play. Having said that, is it literally the case, as I understand it, that if this continuation order was not approved our Armed Forces would cease to exist from early November, or is there in reality other legislation or a decision of Parliament that would enable them to continue in being?

I make these points seriously to understand what failing to renew the Armed Forces Act 2006 for a further year—I stress that this is not a road I am suggesting we go down—would mean in practice, as

opposed to theory. We have an Armed Forces Act every five years. If there is a continuing widespread feeling, as is presumably the case, that Parliament should have to make a regular decision in order for our Armed Forces to continue in existence, one wonders whether there is still a need for this to be done every year as opposed to, say, every five years in the Armed Forces Act. The debate on this annual order does not seem to be regarded as an opportunity for having a wide-ranging discussion or debate, no doubt because there are other, better ways of having more frequent and lengthier discussions and debates on our Armed Forces in your Lordships' House. It is presumably also the case that if the other place had reservations or concerns at any time, it could bring things to a head—not least by declining to agree to the necessary expenditure needed to maintain our Armed Forces for the following financial year. Nor does it seem likely that your Lordships' House, as an appointed House, would decide to vote down an order on such a major issue as retention of the Armed Forces, and surely not when the other place, the elected House, had voted for the order.

6.30 pm

As I said, we support the order, but I hope that the Minister can say whether any consideration has been or is likely to be given to whether this remains the appropriate way or procedure in the 21st century to ensure the continuing existence of our Armed Forces and the vital role that they play in the life and security of our country, for which we will be expressing our thanks and gratitude on Armed Forces Day this Saturday. It would also be helpful if the Minister could clarify, as a point of factual interest, the consequences in practical terms for the continuing existence of our Armed Forces if the Armed Forces Act 2006 were not renewed beyond 3 November this year. I reiterate, though, that we support the order.

Lord Astor of Hever: My Lords, I am grateful to the noble and gallant Lord, Lord Craig of Radley, and the noble Lord, Lord Rosser, for their support in the debate today. The noble and gallant Lord asked about compulsory redundancy. When selecting personnel of the Armed Forces for compulsory redundancy, no consideration was given to the proximity of the immediate pension point. As we reduce the size of the Armed Forces, our priority is to ensure that the services maintain the correct balance of the skills and experience across the rank structures that are required to deliver operational capability now and in future. It is that which has determined the redundancy fields.

The noble and gallant Lord asked whether we were focused just on financial saving. The department has gone to great lengths to carry out these redundancies as sensitively as possible. We fully understand that making the transition from the Armed Forces into civilian life can be daunting and we remain committed to helping service leavers in taking this important step. The Ministry of Defence offers service leavers a wide range of activities that help to facilitate the transition to civilian employment. The support offered is built around preparing the service leaver for future employment in terms of accessing appropriate opportunities for reskilling as well as accessing suitable civilian job opportunities.

The majority of resettlement provision is contracted out to the career transition partnership—the partnering relationship between the MoD and Right Management Ltd. The contract is successful as 97% of eligible service leavers use CTP, 93% of whom tell us that they succeed in becoming settled or gain employment within six months of leaving. That figure increases to 97% after 12 months, and 57% will have had two jobs.

I am grateful for the support of the noble Lord, Lord Rosser. He asked whether, if we did not approve what we are doing today, the Armed Forces would cease to exist. He also asked whether there was other legislation or a more appropriate way of doing this. A change was proposed by the Ministry of Defence in the Armed Forces Bill in 2005 but was resisted by the Defence Committee and the Select Committee that considered the Bill. Both committees favoured retaining the present arrangements and the Ministry of Defence amended the Bill accordingly. What would the effect be if the order were not made? Unless the Armed Forces Act 2006 is continued, there would not be lawful authority for the disciplinary system that governs the Armed Forces. I hope that that addresses the issue.

Lord Rosser: Can I be clear, at least in my mind, that the only effect of not continuing this order would be the impact that it would have on the disciplinary system and not on the reality of our Armed Forces continuing to exist?

Lord Astor of Hever: My Lords, I think I need to write to the noble Lord. The disciplinary issue is pretty important but it is quite complicated, to the extent that I probably do not have time to provide an answer now, but I shall write to the noble Lord. If I may, I shall study the *Hansard* record of the points that have been raised and write to the noble and gallant Lord and the noble Lord if I have anything to add to these exchanges.

Motion agreed.

Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc.) Order 2012

Considered in Grand Committee

6.35 pm

Moved by Baroness Wilcox

That the Grand Committee do report to the House that it has considered the Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc.) Order 2012.

Relevant document: 2nd Report from the Joint Committee on Statutory Instruments.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Baroness Wilcox): My Lords, the purpose of this order, which amends the Companies Act 2006, is to implement the legislative

[Baroness Wilcox]
changes required to support the reforms to the Financial Reporting Council—the FRC—from 2 July 2012, announced by the Government in March.

The FRC is the UK's independent regulator, promoting high quality corporate governance and financial reporting to foster investment. It discharges its responsibilities by setting codes and standards and monitoring the conduct of market participants in specific areas to ensure that they comply with the relevant regulatory requirements.

Noble Lords may remember that the House of Lords Economic Affairs Select Committee criticised the number of organisations engaged in the oversight of accounting and auditing in its report published on 30 March 2011. In addition, the Government's *The Plan for Growth* report, published in March 2011, highlighted concern that the FRC's structure might lead to a duplication of effort. This would potentially cause overregulation but also increase the risk that major weaknesses were not addressed.

The FRC is highly regarded but its structure is complicated and hard to understand. Its seven operating bodies, with separate boards and secretariats, restrict its ability to respond to issues that cut across structural divisions. For example, no single operating body has a remit sufficient to tackle broad questions around the handling of risk, the future of audit and corporate reporting. Following the 2008 financial crisis, such issues had to be addressed by the main board, making use of its ability to bring together the high levels of expertise across the operating bodies. Furthermore, the FRC's effectiveness is constrained by its current powers regarding the accountancy and auditing profession that it oversees. The FRC is being restructured to ensure that it is best placed to meet the challenges created by the global financial crisis, but the board does not have the powers to achieve the necessary change on its own.

The Government and the FRC issued a joint consultation document on 18 October 2011 on the proposed reforms to the FRC's structure and powers. A summary of responses was published on 27 March 2012. A total of 75 responses was received from stakeholders. There was a wide range of views, some supportive of the proposals and others challenging the case for reform. All views were considered carefully and taken into account in the joint government and FRC response. The FRC's reforms will give greater clarity to the boundaries between the professional bodies and the FRC and enhance the FRC's independence from the professional bodies in its role as the UK's lead audit regulator.

The final-stage impact assessment, published alongside the Government's and FRC's finalised proposals, identified direct savings to business in the order of £0.4 million a year. These largely resulted from the ability to settle disciplinary cases without a public hearing, subject to the necessary publicity.

The order will delegate statutory powers to the FRC board rather than its operating bodies as at present, with the exception of the Financial Reporting Review Panel powers, which move to the new Conduct Committee; provide the FRC board with powers to determine and require, rather than request, that recognised supervisory bodies impose sanctions in respect of poor quality audit in certain circumstances; permit certain disciplinary cases to be concluded without a public hearing where the auditor concerned agrees, although they remain subject to appropriate publicity; and provide the FRC board with powers to impose directions and financial penalties on the recognised supervisory bodies and recognised qualifying bodies for shortcomings in discharging their regulatory responsibilities.

These changes, taken as a whole, will enhance the Financial Reporting Council's effectiveness as part of the wider UK regulatory framework and ensure that the United Kingdom has a powerful, joined-up voice on the international stage. I therefore commend this order to the House. I beg to move.

Lord Flight: My Lords, I would like to put on record that this is important legislation. In effect, it sets up a full-scale regulator of the accounting profession comparable to the FSA in the financial services industry. To some extent, I am slightly surprised that this is only an amendment to the Companies Act as it contains many important changes. However, I welcome the order and its economies. I am glad that there was full consultation and I am curious to know the reaction of the institute and of the profession generally.

One or two important matters follow from the order. First, who appoints the senior executives of this new regulator? I have the highest regard for Stephen Haddrill, the present chief executive, but I do not know whether it is a self-appointed body or whether there is any accountability to Parliament or the Treasury Select Committee.

My first question at the time of the banking crash was: where were the auditors? The only point of an audit is to show whether institutions are in either good or bad order. Sets of banks' accounts running to 500 pages were totally impenetrable and impossible to understand and, as far as I am aware, in no case were the auditors whistleblowers. I do not know whether this enhanced FRC will have the powers to change that situation, but some form of review of what happened to the auditors during the banking crash could be of some use.

My other point—the committee of the noble Lord, Lord MacGregor, also made this point—is that the FRSA's accounting standards have been a disaster. They have, in essence, painted an over-rosy picture in good times and an over-negative picture in bad ones. There is a widespread view that they need changing and that they are particularly unsuitable for banks. Every time this matter is raised, nothing ever happens and it is not clear where responsibility lies. However, I imagine that it will be a duty of the greatly enhanced FRC to consider the matter and make recommendations, not only to the profession but to the Houses of Parliament as well.

We have an important new body. It was necessary and timely to tidy it up in the way that it has been, but on those two points there is some unfinished business.

6.45 pm

Baroness Hogg: My Lords, as chairman of the Financial Reporting Council, I thank the Minister very much for pursuing these reforms, which, as she has said, and this has been reinforced, were largely stimulated by an important report by a Select Committee of this House on its inquiry into the audit profession. These changes will enable us to break down some of the silos within the existing regulatory structure of seven operating bodies to which the Minister rightly referred. We need to be able to share knowledge across the organisation in order to operate more effectively, both in our conduct role in the UK and in the international debate on codes and standards, which has been so rightly pointed out. An example of the issues here is that the point is not just the forum in which the international financial reporting standards are set but the process for implementation, because a number of important changes are due to take place to elements of the IFRS, of great importance in respect of banks, that it falls to the European Commission to implement. At the moment, the Commission is taking the view that it does not wish to implement until all amendments have been concluded, but we are urging the Commission to get on with this because we think that some important changes are needed.

If I may help the Minister to respond on the appointment issue that has been much discussed, as the Minister is aware, I, as chairman of the FRC, am appointed by the Secretary of State, as is the deputy chairman. We then appoint the executive team. We have taken the view with these changes that there needs to be some outside input into the process for appointing other members of the board. In much the same way, we are adopting the practice that is common for many public appointments now of appointing an outside assessor to review the way in which we consider appointments to the council and are involved in the nominations process. There is no change in any of this with the change in the regulatory structure, but we thought it right to raise our game in this area and discuss this with the department, and we are putting those arrangements in place.

The changes before the Committee today are to enable us to determine and impose proportionate sanctions for poor quality audits and expedite action by the recognised bodies where we have identified areas for improvement. This enables us to cut across the different bodies in order to put in place inquiries regarding codes, standards and performance. For example, I draw the Committee's attention to the inquiry that we launched under the noble Lord, Lord Sharman, to look at the issue of going concern, which is the critical issue that came to the fore in the discussions over where the auditors were in relation to bank auditing during the financial crisis. The Committee may have noted the publication of this report very recently.

We see the reforms very much as a beginning rather than an end in themselves. We hope that the consultation will be a start of a deeper and wider relationship with our stakeholders, not just in the profession but, very importantly, within it, and we hope that we will help other regulators and other interests to identify and address the challenges facing all those responsible for corporate governance and reporting in the UK. I thank the Minister very much for bringing the reforms forward.

Lord Young of Norwood Green: My Lords, I, too, thank the Minister for her introduction to the statutory instrument. As we on the opposition Benches have argued for some time, we need a better and more responsible capitalism that better serves the people of this country.

That is why this side of the Committee supports the role of the Financial Reporting Council in promoting high standards of corporate reporting and governance in the UK which, as I think the Minister will recognise, we strengthened in 2004 through the Companies (Audit, Investigations and Community Enterprise) Act following major global corporate collapses such as that of Enron. With business rightly under particular scrutiny, the FRC's work is more important than ever. The noble Lord, Lord Flight, stressed the importance of these changes and rightly asked where the auditors were during the financial crash. There are those who suggest that they were perhaps too close to the companies that they audited. I would welcome the Minister's view on that.

Despite what I have just said, corporate reporting and governance in the UK are widely recognised domestically and internationally as being of a very high standard. The FRC's integrated and market-led approach to regulation underpins these standards. We know that this approach continues to receive strong support from companies, investors, the accountancy profession and other stakeholders. The Minister may know that my honourable friend the Member for Hartlepool, following his line of questioning to the likes of Sir David Walker in the Enterprise and Regulatory Reform Bill Committee, has said that he is keen for the UK to maintain its undoubted place as the best country in the world for high quality corporate governance. Inward investment and the location of multinational firms here in the UK flow to some extent from the high-quality and stable regulatory corporate governance and auditing framework we have here. We cannot be complacent on this matter, as noble Lords have already said, and must ensure that it stays best in class.

The FRC should be central in ensuring good remuneration practice and shareholder activism so that it remains in the spotlight. That is why the shadow Business Secretary, Chuka Umunna, has called on the Government to make provision for the FRC to produce an annual report on the state of corporate governance in Britain. This would ensure that shareholder activism, good pay and remuneration practice were kept high on the national agenda. I would welcome the Minister's views on that.

While we welcome today's measures, it is disappointing that the Government are watering down their corporate governance measures as contained in the Enterprise and Regulatory Reform Bill with a climbdown on the proposal for annual binding shareholder votes on executive pay. On its own, this measure would not have been sufficient and would not have solved the issue of excessive director's remuneration, but it would have been a step in the right direction.

[Lord Young of Norwood Green]

I have a number of questions for the Minister. Michael Izza, chief executive of the Institute of Chartered Accountants in England and Wales, has been cautious about the proposed changes. He said recently:

"It is important for the FRC and the government to recognise that there might be a lot of people hoping that this new structure is effective but want it to be proved".

That is not exactly a ringing endorsement from a key player in the accountancy profession. What evidence can the Minister provide to reassure those who have expressed concern about the new measures?

Page 17 of the impact assessment states:

"The primary focus for FRC regulation should be publicly traded and large private companies (defined as those with a turnover of £500m or more)".

This is probably a naive question, because it is not an area in which I profess to be a great expert, but why was the limit set at £500 million or more? An awful of lot companies have turnovers just below that, so I would be interested to hear the Minister's view.

With the FRC's six standard-setting boards streamlined to two, the Accounting Standards Board will no longer exist. How will the Minister ensure that responsibility for ensuring the effective implementation of international financial reporting standards is maintained? Why will the reforms be reviewed only in three years? That seems a long time. Will there be any proposal for an interim review—let us say at two years, when I would think there would be quite a large body of evidence?

Given the importance of these changes, which has been stressed, I would have thought that would be worth while. Again, I would welcome that. Looking at the post-implementation review plan, under "Basis of review" it states:

"As part of its commitment to the principles of good regulation, the FRC is committed to reviewing the proposals in this reform package to ensure that they meet their objectives at a reduced overall cost to business".

I do not cavil at reducing the cost to business; I understand that. However, I would tack on to the end of that, "while maintaining the quality of audit and independence". I am sure that is what will happen, but when we are talking about the basis of the review, it seems to me that that ought to be on the top line, given the concerns we have expressed and not buried somewhere else in the post-implementation review plan.

The FRC's inspection of accountancy firms earlier this year found that 10% of the audits sampled fell into the lowest category, with "significant concerns" raised, leaving the rate of improvement in auditing standards too slow in the aftermath of the financial crisis. Looking at the comment on page 23 of the Explanatory Memorandum, the situation really is quite disturbing. It states:

"Evidence from the Audit Inspection Unit shows that although standards of auditing in the UK are generally good there are areas for improvement. Of the 11 audits (13.5%) requiring significant improvements in 2010/11, six were listed or AIM companies and the audits of three unlisted subsidiaries of overseas banks (out of 10 bank and building society audits reviewed) were assessed as requiring significant improvements".

I think that is quite a worrying comment, so once again I would welcome the Minister's views.

Will today's proposals make it easier for the FRC—[*Interruption.*] Someone has forgotten to turn their mobile to silent. We have all done it. Will today's proposals make it easier, as the Government's consultation paper has stated, for the FRC to,

"ensure it has the powers to respond proportionately and effectively where problems are identified"?

Page 27 of the Explanatory Memorandum says:

"The FRC estimates that the ability to resolve cases without going to tribunal will save the cost of 3 tribunals over the 10 year policy period".

Again, I do not argue that that should not be done. I just want to add, "as long as we are confident that the quality of the investigation will not in any way deteriorate as a result of that change". It makes me think back to the review process, which was perhaps shorter than the three-year proposed period.

What consideration has the Minister given to the Institute of Chartered Accountants in England and Wales Audit Quality Forum in pulling together these proposals? The forum has been in existence since 2004, tasked with promoting quality and confidence in the audit function. What specifically has the Minister taken from the forum's work in drafting these proposals?

On a European dimension—and I certainly concur with what the noble Baroness, Lady Hogg, said—how does the proposal considered today fit in with the broader question currently taking place in the Commission regarding the future of audit and the condition of the audit market? What is the Government's policy on some of the proposals coming out of the Commission, such as mandatory rotation of audit firms—which relates to the question of independence—mandatory tendering and the separation of audit from non-audit services?

While we are on the subject of Europe, are the Government satisfied that there is no risk that the new sanction powers proposed for exercise by the FRC will be subject to challenge from the European courts? What legal advice has the Minister taken with regards to this? I have read the impact assessment and see that the Government have downgraded the benefits provided by these proposals in the face of additional scrutiny from stakeholders. Has the Minister ensured that none of the measures proposed in today's statutory instrument will inhibit investment and possible growth?

As we know, the FRC is connected to the capital markets, and capital-raising forms a part of this. Has an assessment of the efficiency of capital markets been made? Will the Minister act upon the demands of my honourable friend the Member for Streatham in the other place and get the Financial Reporting Council to produce an annual report on the state of corporate governance in Britain? Can the Minister confirm that the statutory requirement to publish business plans will not impede the existing flexible arrangements between the FRC and recognised supervisory bodies, which allow the flow of confidential information between the bodies? Is the Minister satisfied that the FRC is abiding by its own good governance guidelines—in particular, applying lay membership to its own oversight committees and ensuring independence in this regard from the operations of the body? Has the Minister

seen any examples to date of the recognised supervisory bodies failing to exercise sanctions that fell short of what the FRC/BIS would have preferred to be applied?

I think that I have given the Minister enough to cogitate upon. I apologise for the number of questions but I concur with the noble Lord, Lord Flight, that this is a fundamentally important change. Given the problems resulting from the financial crisis and the eternal question, "Where were the auditors?", I think that my questions are merited. I shall quite understand if the noble Baroness cannot answer every single one of them but I hope that I shall receive something in writing in due course.

7 pm

Lord Flight: Perhaps I may just correct myself. I think that I said FRSA when I meant IFRS. I apologise.

Baroness Wilcox: I thank noble Lords very much for the exchanges that we have had. I thank the noble Baroness, Lady Hogg, for being here today—I am delighted about that. She seems to have answered several questions for me, which is an enormous help. Of course, there are many questions to answer. This is a very big and wide area, and it affects so many different organisations that it is right that I should receive more questions than I can answer at the moment. However, I shall endeavour to answer some of them. In talking about appointment issues and so on, the noble Baroness, Lady Hogg, has more than likely provided answers but I shall try to respond to some of the questions from my noble friend Lord Flight.

I think that he asked who appoints the senior executives—a point that I think the noble Baroness, Lady Hogg, answered. The FRC is a company overseen by its board and it will appoint its senior executives in line with the best human resources practices. The additional points made by the noble Baroness were very useful and she gave a better answer than mine.

The Accounting Standards Board sets standards for financial reporting and has regard to best practice. This includes reference to international developments—the IFRS—as well as responding to developments and thinking in the United Kingdom. The use of international accounting standards is subject to EU approval, as always. The adoption of international standards, and amendments to those standards, follows consultation with the member states, and the FRC and the UK work closely with the EU and the IASB to influence these wherever they can.

My noble friend Lord Flight asked who the FRC will be accountable to following the reforms. The FRC will continue to be accountable to government and ultimately to Parliament in relation to the exercise of its statutory powers, and it will also be accountable to the key stakeholders, including the investor community, which relies on the quality of corporate governance and reporting in the United Kingdom. The FRC will report annually to the Secretary of State on the exercise of its powers.

My noble friend Lord Flight and the noble Lord, Lord Young, asked where the auditors were during the financial crisis. When considering financial institutions, it is important to note that the primary regulator of those institutions which was most prominent during the financial crisis was the Financial Services Authority and not the FRC. The FRC works closely with the Financial Services Authority with a view to ensuring that regulatory action is taken where appropriate. We believe that the changes to the FRC's structure will enable it to bring its full resources to address any emerging problem much more quickly and effectively than was done at that time.

The financial crisis has been looked at, as we heard, by the House of Lords Economic Affairs Committee. Although it raised a number of issues relating to auditing, some of which are addressed by these measures, the Government do not take the view that these issues were at the heart of the crisis. The "going concern" issues mentioned by the noble Baroness, Lady Hogg, are important, but there were also failures of prudential regulation. If I have missed anything from those questions, it will of course be picked up by the sturdy band behind me, who have been frantically trying to answer all these questions.

Thankfully, the noble Lord, Lord Young, welcomed this measure before setting off with a flurry of questions, all of them right and relevant. I shall try to answer a few for the moment and then, if it is all right, I will reply in writing. Why is the FRC jettisoning the tried and tested ASB/APB brands, and what effect will this have on the FRC's capability to influence at an international level? International influencing is a central objective of the FRC. The Government and the FRC recognise the contribution that the FRC's standard-setting bodies have made, while remaining convinced that the changes proposed are needed to strengthen the UK voice. In the new structure the FRC should be better equipped to tackle the most strategic issues and to provide high-quality thought leadership, as well as continuing to develop excellent technical solutions. Standard-setting is increasingly debated in the United Kingdom, in the European Union and internationally in fora that cover a wide range of issues. The FRC needs to exert influence accordingly in these areas. The FRC board has the experience, the seniority and hopefully, through the new structure that we propose, the authority to do that.

On the question from the noble Lord, Lord Young, on auditors' independence, the Government and the FRC acted in the wake of the crisis to improve transparency. Furthermore, proposals are now being considered in Europe on this very question. The noble Lord also asked about reporting on corporate governance. The FRC is required to make an annual report on its activities, and that report is laid in Parliament.

Lord Young of Norwood Green: Will that include corporate governance?

Baroness Wilcox: A quick nod from the Box, or a quick "We will write to you"?

Baroness Hogg: My Lords—

Baroness Wilcox: Please. An intervention might help enormously.

Baroness Hogg: If I may help noble Lords, we have recently undertaken to produce an annual report in addition to this one on the operation of the corporate governance code, which embraces all aspects of corporate governance, and another one on the stewardship code, which covers the activities of investors and the extent to which they are performing as active owners of the companies. Those are two separate reports produced every year in addition to the main report that the Minister has mentioned.

Baroness Wilcox: Absolutely marvellous; I thank the noble Baroness. On executive pay, the answer that I have is that the Government's proposals will introduce the necessary restraint and shareholder involvement without unduly burdening shareholders and business more widely.

The noble Lord, Lord Young, asked whether there will be an interim review. There is no proposal for such a review, but the Government have regular contact with the FRC and will continue to do so in future. We will also meet key stakeholders regularly and ensure that any emerging issues are addressed quickly as part of our normal engagement with members of the board and senior executives.

We are continuing to negotiate in Europe on the EU proposals on auditing. Some, such as the mandatory rotation of auditors, concern us while others, including the proposal on improving the auditors' report, we support in principle. Those are the answers that I have at the moment to the noble Lord's questions. There were a lot more, but I hope that he will feel that I have tried to reassure him that we are on the job. We will definitely be writing in response to his other questions.

I thank noble Lords for their consideration of the draft order today. Consistency and continual improvement in the regulatory landscape are essential if we are to provide an even stronger, more supportive environment in which businesses can prosper and grow for the benefit of the whole economy. The order will mean that the FRC is better placed to respond more quickly to matters of concern in the market. Its approach will be more targeted and proportionate, and I believe that it will have a more powerful, joined-up voice both domestically and in the international arena. I commend the order to the House.

Motion agreed.

Care Quality Commission (Registration and Membership) (Amendment) Regulations 2012

Motion to Take Note

7.11 pm

Moved by ***Lord Hunt of Kings Heath***

That the Grand Committee takes note of the Care Quality Commission (Registration and Membership) (Amendment) Regulations 2012 (SI 2012/1186).

Lord Hunt of Kings Heath: My Lords, I declare an interest as chair of an NHS foundation trust, a consultant in the health service and a trainer in relation to Cumberlege Connections.

When we debated the Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2012 in Grand Committee on 22 May, we touched on CQC's governance, the PAC report of 12 March and the department's capability review. The noble Earl will know that the PAC expressed some serious concerns and that his department's capability review acknowledged that CQC could have done more to manage operational risk and provide better strategic direction.

The review recognised that the department and CQC had underestimated the scale of the task of combining three regulators into one organisation while developing and implementing a new regulatory model. The review also made recommendations to strengthen the board and the board structures, and to establish a unitary board with a majority of non-executives but with senior executives sitting on the board to enable a tighter accountability relationship between non-executives and senior executives. Let me say at once that the Opposition do not oppose these changes which bring CQC governance more into line with that of the National Health Service. While governance is important, underlining it are probably questions about CQC's capacity to discharge its wide and important responsibilities.

I have read very carefully CQC's response to the performance and capability review that has now been published. That fairly sets out the scale of the challenge that it faced. However, the CQC acknowledges that the strategy devised at the outset of the new regulatory body failed to take into account the complexity of the changes in the regulatory review regime and, in particular, the workload implicit in recognising so many providers, merging three organisations into one, while reducing costs and changing the working patterns and skill requirements of many of the staff who were either inherited or taken into the new organisation.

That is a very helpful recognition. Many who have been concerned with the architecture of CQC would have to take some responsibility for that; I do not detract from my own Government's responsibility. We are trying to learn some of the lessons and hope that they can be embraced within the new strategy that CQC will take forward under its new leadership.

Nor do I ignore the progress that CQC has made. Creating a single regulator of health and adult social care services spanning, as CQC points out, more than 22,000 providers of 40,000 services is no mean challenge. Today's Written Ministerial Statement in another place by the Minister of State, Mr Paul Burstow, concerning the Winterbourne View private hospital, which draws on the reports of the Care Quality Commission's inspection of 150 hospices and care homes, also indicates the value of the work that has been undertaken by CQC.

7.15 pm

I also want to repeat something that I said when we debated CQC only a few weeks ago. I do not seek to criticise the leadership qualities of either the chair or

the chief executive, Cynthia Bower. They are both people whom I admire and respect. I believe that the task given to them was, if not undoable, a very challenging one. I also welcome David Behan's appointment as the new chief executive. He comes with support from many people who have known and worked with him and from the stakeholder community generally. Having said that by way of introduction, may I ask whether the noble Earl is really convinced that that body is now able to fulfil the challenging programme that it has been set? Can he say something about the resources that are likely to be available to CQC in the next few years? I also come back to the point about the requirement for CQC to register 9,000 providers of primary medical services in the 2012-13 financial year. Is he convinced that CQC will be able to do that without detracting from its other major responsibilities?

I would also like to ask the noble Earl about the effectiveness and consistency of the regulatory model that CQC has adopted. I know that the commission has gone through a process of review and streamlined some of the processes, after criticism that the original process was too unwieldy and cumbersome. On the architecture and the philosophy of CQC using a generic model of regulation across all sectors, I know that that is becoming more frequent among regulatory bodies. I do not want to debate the HPC today, but the model is simple and it does not really matter whom you regulate; when you have the model, you can take on more and more organisations and sectors. I understand that up to a point and I understand, too, that CQC is committed to ensuring that the right level of specialist expertise is available when needed. However, thinking about the wide span of the organisations involved, which ranges from huge London teaching hospitals on the one hand to very small nursing homes on the other, I wonder whether that is the right approach. Particularly when it comes to large NHS organisations I wonder, too, whether instead of relying on their own inspectorate a peer-group review system might not be more appropriate.

Perhaps I can take the noble Earl back to what we lovingly called CHI, which was the first health regulator. It attempted to send teams of senior people into parts of the NHS. There was a problem because it was very difficult to persuade chief executives of major NHS bodies to serve on the CHI inspecting teams. What tended to happen was that primary care trusts provided most of the chief officer representatives. I always felt that we should have insisted that good chief executives, directors of finance and directors of nursing should as part of their duties have committed themselves to at least two to three weeks a year inspecting similar organisations. I wish we had done it.

I realise that the noble Earl will not be able to give a definitive response but I wonder whether part of the answer to the CQC's problems is to embrace much more the people delivering services within the inspectoral regime, rather than relying on its own inspectors and bringing in specialists. Its credibility might be enhanced and it might share the load. If senior people in the NHS took part in the inspection of other areas of the NHS, it could be an important development process for them. I hope to hear from the noble Earl that, under the new director, the CQC would be prepared to look at these issues and its regulatory model and to talk to the people who are being regulated about ways in which the system might be developed in future.

Overall, the Opposition wish to support the CQC and to see it grow in credibility and responsiveness. However, we also look for reassurance from the noble Earl about its capacity to deliver the task that it has been set. As I said, I hope also that CQC will be prepared to review the way in which it carries out its business. It has a massive task and it must be difficult to come up with a model that will deal with the trust of the noble Baroness, Lady Wall, on the one hand and the very small residential home on the other. It would be worth while for the CQC to reflect on the way in which it will develop its regulatory regime in the future. I beg to move.

Baroness Jolly: My Lords, we all want the CQC to be effective and efficient. The noble Lord, Lord Hunt of Kings Heath, has laid out a clear description of its history and where it is now. It has a difficult task: it has to balance registration complexity for those providing both health and social care and ensure safety and quality of services. Of course, since the Act of 2012, all providers in the public, private and voluntary sectors are involved and it has to extend its remit to include dentists and GPs. It has a huge task. There have clearly been failings in the past, but the organisation as a whole has faced up to them and has made many strides forward.

We have this SI as a result of the Health and Social Care Act 2012. It is in two parts—registration, and governance and membership—and it throws up more questions than answers. I was reminded of a long time ago when I was a CHI reviewer. The training was superb; the teams went in and the inspection was intensive and penetrated every corner. Perhaps there would be some mileage in looking back at that model to see whether it could be incorporated into what currently exists.

Lord Hunt of Kings Heath: I was interested in the noble Baroness's comments about the CHI training process. Does she agree that one of the great advantages of the CHI approach was that, when a team went in, it had respect because the people in the team were the equals, if you like, of the people whom they were inspecting and, although it was an inspection and allowed people to work with an inspection team, it was almost a development opportunity for the organisation as well?

Baroness Jolly: Certainly that was my experience. Although there were instances where we had uncomfortable inspections, afterwards an awful lot of work was put in to try to remedy issues that had been raised. The team went in as a team and worked as a team. Everyone on the team had experience of working within the NHS in one format or another and, although we may not have carried out identical roles to those that we were inspecting, there was a clear awareness that we knew what we were about. I shall not carry on at great length because of the time.

[Baroness Jolly]

The amendments to the registration are a tidying-up exercise. All that we are doing is replacing the National Patient Safety Agency with the NHS Commissioning Board Authority, so it is a cut-and-paste job, if you like. Will the Minister confirm that in due course this will subsequently transfer to the board when the board becomes the board and not just the authority? Will the Minister clarify the situations where deaths and other incidents in these situations involving service users—vulnerable people—are reported and say why they might be reported to the board and not to the CQC? If we are to learn anything from this information, it is critical that the board commits to publishing it on a regular basis. It also needs to be part of the board's regular agenda.

On a related issue, will the Minister update the Committee on deaths of service users and untoward incidents, which cause difficulty for carers and, in the case of untoward incidents, the patients themselves? During the consideration of the 2012 Bill, there was much debate about the duty of candour. Will the Minister give us some sort of update on where things are? I remind him of his comment on 27 February:

"I reiterate the commitment that I have given today that the Government intend to use the 'standing rules' regulations to specify that the contractual duty of candour must be included in the NHS standard contract".—[*Official Report*, 27/2/12; col. 1055.]

That was a welcome move but I would appreciate it if the Minister could update us on where we are. I appreciate that this will not happen overnight; it will require training and a large amount of cultural change.

I move on to the governance and board membership issue. Today we had the interesting interim report on the Winterbourne View Hospital. Bearing that in mind, will the Minister reflect on whether he believes that the new governance arrangements proposed in these regulations will minimise or even avoid a repetition of this level of behaviour or such an appalling lack of dignity for those with learning disabilities? Does he believe that adequate funding is available for the CQC? Again, the noble Lord, Lord Hunt, gave us a long list with numbers relating to its remit—it is really broad and deep. The Committee would probably feel comfortable if it felt that the CQC was being ably supported with adequate resources. It has had a difficult role in changing times and it can use its registration requirements to drive up quality. To that end, the Government must work with it. I think that we would all agree that service users and carers deserve no less.

Baroness Wall of New Barnet: My Lords, I, too, support my noble friend's view of the CQC. I want to mention, as he has done, the work carried out by the previous chief executive and the chair of the CQC, and welcome the new chief executive. The noble Lord may remember that when we had a discussion in the House on the social services Bill about care in some care homes, he made a plea, in response to a question, that we should look at the CQC's responsibilities and not blame the CQC itself for everything that happens. More and more, that is certainly my view.

I am not aware of any detail of the alternative ways that the noble Lord and the noble Baroness, Lady Jolly, have mentioned, but I am concerned about—my noble friend raised this issue—the credibility of the CQC. I have noticed from my experience in the trust that the more responsibilities the CQC has been given, the greater the perception that it is going to be very thinly spread and that its expertise will in some way be weakened. That may be people's view rather than the reality, but I think that we owe it to everyone who has a relationship with the CQC not to dilute it by continually adding to its responsibilities. I know from my own experience how important its inspections are, certainly in hospitals.

The noble Lord referred to my trust, which covers a two-district general hospital, and also to some very small GP practices and other areas of work. I am a great supporter of the CQC, as the noble Lord will know. I feel that it has done a tremendous job and has made a difference compared with what happened before it came into being. I want to strengthen that rather than in any way to dilute its reputation. For example, people who work in my hospital say, "My goodness, it's doing everything now", but what does that really mean? I am sure that the noble Earl will have listened to everything that has been said and that he will think very carefully about what the CQC's credibility means to all of us in terms of its responsibilities.

7.30 pm

Earl Howe: My Lords, I am most grateful to noble Lords who have spoken and shall endeavour to cover the questions and points they have raised in a moment. However, before I do so, perhaps I may briefly take the Committee through the purpose of this instrument.

The regulations before us today make changes to two areas of the legislation that affect the operation of the CQC. The first component of this statutory instrument makes two small amendments to the Care Quality Commission (Registration) Regulations 2009 to replace references to the National Patient Safety Agency, the NPSA, with references to the NHS Commissioning Board Authority. The second relates to the make-up of the commission's board. I shall say more about the purpose of these changes in a moment but I should like to reflect on the importance of the Care Quality Commission as the independent regulator of health and adult social care services in England.

The commission plays a vital role in providing assurance that patients and service users receive the standards of care that they have a right to expect. All providers of regulated activities in England, regardless of whether they are public, private or voluntary sector organisations, are required to register with the commission. Providing a regulated activity without being registered is an offence. In order to be registered, providers have to comply with a set of registration requirements that set the essential levels of quality and safety. Where providers do not meet these essential levels, the commission has a range of enforcement powers that it can use to protect patients and service users from unsafe care, including, in the most extreme cases of poor care, closing down services. The changes to the commission effected through the Health and Social Care Act 2012 are to strengthen the CQC as the quality regulator of health and adult social care services.

I shall now explain why we need to make these changes to the regulations included in the instrument under debate. Under Regulations 16 and 18 of the CQC registration regulations, registered providers of regulated health service activities have been required to notify the CQC of unexpected deaths of service users or other serious incidents, except where such providers have already reported the death or incident to the NPSA. This exception was designed to reduce the reporting burden on providers, preventing the duplication of reporting to both the NPSA and the CQC. Notifications to the NPSA were processed through the national reporting and learning system, the NRLS, and notifications made in the circumstances described in Regulations 16 and 18 of the registration regulations were passed on to the commission by the NPSA.

However, from 1 June, responsibility for oversight of the NRLS transferred from the NPSA to the NHS Commissioning Board Authority. Therefore, the amendments to which I referred were needed to reflect the changing ownership of and responsibility for the NRLS and to update the exception and allow it to continue from 1 June.

Relevant notifications to the NRLS will continue to be passed to the CQC under the new arrangements. To set this in context, as noble Lords are aware, the arm's-length bodies review in 2010 recommended the abolition of the NPSA, and provision is made for the recommended abolition in Section 281 of the Health and Social Care Act 2012. Provision in the Act is also made for the NHS Commissioning Board to have responsibility for the patient safety functions formerly carried out by the NPSA. I shall briefly reiterate why we believe this to be entirely sensible and in the best interests of patients. Patient safety has to be the key priority for all those working in the health service. It can never be allowed to be seen as an add-on or an afterthought.

For that reason the Act puts safety at the heart of the NHS, not at arm's length. Safety is, of course, a central part of quality and we believe that the board, as a body legally responsible for ensuring continuous quality improvement in the NHS, will be best placed to drive a powerful safety agenda throughout the NHS. Embedding safety across the health and social care system is vital. That is why oversight of the patient safety function has been conferred on the shadow body—the NHS Commissioning Board Authority—from 1 June. The NPSA did not have the authority or position to fully exploit the information gained from the NRLS. In contrast the board will have the necessary authority and, being positioned at the very heart of the system, will be better placed to lead and drive improvements. Patients rightly expect that all NHS services will be safe. We believe that by making the board responsible for safety, we are placing that responsibility at the centre of the NHS.

The second part of the regulations makes changes to the regulations setting out the composition of the Care Quality Commission's board. These changes are in response to the recommendations of the Department of Health's review into the performance and capability of the commission. The review recommended that the department should take steps to strengthen the board, including changing its structure to that of a unitary board, so that instead of comprising only non-executives, senior executives can also be appointed and held to account by the non-executive members. The model of a unitary board also potentially offers strength in combining the strategic views of the non-executives with the organisational knowledge of the executives. In addition, the performance and capability review recommended that the Secretary of State should strengthen the board by appointing new non-executive members to existing board vacancies. The regulations, therefore, remove the bar in the commission's existing regulations stating that the Secretary of State cannot appoint an employee of the commission to the board, so allowing for the creation of a unitary board. The regulations also extend the number of members who can be appointed to the commission's board so as to accommodate the senior executives. The upper limit is currently set at 10, and these regulations extend that to 12. That allows flexibility in the appointment of new executive and non-executive members to strengthen the board's capability.

I was very grateful for the comments of the noble Lord, Lord Hunt, on the appointment of David Behan as chief executive of the commission. I am sure he will agree that David's wealth of experience around adult social care and local government system reforms at the department as director-general for social care, local government and care partnerships will stand him in excellent stead for his new role as chief executive of the CQC. David's previous experience as the first chief inspector of the Commission for Social Care Inspection and as president of the Association of Directors of Adult Social Services, as well as his other front-line experience, will also be a great advantage to the commission.

All noble Lords who spoke asked about resources and funding. It is important to recognise that the CQC recovers fees from providers to cover the cost of registration. In addition, it receives grant in aid to cover its other functions. Every year, the CQC agrees its business plan with the Department of Health and its financial position is kept under constant review. We have agreed that the CQC will receive additional funding for staff recruitment in 2012-13.

Allied with the question of resources was that about the CQC's capability. We have every confidence in the CQC's ability to provide the effective regulation of providers of health and adult social care. I welcomed what the noble Baroness, Lady Wall, had to say about that. As the noble Lord, Lord Hunt, has acknowledged, huge improvements are being made in the delivery of its core task of providing assurance that services for patients and service users are safe and of appropriate quality. The CQC leadership is now demonstrating greater confidence and challenge. The recommendations that we made in the performance and capability review are aimed at building on performance during the past 12 months to strengthen capability further and to improve accountability, including accountability with the department.

We are committed to supporting and strengthening the CQC. We are clear that the CQC should continue to focus on its core role of assessing whether providers

[Earl Howe]
meet the essential levels of safety and quality through its registration function. The department is assured that the CQC is delivering its core functions and learning from its implementation of the registration system, improving the way in which it carries out its core business to provide a better service. We have emphasised to the CQC the importance of ensuring that providers continue to comply with regulations and safety and quality requirements. The CQC continues to monitor closely the information on service providers that it receives and takes regulatory enforcement action if it finds the safety and quality of services to be lacking in any case.

We are committed to developing the role of the CQC as the quality regulator of health and adult social care services in England. The functions that the CQC will gain as a result of the Health and Social Care Act 2012—joint licensing with Monitor, information governance monitoring and hosting Healthwatch England—and the potential transfer of functions from the Human Fertilisation and Embryology Authority and the Human Tissue Authority, subject to consultation, are all aimed at strengthening its role in assuring the safety and quality of health and adult social care services.

I emphasise that these changes will not happen overnight. For example, the delivery of joint licensing is not expected until 2014, and any transfer of functions from the HFEA or the HTA will not happen until 2015. The CQC will have a number of years to prepare for these functions, including assessing the resources needed to carry them out. During this time, the department will work with the CQC to ensure that it is ready to take on the functions at a pace that avoids distracting the commission from its core responsibilities and placing the delivery of its current functions at risk.

The noble Lord, Lord Hunt, spoke about the CQC's methodology and in particular the "generic model of regulation". Professional regulation, as he knows, conducted through the GMC, the GDC and other professional regulators, focuses mainly on the competence of the individual professional. However, the way in which organisations are managed and their systems work, together with factors such as the suitability of premises, also affects the safety and quality of the services provided. CQC registration will ensure that competent individuals meet the needs of their patients without putting them at risk from potential system or premises weaknesses. It is encouraging that both the General Practitioners Committee and the Royal College of General Practitioners have issued joint statements with the CQC illustrating the profession's acknowledgment of the need for CQC registration and the light-touch approach that the CQC is taking to bringing providers into registration.

I argue that there is a generic element to the regulation process, but that does not mean that the CQC approaches its task on a one-size-fits-all basis. I have accompanied CQC inspectors when visiting a dental practice, and I know that there are non-generic elements of its methodology that apply only to dentistry. The CQC has worked with stakeholders and trialled its processes to keep these to a minimum, but it is important that it has the capacity to take action where services do not meet essential standards.

7.45 pm

The noble Lord, Lord Hunt, advanced an interesting proposal involving peer-group participation in the review system. The CQC, as part of improving and refining its regulatory model, is building up a pool of experts to work with it, bringing specialist knowledge and credibility. It has adopted this model already with dignity and nutrition work and learning disability inspections. It has also taken and continues to take into account the views of people using services, including taking them on inspection visits where appropriate. The noble Lord's idea is already one that the CQC is working on, but if I can gain any further information on that front, I will gladly pass it on to him.

My noble friend Lady Jolly asked about the state of play, if I can put it that way, regarding the duty of candour. She will know from our debates on the Bill that we believe this to be an extremely important element of the safety culture, ensuring that staff across the NHS are open with patients. The responses to the public consultation on the contractual duty of candour are currently being analysed and considered. While we currently believe that a contractual duty is likely to be the most effective mechanism to improve openness in the NHS, we are fully considering all the consultation responses received. We are also aware that Robert Francis QC has said that he is likely to comment on the proposed duty of candour in the report of the inquiry into the Mid Staffordshire NHS Foundation Trust. We remain committed to giving full and careful consideration to the findings and recommendations of the inquiry, including any recommendations on the duty of candour, and to taking whatever action we consider necessary as a result.

My noble friend also referred to today's announcement by the CQC in its national overview report of learning disability inspections, alongside the department's interim learning disabilities review report. While this has found that failings on the scale of those seen at Winterbourne View are not widespread, it has found that 48% of the inspected providers were not providing care that met the essential levels of safety and quality, and that is simply unacceptable. The department's interim report sets out the national actions that we are taking now to address the serious issues that we have already identified. The national actions will set the strategic direction, create the policy and legal frameworks and look at what longer-term changes are needed in monitoring and inspecting services. Today's interim report will feed into the wider Department of Health review of Winterbourne View, which is due later in the year. Once criminal proceedings are concluded, Ministers will report its findings to Parliament and determine what further action is necessary.

My noble friend asked why incidents are to be reported to the board and not to the CQC. The requirement remains to report serious incidents and unexpected deaths to the CQC, but that requirement can be met by reporting incidents to the board using the national reporting and learning system. This prevents

the need, as I explained in my earlier remarks, for double and duplicate reporting. The model of CHI—that is, both CHI and CHAI—was cited by my noble friend Lady Jolly and the noble Lord, Lord Hunt.

The CQC's approach is to work wherever possible with providers to identify compliance but, unlike its predecessors in the NHS, it now has enforcement powers that it can use to ensure that providers are brought back into compliance. Inspections are structured to ensure that they are able to identify and address poor practice. There has of necessity been a shift in the CQC's working method compared with its predecessors for those reasons.

I have listened carefully to all the speeches, including that of the noble Baroness, Lady Wall, whose points I have not fully addressed. However, in so far as I have failed to cover points and questions, I shall of course write after the debate. I commend the instrument to the House.

Lord Hunt of Kings Heath: My Lords, I thank the noble Earl for his comprehensive response and the noble Baronesses, Lady Wall and Lady Jolly, for joining the debate.

The noble Earl can take it that there is general cross-party support for the work of the CQC; we wish it and Mr Behan well. The tasks that it faces are formidable, but I hope that with the resource increase referred to by the noble Earl and the spirit of support and co-operation, it will be able to make progress in the next few years.

I should like to raise two points. First, I did not mention the National Patient Safety Agency in my opening remarks, although I was tempted to do so. I understand the point the noble Earl is making. The main responsibility of the NPSA, of which I was chair a few years ago, was to record these incidents and then send out reports of the trends. The issue was with what happened to put that into practice. The noble Earl's argument is that by bringing that into the NHS Commissioning Board it will be more in the mainstream of the architecture and more likely that the reports of those trends will be taken account of in the health service. The risk is that the National Reporting and Learning Service will no longer be seen as independent because it is part of the management structure and that, in the future, staff will be more reluctant to report incidents. All I ask of the noble Earl is that his department keeps a close eye on the number of incidents that are reported. If there appears to be a tailing off, the Government might need to revisit the issue of where the NRLS is placed.

Secondly, on the approach and methodology of the CQC, I fully accept that life has moved on since the CHI model. The CHI model was certainly not perfect but, as the noble Baroness, Lady Jolly, suggested, it benefited from high-quality inspection teams. I am glad that the noble Earl listened carefully to what I had to say on that matter and I hope that this can be the start of a more general engagement on the work of CQC and its methodology. It enjoys support for what it does and we want it to do well in the future, but we would also like to take part in these important discussions.

Having said that, I thank all noble Lords who have taken part in the debate.

Motion agreed.

Committee adjourned at 7.53 pm.

Written Statements

Monday 25 June 2012

Banks: Iceland

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.

Kaupthing Singer and Friedlander Limited (KSF) was the UK subsidiary of the Icelandic bank Kaupthing Bank hf. On 8 October 2008, the Financial Services Authority (FSA) decided that KSF was in breach of its threshold conditions under the Financial Services and Markets Act 2000 (FSMA) and that it should be prohibited from accepting any new deposits.

Treasury officials have prepared a note on the events around the failure of KSF, focusing on: the chronology of events ahead of the failure of Icelandic banks in October 2008; why the FSA came to the decision that KSF had breached its threshold conditions; the discrepancies in reporting on whether Iceland would honour its obligations to UK depositors; and whether the actions of UK authorities triggered the administration of KSF Isle of Man (KSF IoM).

The note clarifies that, while the Treasury used asset-freezing powers in relation to Landsbanki Islands hf, another Icelandic bank, the use of these powers by the Treasury did not have any direct impact on the failure of KSF, KSF IoM or Kaupthing Bank hf.

I have placed copies of the document in the Libraries of both Houses.

Care Services: Winterbourne View

Statement

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): My honourable friend the Minister of State, Department of Health (Paul Burstow) has made the following Written Ministerial Statement.

I promised to update the House about ongoing activity in relation to Winterbourne View private hospital.

I am today publishing an interim report of the review which I set up to establish the facts and bring forward actions to improve care and outcomes of people with learning disability or autism and behaviours that challenge. The interim report has been placed in the Library. Copies are available to honourable Members from the Vote Office and to noble Lords from the Printed Paper Office.

This interim report does not cover what happened at Winterbourne View itself. I will be able to report on that once current criminal proceedings against former staff at the hospital are completed and all the evidence is published in the Serious Case Review being conducted by South Gloucestershire Council.

But there is already good evidence that the health and care system is not meeting the needs of people with learning disability or autism and behaviour which challenges, and there is an unacceptable gap between best practice and actual practice.

This interim report looks at the quality of the health and care support provided to the approximately 15,000 people in England with learning disabilities or autism who have mental health conditions or behaviour which challenges, and the quality of health and care services they receive. It draws on the reports of the Care Quality Commission's focused inspection of 150 hospitals and care homes for people with learning disabilities, widespread engagement with people with learning disabilities, people with autism, family carers, voluntary groups, health and care commissioners, providers and professionals, as well as the regulators, and other evidence submitted to the review team.

The main findings set out in the interim report are that there are too many people in in-patient services for assessment and treatment and they are staying there for too long. This model of care has no place in the 21st century. Best practice is for people to have access to the support and services they need locally to enable them to live fulfilling lives integrated within the community. In too many services there is robust evidence of poor quality of care, poor care planning, lack of meaningful activities to do in the day, and too much reliance on restraining people.

All parts of the system—commissioners, providers, workforce, regulators and government—must play their part in driving up standards of care and demonstrating zero tolerance of abuse. This includes acting immediately where poor practice or sub-standard care is suspected.

Our key objectives are to:

improve commissioning across health and care services for people with behaviour which challenges with the aim of reducing the number of people using inpatient assessment and treatment services;

clarify roles and responsibilities across the system and support better integration between health and care;

improve the quality of services to give people with learning disabilities and their families choice and control;

promote innovation and positive behavioural support and reduce the use of restraint; and

establish the right information to enable local commissioners to benchmark progress in commissioning services which meet individuals' needs, improve the quality of care, and reduce the numbers of people in in-patient services for assessment and treatment.

The report sets out clear actions at a national level to support local improvement and ensure that we are able to deliver these key objectives.

I will continue to update the House and will publish the final report of the Winterbourne View review in the autumn.

Department for International Development: Annual Report and Accounts

Statement

Baroness Northover: My right honourable friend the Secretary of State for International Development has made the following Statement.

I have today published and laid before Parliament, the Department for International Development's annual report and accounts for the year 2011-12.

The report covers DfID's activities during 2011-12 in line with the International Development (Reporting and Transparency) Act 2006 and includes a full set of accounts for 2011-12. The report has been placed in the Libraries of the House of Commons and House of Lords for the reference of Members and copies will be made available in the Vote Office. It is also available online on DfID's website (www.dfid.gov.uk).

The annual report contains results which are both clear and quantifiable. This has been possible because for the first time, this Government have established systems which allow us to measure and track, in detail, the results which UK aid is achieving.

Over the past two years aid from Britain has quite simply transformed the lives of millions in the world's poorest countries. This has included:

vaccinating over 12 million children against preventable diseases;

improving the land and property rights of 1.1 million people;

supporting 5.3 million children (2.5 million of them girls) to go to primary school;

distributing 12.2 million bednets to protect people against malaria;

supporting 26 African countries to agree an Africa free trade area;

enabling 11.9 million people to work their way out of poverty by providing access to financial services;

preventing 2.7 million children and pregnant women from going hungry;

reaching 6 million people with emergency food assistance;

supporting freer and fairer elections in five countries; and

improving hygiene conditions for 7.4 million people.

These results show what British aid can achieve. It is time that aid funded by the British people is easily and clearly identified as coming from the UK.

For that reason, I am today launching a new UK Aid logo which we intend, in future, to apply to things like emergency grain packets, buildings and pumps. The logo features the Union Flag and will be instantly recognisable across the world. The logo has been designed in-house at no additional cost to the taxpayer and will be introduced gradually as existing stocks run down.

Both the annual report and our new logo are testament to the extraordinary results which British aid is achieving. They are results of which this House and this country can be proud.

Weightman Report

Statement

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Lord Marland): My honourable friend the Minister of State for Energy (Charles Hendry) has made the following Written Ministerial Statement.

Today I welcome the findings and recommendations set out in Dr Weightman's final report on the events at the Fukushima nuclear site and publish the final Government response to this report. I commend Dr Weightman and his team on the depth and quality of their work.

As part of his report Dr Weightman invited Government to report back on the recommendations by June 2012. In December 2011, Government gave their initial response. The Government response published today updates this and sets out the work we have done or intend to do in implementing Dr Weightman's recommendations. This includes:

further strengthening our work with international partners on nuclear safety, particularly through the IAEA. The UK has recently joined the IAEA's global assistance network for nuclear emergencies, RANET;

taking forward work from the Nuclear Emergency Planning Liaison Group review of the UK's national nuclear emergency arrangements in light of the experience of dealing with the prolonged Japanese event—and implementing a new UK National Strategic Framework for nuclear emergency planning and response; and

ensuring that openness and transparency are enshrined in the work we are taking forward to create the Office of Nuclear Regulation as a statutory body.

Copies of the Government response will be placed in the Libraries of the House or can be obtained from the DECC website.

Written Answers

Monday 25 June 2012

Abortion

Question

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

To ask Her Majesty's Government, further to the Written Answer by Earl Howe on 11 June (*WA 139*), what assessment they have made of (1) the principle of, and (2) the physical and psychological health impacts of, women having multiple abortions. [HL832]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): An abortion is legal only if carried out under the terms of the Abortion Act 1967; this does not limit the number of abortions a woman may have. Women have more than one abortion for a wide variety of, often complex, reasons. Every woman who has an abortion is offered information about, and access to, contraception to reduce the risk of future unintended pregnancies. There are many types of contraception available to suit all health and lifestyle needs.

In its clinical guideline *The Care of Women Requesting Induced Abortion* (November 2011), the Royal College of Obstetricians and Gynaecologists states that there are no proven associations between induced abortion and future pregnancy complications.

In 2011, the National Collaborating Centre for Mental Health published *Induced Abortion and Mental Health: A Systematic Review of the Mental Health Outcomes of Induced Abortion, Including their Prevalence and Associated Factors*. This concluded that having an abortion does not increase the risk of mental health problems, and that the rates of mental health problems for women with an unwanted pregnancy are the same, whether they have an abortion or have given birth. Some of the studies included women having repeat abortions.

Armed Forces: Aircraft

Questions

Asked by ***Lord West of Spithead***

To ask Her Majesty's Government whether, further to the response by Lord Astor of Hever on 31 May to the Freedom of Information Act request by Lord West of Spithead (MSU/01/02/01/01/DH), the "unacceptable material damage" that was apparently being inflicted on the Harrier force, leading in part to the decision to replace Harrier planes with Tornado in Afghanistan, was related to direct airframe or engine damage or related to shortage of spares. [HL817]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): The unacceptable material damage referred to in the document does not relate to any direct physical airframe or engine damage or shortage of spares. It relates to the damage incurred in the ability of the Harrier force to undertake wider Harrier capabilities, beyond those which were being undertaken on Op Herrick. This included skill fade and the need to regenerate wider contingent capability, including complex multinational formation operations in a contested air environment and for utilisation of Harrier weapons systems that were not deployed in Herrick. In 2008, there was also material damage to the provision of a robust Harrier carrier operating capability and the ability to generate additional Harrier force elements at readiness to undertake a small-scale focused intervention.

Asked by ***Lord West of Spithead***

To ask Her Majesty's Government whether, further to the response by Lord Astor of Hever on 31 May to the Freedom of Information Act request by Lord West of Spithead (MSU/01/02/01/01/DH), the Harmony guidelines referred to as being broken in the Harrier force, at the time the decision to deploy Tornado planes in place of Harriers to Afghanistan in July 2008 was made, were those that applied to Royal Navy or Royal Air Force personnel. [HL818]

Lord Astor of Hever: Joint Force Harrier was formed of Royal Navy and Royal Air Force squadrons. The Harmony guidelines referred to as being broken in the document were Joint Force Harrier Unit Operational Harmony Guidelines. These Harmony guidelines applied to the Harrier force as a whole, irrespective of service. A unit was considered to be achieving Operational Harmony if it achieved "4 in 20" (for every four months away, 16 months should be spent at home), if the separation was for operational reasons.

Armed Forces: Commemoration

Question

Asked by ***Lord Morris of Manchester***

To ask Her Majesty's Government what assistance they are providing for the ceremony to mark the unveiling of the Bomber Command Memorial on 28 June; and what discussions they have had with the Bomber Command Association about whether they are content with the level of help they are providing. [HL794]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): Approximately 200 Royal Air Force personnel will be providing support and assistance at the unveiling ceremony for the Bomber Command Memorial on 28 June 2012. These personnel will carry out a number of different roles including ceremonial and ushering duties. A fly-past is also scheduled for the event.

A continuous dialogue has been held between officials from the Air Staff and the Bomber Command Association since the inception of the memorial. The level of support being provided has been under constant review and the Bomber Command Association has expressed nothing but gratitude for that support.

Asylum Seekers

Questions

Asked by ***Baroness Lister of Burtersett***

To ask Her Majesty's Government, in each of the past five years, how many families with dependent children (1) applied for Section 4 asylum support, (2) were granted the support, and (3) were refused support. [HL696]

The Minister of State, Home Office (Lord Henley): The information requested is shown in the following table. Please note that the information is derived from local management information and has not been subject to National Statistics protocols.

Outcome	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*
Undecided		-	*	*	*	-	-
Refused	-	5	16	26	23	19	*
Grants	898	581	1045	987	495	262	63
Total	898	586	1062	1015	519	281	67

(1) All figures quoted are management information which has been subject to internal quality checks.

(2) Figures below 5 are indicated with an "*"; zero is indicated with an " – ".

Asked by ***Baroness Lister of Burtersett***

To ask Her Majesty's Government how many asylum-seeking children in receipt of Section 4 asylum support lived in hostel accommodation in the past five years; and for what average length of time. [HL697]

Lord Henley: The information requested on the number of asylum-seeking children in receipt of Section 4 support is shown in the following table. Please note that the information is derived from local management information and has not been subject to National Statistics protocols. Figures below five are not released, as it may be possible to identify individuals. The policy of the Home Office is not to disclose, to a third party, personal information about another person, as the department has obligations under the Data Protection Act and in law generally to protect this information.

It is not possible to determine the average length of time asylum-seeking children in receipt of Section 4 support lived in hostel accommodation in the past five years without a manual search of individual cases, which would incur disproportionate costs.

Children receiving Section 4 support and accommodated in hostels

Year	*Children in Hostels*
2012	*
2011	*
2010	*
2009	5
2008	5

Asked by ***Baroness Lister of Burtersett***

To ask Her Majesty's Government how many individuals, including dependants, who had a disability were in receipt of Section 95 asylum support in each of the last five years, broken down by age. [HL699]

Lord Henley: The information requested is shown in the following table.

Cases in receipt of Section 95 asylum support that had a disability recorded against them in March of each of the past five years

Date	*Disability cases*
March 2008	164
March 2009	174
March 2010	130
March 2011	93
March 2012	72

(1) All figures quoted are management information which has been subject to internal quality checks.

(2) The figures refer to a snapshot of a single day in March of each of the past five years.

(3) Disability figures refer to the number of applications with someone having disability, and the applications may correspond to one or more individuals.

Please note that the information is derived from local management information and has not been subject to National Statistics protocols. The figures refer to a snapshot of a single day in March of each of the past five years. Disability figures refer to the number of applications with someone having a disability and the applications may correspond to one or more individuals.

Data broken down by age are not available.

Bank of England

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government whether the identification and selection of the three independent reviewers commissioned by the Court of the Bank of England and announced by the Bank on 21 May was made under the advice of the Governor or his officials; and whether the reviewers were approached by, or discussed their terms of reference with, the Chairman of the Court or the Governor and his officials prior to their appointment. [HL674]

The Commercial Secretary to the Treasury (Lord Sassoon): The decision to set these terms of reference and appoint these reviewers was taken by Court. The identification and selection of the three independent reviewers and their terms of reference were discussed by the Chairman of Court with the Governor prior to their appointment by Court at its meeting on 17 May. The Chairman of Court has held separate meetings in person and, in one case, by telephone with the reviewers.

Banking: Quantitative Easing

Question

Asked by ***Lord Barnett***

To ask Her Majesty's Government what is their latest estimate of how the £325 billion of quantitative easing has been spent by the recipient banks. [HL722]

The Commercial Secretary to the Treasury (Lord Sassoon): The Monetary Policy Committee's (MPC) policy tools, including bank rate and quantitative easing (QE), are macroeconomic policy tools designed to affect the economy as a whole, in order to meet the 2% inflation target over the medium term.

The Bank of England's asset purchases during QE have largely been from non-bank financial institutions, including insurance companies and pension funds, which use the money received to purchase other assets such as corporate bonds and equities. MPC members have stated that QE has been designed to work through channels other than the impaired banking system, by stimulating activity in the capital markets.

Business Rates

Question

Asked by ***Lord Wigley***

To ask Her Majesty's Government what representations they have received from the Welsh Government for matters relating to the legislation for, and the administration of, business rates to be fully devolved to the National Assembly for Wales. [HL771]

The Advocate-General for Scotland (Lord Wallace of Tankerness): Her Majesty's Government have not received any representations from the Welsh Government on this issue.

Care Homes

Questions

Asked by ***Lord Warner***

To ask Her Majesty's Government how many (1) residential care homes, (2) nursing homes, and (3) dual-registered care homes were registered with the Care Quality Commission as at 31 March in each of 2008, 2009, 2010, 2011 and 2012; how many homes in each category were deregulated in each of those years ending on 31 March; and what was the total registered capacity (measured by places) in each category of home on 31 March in each of those years. [HL624]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): We are informed by the Care Quality Commission (CQC) that, under the Health and Social Care Act 2008, CQC registers providers to perform particular regulated activities. It registers providers according to these activities, rather than by service type, such as nursing and residential homes. Nursing and residential homes are registered to provide the regulated activity "accommodation with nursing and personal care". Although services are not registered by type, the CQC will agree with the provider of a service the category it falls into upon registration. The CQC is confident this allows it to report information by type of service.

Table 1 shows numbers of registered residential homes and nursing homes and places at the end of each financial year. There is no dual registration of homes under current legislation. Dual registration applied under the Registered Homes Act 1984; care homes were regulated by local authorities, whereas nursing homes were regulated by health authorities. Dual registration referred to homes that were regulated by both authorities. It ceased with the introduction of the Care Standards Act 2000, although establishments could be registered to provide both residential and nursing care.

Table 2 shows numbers of services that deregistered during each financial year. It should be noted that deregistration of homes is not necessarily indicative of permanent closure or of enforcement activity by the CQC. For example, a home may have temporarily deregistered (and subsequently re-registered) while undergoing refurbishment, or due to its having been taken over by a different provider.

Table 1: Trends in Registered[1] Care Homes

Registered under Care Standards Act 2000[1]

As at:	*31 March 2008*[2]		*31 March 2009*[2]		*31 March 2010*[3]	
	Services	*Places*	*Services*	*Places*	*Services*	*Places*
Residential Homes[1]	14,388	262,949	14,145	260,791	13,903	256,794
Nursing Homes[1]	4,153	185,116	4,233	192,681	4,352	202,654
Totals	18,541	448,065	18,378	453,472	18,255	459,448

Registered under Health and Social Care Act 2008[1]

As at:	*31 March 2011*[3]		*31 March 2012*	
	Services	*Places*	*Services*	*Places*
Residential Homes[1]	12,794	234,584	13,134	247,878
Nursing Homes[1]	4,458	202,040	4,674	215,524
Totals	17,252	436,624	17,808	463,402

Notes:

[1] Methods of ascribing registration categories differ between the two Acts. Caution should be exercised when comparing Care Standards Act data with Health and Social Care Act data.

[2] Until 31 March 2009, care home services were regulated by the Commission for Social Care Inspection.

[3] Until 30 September 2010, care homes were regulated under the Care Standards Act 2000. From 1 October 2010, all providers were required to register under the Health and Social Care Act 2008.

Source:

CQC database at 12 June 2012

Table 2: Trends in Deregistered[1] Care Homes

Registered under Care Standards Act 2000

Year	*2007-08*[2]		*2008-09*[2]		*2009-10*		*2010-11*[3]	
	Services	*Places*	*Services*	*Places*	*Services*	*Places*	*Services*	*Places*
Residential Homes	1,195	21,084	893	14,363	809	12,084	519	8,742

Table 2: Trends in Deregistered[1] Care Homes

Registered under Care Standards Act 2000

Year	*2007-08*[2]		*2008-09*[2]		*2009-10*		*2010-11*[3]	
	Services	*Places*	*Services*	*Places*	*Services*	*Places*	*Services*	*Places*
Nursing Homes	257	10,103	164	6,521	154	6,198	92	3,812
Totals	1,452	31,187	1,057	20,884	963	18,282	611	12,554

Registered under Health and Social Care Act 2008

Year	*2010-11*[3]		*2011-12*	
	Services	*Places*	*Services*	*Places*
Residential Homes	28	293	1,481	23,636
Nursing Homes	10	40	692	32,758
Totals	38	333	2,173	56,394

Notes:

[1] Deregistration of homes is not necessarily indicative of permanent closure.

[2] Until 31 March 2009, care home services were regulated by the Commission for Social Care Inspection.

[3] Until 30 September 2010, care homes were regulated under Care Standards Act 2000. From 1 October 2010, all providers were required to register under the Health and Social Care Act 2008.

Source:
CQC database at 7 June 2012.

Asked by ***Lord Warner***

To ask Her Majesty's Government how many staff were employed in (1) residential care homes, (2) nursing homes, (3) dual-registered homes, and (4) home care organised homes registered with the Care Quality Commission at the most appropriate date in 2008–09, 2009–10, 2010–11 and 2011–12. [HL625]

To ask Her Majesty's Government what information is available to them on (1) the levels of occupancy in residential care and nursing homes registered with the Care Quality Commission; (2) the incidence of local authorities embargoing the use of such homes for publicly funded residents in cases where there are no care quality concerns; and (3) the level of subsidy provided by privately paying residents in such homes to the costs charged for publicly funded residents. [HL628]

Earl Howe: We are informed by the Care Quality Commission (CQC) and the National Health Service Information Centre that information on numbers of staff employed in care and nursing homes, occupancy levels, fees and which care providers are used by councils is not available.

Under both the Care Standards Act 2000 and the Health and Social Care Act 2008, standards require CQC inspectors to look at the suitability and appropriateness of staffing levels, qualification and supervision. However, the CQC is not required to record staff numbers centrally and does not do so.

Local councils are free to decide how best to contract with providers of residential care to meet the needs of their populations. The Government do not set or recommend the fee rates which local councils negotiate with care providers.

Commonwealth: Heads of Government Meeting

Question

Asked by ***Lord Wills***

To ask Her Majesty's Government whether they have considered not attending the Commonwealth Heads of Government Meeting in Sri Lanka. [HL733]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): It is too early to talk about attendance at the Commonwealth Heads of Government Meeting (CHOGM). We have made clear to the Sri Lankans that we want to see a successful CHOGM in 2013. We will look to Sri Lanka as host to demonstrate its commitment to upholding the Commonwealth values of good governance and human rights. A key part of this will be to address longstanding issues around accountability and reconciliation after the war.

Democratic Republic of Congo

Question

Asked by ***The Lord Bishop of Bath and Wells***

To ask Her Majesty's Government what assessment they have made of the current United Nations Stabilisation Mission in the Democratic Republic of Congo, and the ability of that mission to meet its core mandate of stabilisation and protection of civilians. [HL893]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): We fully support the role the UN Stabilisation and Peacekeeping Mission in the Democratic Republic of Congo (MONUSCO) plays in protecting civilians and continue to encourage

the mission to prioritise its efforts. MONUSCO supports the Government of the Democratic Republic of Congo (DRC) in tackling armed groups and peacefully removing militia fighters from the battlefield through the disarmament, demobilisation, repatriation, resettlement and reintegration (DDRRR) programme. MONUSCO also conducts joint operational planning with the Military of the Democratic Republic of the Congo (FARDC) allowing them to ensure that humanitarian concerns are taken into account and that support is not provided to those accused of serious human rights abuses. But we must also acknowledge that MONUSCO cannot be everywhere, not least given the difficult terrain in which they operate, and that the primary responsibility for protection of civilians lies with the Government of the Democratic Republic of Congo.

The MONUSCO mandate is due to be renewed at the end of June and negotiations in the United Nations are ongoing. We continue to push for the mandate to reflect the situation on the ground, retaining protection of civilians as its first priority and to have a greater emphasis on stabilisation activity and other longer-term objectives such as security sector reform and helping to enforce the arms embargo.

Disabled People: Children

Question

Asked by ***Lord Morris of Manchester***

To ask Her Majesty's Government what assessment they have made of the report of the Newlife Foundation for Disabled Children, *From the Front Line*, on equipment provision for disabled and terminally ill children; and what action they are taking to respond to its findings. [HL730]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): We are very clear that there should be prompt access to appropriate specialist equipment to ensure children and young people's needs are met, and to support them in living as independently as possible. There are a number of initiatives to support this aim.

The Government's Green Paper, *Support and Aspiration—A New Approach to Special Educational Needs and Disability*, was published in March 2011 and the *Next Steps* document published in May 2012. These include a new single assessment process with a single education, health and care plan, and the option of a personal budget for children and families that will give families more control over the services they receive, including the ability to purchase specialist equipment.

In January, the Secretary of State launched a Children and Young People's Health Outcomes Forum to identify the outcomes that matter most for children and young people and set out how the new health system will deliver these outcomes. The forum has a group looking specifically at the needs of children with disabilities and those requiring palliative care, and it will be presenting its report to the Secretary of State in July.

One of the high-impact innovations of the NHS chief executive's review of innovation, *Innovation Health and Wealth: Adoption and Diffusion of Innovation*, is the launch of a "Child in a Chair in a day" programme to transform the delivery of wheelchair services throughout the National Health Service. This, together with the introduction of "Any Qualified Provider" in wheelchair services will increase choice and control for patients. Both these initiatives should improve the quality of wheelchair services offered.

Disabled People: Transport

Question

Asked by ***Lord Morris of Manchester***

To ask Her Majesty's Government how many severely disabled students, eligible for a Freedom Pass, have had their disabled students' allowance reduced by the nominal cost of bus fares, but are unable for reasons of disability to use public transport; why such students are treated in the same way as less disabled students who are able to access public transport; and what would be the cost of removing this provision in respect of severely disabled students. [HL903]

Baroness Verma: Unfortunately, we do not record this information. If a student is eligible for DSA travel allowance, our guidance states that we must take off the cost of public transport so we do not advantage a disabled student.

Elections: Overseas Electors

Questions

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

To ask Her Majesty's Government what steps they are taking to increase the number of overseas electors; and whether they will make it their policy to publish the number of overseas electors by constituency. [HL795]

Lord Wallace of Saltaire: The Government are committed to maximising registration rates. However, there are difficulties with contacting British expatriates as their whereabouts are simply not known and they are not required to inform the UK authorities where they intend to reside, if they emigrate. Those expatriates who have registered receive an annual reminder from their electoral registration officer to update their registration, but there is no way of making contact with those who fail to register or to re-register when they change address.

The Government are considering whether there are any changes that can be made to the registration process for overseas electors—for example, enabling online registration. The Electoral Registration and Administration Bill, currently before Parliament, also includes provisions to support the participation of overseas and service voters by extending the timetable for parliamentary elections from 17 to 25 days.

Statistics detailing the number of electors registered to vote in parliamentary elections are produced by the Office for National Statistics (ONS). ONS publishes annual statistics for the number of people registered to

vote by parliamentary constituency. Electors who are resident overseas form part of the total number of parliamentary electors but the published figures do not provide information on residence. ONS does not currently have plans to publish figures for the number of overseas electors. The House of Commons, however, publishes information on overseas electors for the UK, but does not publish this information by parliamentary constituency.

Asked by ***Lord Lexden***

To ask Her Majesty's Government whether they have any plans to extend the existing 15-year period during which British citizens living abroad can vote in UK elections. [HL884]

Lord Wallace of Saltaire: The Government are considering whether the 15-year time limit on voting rights for British citizens overseas remains appropriate, but have no immediate plans to alter the legislation.

In the mean time, the Government have taken steps to improve the overseas voting process by introducing proposals in the Electoral Registration and Administration Bill, currently before Parliament, to extend the electoral timetable for UK parliamentary elections from 17 to 25 working days. This will facilitate greater voter participation, making it easier for postal voters and, in particular, overseas and service voters. The Government are also considering what more can be done to improve the registration process in the context of the move to individual electoral registration.

Employment: Under-25s

Questions

Asked by ***Lord Adonis***

To ask Her Majesty's Government, since the start of the youth contract in April, how many of the 160,000 wage-subsidised jobs promised in the contract have been made available to under-24 year-olds on the Work Programme. [HL881]

To ask Her Majesty's Government how many employers have offered under-24 year-olds on the Work Programme subsidised jobs since the launch of the youth contract in April. [HL882]

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud): The department is working to guidelines set by the UK Statistics Authority to ensure we are able to publish accurate high-quality statistics at the earliest opportunity.

Official statistics on subsidised jobs under the youth contract are not currently available. The exact details of what we will publish have still to be decided as that is dependant on the availability and quality of the data in line with the code of practice on official statistics.

The department is currently commissioning an evaluation strategy for the youth contract. Information from the evaluation will be available in 2013.

Energy: UK-Norway Partnership

Question

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

To ask Her Majesty's Government how many jobs they estimate will be created in the United Kingdom following the Prime Minister's recent discussions in Norway regarding joint venture energy deals, research and programmes. [HL894]

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Lord Marland): During a visit to Oslo on 6 and 7 June, the Prime Minister announced a UK-Norway energy partnership and billions of pounds of new investment by UK and Norwegian companies. The announcement can be found at: http://www.decc.gov.uk/en/content/cms/news/pn12_072/pn12_072.aspx.

These investments have the potential to create thousands of jobs in the UK. Details include:

Statoil's further £12 billion investment developing Mariner-Bressay North Sea oil fields creating 800 to 1,000 new jobs, including 200 to 300 jobs at a new operations centre in Aberdeen;

Aker Solutions creating 1,300 jobs in London; and

Forewind Consortium's development of Dogger Bank offshore wind farm, which could create many thousands of jobs.

Equines: Hot Branding

Question

Asked by ***Baroness Mallalieu***

To ask Her Majesty's Government whether they will review the operation of the provisions which permit the hot-branding of equines. [HL861]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Taylor of Holbeach): I have asked the Chief Veterinary Officer to provide me with a report into this practice. It will be with me shortly.

EU: Access to Documents

Question

Asked by ***Lord Lester of Herne Hill***

To ask Her Majesty's Government whether they support changes to European Union Regulation 1049 on public access to European Parliament, Council and Commission documents so as to (1) extend the institutional scope of the Regulation to all EU bodies, (2) ensure legislative transparency, (3) align the Regulation with the Aarhus Convention on environmental information, and (4) balance the right to public access to EU documents with the right to personal privacy. [HL860]

The Minister of State, Ministry of Justice (Lord McNally): The Government have been fully engaged in the discussions on the recast of the access to documents regulation and is committed to the principle of transparency within EU institutions.

The Government support an enhancement of transparency and therefore strongly oppose any restriction on what constitutes a document for the purposes of the regulation.

Specifically, the Government support an extension of the institutional scope of the regulation in accordance with the Lisbon treaty and an alignment of the regulation with the Aarhus convention. We support the extension of legislative transparency, although this must be balanced against the importance of protecting important and sensitive information, such as legal advice. We also strongly oppose any proposals to weaken the protection afforded to personal privacy and remain of the view that the right to information must be appropriately balanced with the right to privacy.

EU: Economic Partnership Agreements

Question

Asked by ***The Earl of Sandwich***

To ask Her Majesty's Government whether they are in favour of the European Union's support for regional economic partnership agreements (EPAs) in Africa; and what assessment they have made of the potential impact of EPAs on export duties and African economies. [HL849]

The Minister of State, Department for Business, Innovation and Skills & Foreign and Commonwealth Office (Lord Green of Hurstpierpoint): The UK has been a consistent supporter of development-friendly economic partnership agreements between the European Union and the African, Caribbean and Pacific (ACP) countries, which it sees as the best available means to allow ACP countries to continue to benefit from preferential market access to the EU. These agreements differ from standard free trade agreements (FTAs) in a number of ways intended to account for the development needs of the ACP countries:

they are asymmetrical, with the ACP country gaining immediate 100% duty-free, quota-free access to the EU in return for opening 80% of its market over an extended period (between 15 and 25 years);

the ACP country can make use of a wide range of safeguards, anti-dumping duties and infant industry protection;

they are negotiated in regional blocs to facilitate regional integration; and

the EU provides accompanying development assistance to help ACP countries make the most of EPA opportunities.

All ACP countries which implement an EPA will get 100% access to the EU market. The impact of the opening of the ACP country market will vary according to the deal negotiated, but the need to ensure compliance with World Trade Organisation rules means that the ACP country is likely to be required to eliminate tariffs on approximately 80% of its imports. However, impacts will be mitigated through the staged opening over 15 to 25 years and through the possibility of deploying safeguards, infant industry protection and anti-dumping provisions.

Extradition

Questions

Asked by ***Lord Maginnis of Drumglass***

To ask Her Majesty's Government whether there have been any substantive alterations made to the United Kingdom's extradition arrangements with the United States in the past two years; whether terms for extradition are reciprocal; and whether any new safeguards have been implemented since June 2010. [HL644]

The Minister of State, Home Office (Lord Henley): There have been no substantial alterations made to the UK's extradition arrangements with the US and no new safeguards have been implemented since 2010. The terms for extradition are as broadly reciprocal as can be between two countries given that they are based on different legal systems.

The UK-US extradition treaty was also considered by the independent review of the UK's extradition arrangements led by Sir Scott Baker. The panel found that the treaty does not operate in an unbalanced manner. The Home Secretary is considering the review panel's findings and will announce the Government's response shortly.

Asked by ***Lord Maginnis of Drumglass***

To ask Her Majesty's Government how many United States citizens were extradited to the United Kingdom between January 2004 and April 2012 for crimes allegedly committed whilst the person was in the United States; and how many such applications for extradition are pending. [HL646]

To ask Her Majesty's Government how many United Kingdom citizens were extradited to the United States between January 2004 and April 2012 for crimes allegedly committed whilst the person was in the United Kingdom; and how many such applications for extradition are pending. [HL647]

Lord Henley: As a person's nationality has never been a bar to extradition between the UK and the US, the nationality of the person whose extradition was sought was not, before 2010, always recorded. Information about where the alleged offence was committed in each case is not held centrally; however, in every case the alleged offence would have to come within the jurisdiction of the requesting state. The answer reflects these qualifications.

Between 2010 and April 2012, 10 people were extradited from the US to the UK, of whom two were US nationals. Neither has been identified as being accused of a crime which was committed while the person was in the US. Currently, there is one outstanding request from the UK to the US for a US citizen. This has not been identified as involving a crime which was committed while the person was in the US.

In the same timeframe, 23 people were extradited from the UK to the US. Fifteen were UK nationals, of whom three were dual nationals (of the UK and a third state). None has been identified as being accused solely of a crime committed whilst the person was in

the UK. There are currently 17 outstanding requests from the US to the UK for UK citizens. Of these 17, there are five cases where I can confirm that the alleged offences were committed whilst the person was in the UK.

The figures given in this reply do not include requests between the US and Scotland.

Extradition: Gary McKinnon

Questions

Asked by ***Lord Maginnis of Drumglass***

To ask Her Majesty's Government whether, in dealing with the extradition case involving Gary McKinnon, they have given consideration to the comments made by the New Zealand judge David Harvey, in the Megaupload case, that in considering extradition to the United States he recognised "the need not only for a fair hearing but a fair hearing properly informed". [HL642]

To ask Her Majesty's Government, further to the Written Answer by Lord Henley on 7 November 2011 (*WA 10*), what further medical reports they have received regarding Gary McKinnon; what assessment they have made of the potential psychological impact on Gary McKinnon due to the uncertainty about his potential extradition to the United States; and for how long they believe it would be acceptable for that uncertainty to continue. [HL645]

The Minister of State, Home Office (Lord Henley): The sole issue for my right honourable friend the Home Secretary to consider is whether Mr McKinnon's extradition would contravene his human rights. She is currently reviewing all the relevant material, including extensive representations provided by Mr McKinnon's solicitors covering all aspects of his case.

It would not be appropriate for me to comment on a case being considered in another jurisdiction. I would, however, note that Mr McKinnon's case has been exhaustively considered in the UK courts.

Families: Troubled Families

Question

Asked by ***Lord Avebury***

To ask Her Majesty's Government whether they have sought approval from the Information Commissioner for the identification of "troubled families", including access by local authorities to data on the Police National Computer. [HL777]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): All agencies that are sharing data for the identification of troubled families need to satisfy themselves of the legality of their processes. The financial framework for the troubled families programme (a copy of which has been placed in the Library) sets out a process for identification of such families and includes, at Annexe A, the legal basis on which this process may be undertaken.

The approval of the Information Commissioner to this process is not required and was not sought, as such sharing of data is permissible within existing legislation. The Department for Work and Pensions did, however, consult the Information Commissioner about the proposal to share social security data with local authorities for purposes connected with the troubled families programme.

Fishing: Stock

Question

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

To ask Her Majesty's Government what estimates they have on the predicted decline of stocks of white fish in the waters around the United Kingdom, in the light of current European Union policies and policies under negotiation. [HL838]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Taylor of Holbeach): The European Commission's assessment for this year of the state of fish stocks in the Atlantic and nearby seas indicates the proportion of overfished stocks fell from 32 out of 34 stocks in 2004 to 18 out of 38 stocks in 2011.

Although improvements are gradually being made under the current Common Fisheries Policy (CFP), the UK Government believe radical reform of this broken policy is needed to help achieve the maximum sustainable yield (MSY), something which the Commission agrees is a realistic and achievable goal. We have therefore pressed strongly for a reformed CFP to contain a clear legal commitment, with deadlines, to achieve MSY as soon as possible. Reform negotiations continue, but last week the council agreed an approach in principle that includes legally binding limits on fishing levels to ensure scientific advice on MSY is taken into account when agreeing annual quotas.

Fluoridation

Questions

Asked by ***Earl Baldwin of Bewdley***

To ask Her Majesty's Government, further to the Written Answer by Earl Howe on 1 May (*WA 448–9*) where they cited the 2004 Newcastle fluoride bioavailability study as showing "no statistically significant difference" between two types of fluoridated water for plasma fluoride concentration following water ingestion in healthy young adults, to what they were referring in the Written Answer by Earl Howe on 27 February (*WA 253*) where they stated that "the researchers concluded that the findings were still statistically significant". [HL801]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): There is no inconsistency. The School of Dental Sciences at Newcastle University found statistically significant results from its research into the bioavailability of fluoride. One of the findings was that there were no (statistically significant) differences

in plasma fluoride concentration following ingestion in healthy young adults of water in which fluoride occurs naturally and water to which fluoride has been added.

Asked by ***Earl Baldwin of Bewdley***

To ask Her Majesty's Government, further to the Written Answer by Lord Hunt of Kings Heath on 31 January 2001 (*WA 66*) in which the British Fluoridation Society was stated to have a promotional role, whether it is the case that present and past officers and members of the society should formally register an interest when sitting on bodies which deliberate on aspects of fluoridation policy; and, if not, whether they will issue advice to that effect. [HL802]

Earl Howe: This is a helpful suggestion, which we will bear in mind if we set up an expert advisory group on research or policy development on fluoridation.

Asked by ***Earl Baldwin of Bewdley***

To ask Her Majesty's Government what is their assessment of the article "Weeping and Wailing and Gnashing of Teeth: The Legal Fiction of Water Fluoridation" in the journal *Medical Law International 2012* in respect of the medicinal status of fluoridation. [HL803]

Earl Howe: Our views remain the same as that of the Medicines and Healthcare Products Regulatory Agency, that fluoride added to drinking water is not a medical product.

Food: Food Security Summit

Question

Asked by ***The Lord Bishop of Wakefield***

To ask Her Majesty's Government which government department has lead responsibility for organising the food security summit during the 2012 Olympic Games. [HL650]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Taylor of Holbeach): The Department for International Development will have lead responsibility for organising a major event on hunger during the 2012 Olympic Games.

Gaza

Questions

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what assessment they have made of the statement by the International Committee of the Red Cross on 14 June 2010 on the closure of the Gaza Strip; and what measures they are taking to support the lifting of the blockade. [HL742]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): The UK frequently raises with the Israeli authorities our concerns on the impact of restrictions on Gaza, urging Israel to comply with her international obligations. In close co-ordination with our European Union partners and the Office of the Quartet Representative, we continue to press the Israeli Government at ministerial and official level to ease access restrictions.

While we welcome the steps that have been taken, including the first exports of textiles goods from Gaza to the UK, a normalisation of Israeli trade relationship with Gaza would make the greatest contribution to economic development.

Asked by ***The Lord Bishop of Exeter***

To ask Her Majesty's Government (1) what discussions they have had with, and (2) what representations they will make to, the United Nations Relief and Works Agency for Palestinian Refugees regarding its decision to stop funding the Ali Ahli Hospital in Gaza. [HL843]

Lord Howell of Guildford: We understand that the United Nations Relief and Works Agency for Palestinian refugees (UNRWA) is currently re-tendering the contract to provide secondary healthcare for the refugee community in Gaza, which was previously held by the Al Ahli Hospital. As a major donor to the United Nations Relief and Works Agency (UNRWA), the UK—through the Department for International Development—liaises closely with UNRWA to ensure that essential services to Palestinian refugees are delivered effectively and provide good value for money for the UK taxpayer. However, it would not be appropriate for us to intervene in individual procurement decisions or offer additional funding to an unsuccessful bidder.

Government Departments: Apprentices

Question

Asked by ***Lord Adonis***

To ask Her Majesty's Government what was the total number of staff employed within the private offices of Ministers and the Permanent Secretary at the Department for Transport on 1 June; and how many of them were (1) under the age of 21, (2) apprentices under the age of 21, and (3) apprentices over the age of 21. [HL909]

Earl Attlee: As of 1 June 2012, there is a total of 21 staff employed in the private offices of Ministers and the Permanent Secretary. None was either an apprentice or under the age of 21.

Government Departments: Communication

Question

Asked by ***Lord Shutt of Greetland***

To ask Her Majesty's Government, in the light of the National Audit Office's report *Central government's communications and engagement with local government*, how the sending of 744,115 e-mails by central government departments to local authorities in March 2012 sits with their localism aims.[HL829]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): We welcome this report and are pleased to have been recognised for our communication and engagement with local authorities. It is reassuring to learn that channels such as our website, info4local, and our local authority chief executive newsletter are regarded as best practice and we will continue to build on these successes.

Inevitably even in a localist world, central and local government need to work together and it is right that we maintain communications and be transparent. However, it is not DCLG's position to try to monitor communication standards and levels across government. According to the National Audit Office' report, it is the Department for Work and Pensions and its agencies and other bodies, and the Ministry of Justice and its agencies and other bodies, that send the greatest volume of e-mails to local authorities. DCLG will aim to engage with Whitehall departments on a periodic basis to assess respective progress on the National Audit Office's recommendations.

The Government are committed to decentralisation, devolving power, money and knowledge to those best placed to find the best solutions to local needs.

Lifting the burden of centrally imposed bureaucracy is a central plank of our approach—since the summer of 2010, the Government have ended over a quarter of all data collections from local authorities, in addition to ending comprehensive area assessment, the national indicator set and local area agreements.

Government Departments: Legal Payments

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government what payments were made by the Department for Communities and Local Government to (1) Clifford Chance, (2) Freshfields, (3) Slaughter and May, (4) Allen and Overy, and (5) Linklaters, in (a) 2008–09, (b) 2009–10, (c) 2010–11, and (d) 2011–12; and to what those payments related. [HL916]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): (1) Clifford Chance—Supplier Reference 401460: No payment records reported in the time periods specified.

(2) Freshfields: No supplier record found.

(3) Slaughter and May—Supplier Reference 406425: See table below for payments made for legal services:

Financial Year	*Value (£)*
2008-09	207,478.37
2009-10	399,685.15
2010-11	8,159.86
2011-12	None to date

(4) Allen and Overy—Supplier Reference 400225: No payment records reported in the time periods specified.

(5) Linklaters—Supplier Reference 413248: No payment records reported in the time periods specified.

Health: Diabetes

Questions

Asked by ***Lord Morris of Aberavon***

To ask Her Majesty's Government what are the difficulties in disaggregating expenditure on type 1 diabetes from type 2; and whether, in the light of the report of the National Audit Office that the number of people with diabetes in England is projected to increase to 3.8 million people by 2020, they will give further consideration to providing sufficient financial information so as to make adequate provision for the future treatment of type 1 diabetes patients. [HL786]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): Estimating expenditure on healthcare conditions such as diabetes is a complex process. National Health Service commissioners need to compile information from a wide range of service areas, such as hospital admissions, community care and drugs prescribed in primary care. Based on existing information systems it is not always possible to identify whether a particular admission or treatment is for type 1 or type 2 diabetes. For example, drugs prescribed in primary care are recorded using British National Formulary codes, but this may be prescribed for type 1 or type 2 diabetes patients.

The department works closely with a range of NHS organisations to improve the estimates of expenditure and makes improvements to the guidance, systems and processes of the collection each year. The department will review the National Audit Office report and consult with the relevant experts in order to determine what improvements can be made to the estimates of diabetes expenditure in future years.

Asked by ***Lord Morris of Aberavon***

To ask Her Majesty's Government what is the current expenditure on research for type 1 diabetes treatment; and what consultation they have carried out with researchers and the medical profession as to its adequacy. [HL787]

Earl Howe: The department spent £1.8 million in 2011-12 on research on type 1 diabetes treatment through research programmes, research centres and units, and research training awards.

The department's total spend on research on type 1 diabetes treatment is higher because expenditure by the National Institute for Health Research (NIHR) Clinical Research Network (CRN) on this topic cannot be disaggregated from total CRN spend.

The CRN currently has 211 studies in diabetes that are in set-up or recruiting patients. The breakdown is as follows:

Type	*Number of Studies*
1	44
2	108
1 and 2	58
Other diabetes-related	14

The NIHR welcomes funding applications for research into any aspect of human health, including type 1 diabetes. These applications are subject to peer review and judged in open competition, with awards being made on the basis of the scientific quality of the proposals made. In all disease areas, the amount of NIHR funding depends on the volume and quality of scientific activity.

The department has not consulted with researchers and the medical profession specifically on the adequacy of current expenditure on research for type 1 diabetes treatment.

Health: Lyme Disease

Question

Asked by ***The Countess of Mar***

To ask Her Majesty's Government how many United Kingdom residents received (1) a positive serology test result, (2) an equivocal test result, and (3) a negative test result, for Lyme borreliosis from tests carried out by all National Health Service microbiology laboratories using ELISA or C6 ELISA test kits, including Primary Care Trust laboratories, Health Protection Agency collaborating laboratories and Health Protection Scotland laboratories, for the years 2005 to 2010 inclusive. [HL685]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Health Protection Agency (HPA) until 2010 received data voluntarily supplied by National Health Service institutions in England and Wales on the number of positive Lyme cases they have identified, but this information does not include the analytical method used. The HPA cannot answer on behalf of Health Protection Scotland.

Within the HPA, confirmatory Lyme testing between 2005 and 2010 was carried out by the HPA Lyme Borreliosis Unit at Southampton. During this period, the Southampton unit has used three different enzyme linked immuno sorbent assay (ELISA) types, including the C6 ELISA.

In addition, the number of samples undergoing confirmatory testing at the Southampton unit by the various different ELISA tests showing as equivocal, negative and reactive from referring laboratories (which are NHS, HPA and private laboratories) are shown in the following tables.

IgG EIA

	Equivocal	*Negative*	*Reactive*	*Total Tested*	*Equivocal or Reactive*
2005				Test unavailable prior to 2006	
2006	6	126	25	157	31
2007	85	1,448	289	1,822	374
2008	74	1,007	269	1,350	343
2009	96	1,030	288	1,414	384
2010	85	816	206	1,107	291

IgM EIA

	Equivocal	*Negative*	*Reactive*	*Total Tested*	*Equivocal or Reactive*
2005				Test unavailable prior to 2006	
2006	1	147	9	157	10
2007	42	1,644	132	1,818	174
2008	66	982	245	1,293	311
2009	87	876	398	1,361	485
2010	90	674	296	1,060	386

Combined IgG & IgM EIA

	Equivocal	*Negative*	*Not detected*	*Reactive*	*Total Tested*	*Equivocal or Reactive*
2005	280	3,654		376	4,310	656
2006	250	2,929		442	3,621	692
2007	157	1,635		135	1,927	292
2008	145	2,371		137	2,653	282
2009	298	2,664	19	182	3,163	480
2010	363	2,732		195	3,290	558

Combined IgG & IgM using Synthetic Peptide (C6)

	Equivocal	*Negative*	*Not detected*	*Reactive*	*Grand Total*	*Equivocal or Reactive*
2005	23	4,700		932	5,655	955
2006	39	6,889		910	7,838	949
2007	206	8,875		1,216	10,297	1,422
2008	158	10,463	1	1,397	12,019	1,555
2009	184	11,622		1,426	13,232	1,610
2010	276	11,707		1,241	13,224	1,517

Notes:

1. ELISA: Acronym for Enzyme Linked Immuno Sorbent Assay: method used to capture either specific target antigen or antibody, either in a liquid or solid phase assay, to detect the presence of these targets in clinical and other samples.

2. IgG EIA: ELISA detecting specifically the immunoglobulin class IgG.

3. IgM EIA: ELISA detecting specifically the immunoglobulin class IgM.

4. C6 ELISA: A commercial ELISA utilising a synthetic peptide (a component part of a protein designed to enhance specificity).

5. Reactive: where there is a signal, either as a colour generation in a liquid system or as line of staining on a solid phase indicating the presence of a target, eg antigen or antibody. Depending on the assay, this reactivity may require further analysis to determine its significance in terms of specificity. Reactive is the equivalent to a positive result.

6. Equivocal: where an assay signal or reaction has not met a complete set of preset criteria (possibly defined by the kit manufacturer or by laboratory validation methods) to satisfy an interpretation of positive, but is demonstrating sufficient reactivity that requires further investigation, perhaps by alternative assay or by repeat specimen.

Health: Mitochondrial Disease

Question

Asked by ***The Countess of Mar***

To ask Her Majesty's Government why mitochondrial function testing is not generally available through the National Health Service. [HL684]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): We understand that mitochondrial function testing as a possible diagnostic test for chronic fatigue syndrome/myalgic encephalomyelitis is not yet accepted as part of normal clinical practice. It is for local commissioners to determine what services they should commission to meet the needs of their populations, within available resources and local priorities.

Health: Multiple Sclerosis

Questions

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

To ask Her Majesty's Government how many people have been diagnosed with multiple sclerosis in (1) each primary care trust, (2) England, and (3) each parliamentary constituency in each of the past five years for which data are available. [HL688]

To ask Her Majesty's Government how many people with symptoms of multiple sclerosis have been diagnosed with (1) relapsing remitting, (2) secondary progressive, and (3) primary progressive multiple sclerosis, in (a) each primary care trust, (b) England, and (c) each parliamentary constituency, in each of the past five years for which data are available. [HL689]

To ask Her Majesty's Government how many people died as a result of multiple sclerosis in (1) each primary care trust, and (2) England, in each of the past five years for which data are available. [HL690]

To ask Her Majesty's Government whether they will introduce a new national clinical audit to collect data about the quality of care provided to people with multiple sclerosis. [HL692]

To ask Her Majesty's Government what plans they have to collect data on patient report outcome measures for people with multiple sclerosis. [HL693]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): Information on the number of people of people diagnosed with multiple sclerosis (MS) is not available centrally.

The UK Statistics Authority collects mortality numbers and rates for England and Wales, including all-cause and specific causes as defined by the International Classification of Diseases, Tenth Revision (ICD-10).

The department currently has no formal plans to introduce a central collection of patient reported outcome measures for people with multiple sclerosis, or to introduce a clinical audit.

The NHS Outcomes Framework sets the national outcomes that the National Health Service should be aiming to improve. Domains two, three and four of the NHS Outcomes Framework relate to neurological conditions, in terms of enhancing the quality of life for people with long-term conditions, helping people to recover from episodes of ill health and injury and ensuring that people have a positive experience of care. The following indicators from the NHS Outcomes Framework are particularly relevant:

2. Health related quality of life for people with long-term conditions; and

2.1 Proportion of people feeling supported to manage their condition.

These indicators will be measured through the GP Patient Survey and, while these are generic measures, it should be possible to break down the responses into patients with various specific long-term conditions, including neurological conditions.

The Government want to make more use of information generated by patients themselves by making wider use of tools such as patient reported outcome measures (PROMS). In the White Paper *Equity and Excellence: Liberating the NHS*, the Government made a commitment to expand, wherever practicable, the collection of PROMS to a wider range of patients.

Health: Neurology

Questions

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

To ask Her Majesty's Government whether they will develop a national patient experience survey for neurological conditions, and if so, how. [HL691]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The department currently has no plans to introduce a national patient experience survey for neurological conditions.

There are a number of drivers that require and support healthcare organisations to continually measure and improve the patient experience.

The NHS Outcomes Framework sets the national outcomes that the National Health Service should be aiming to improve. Domains two, three and four of the NHS Outcomes Framework relate to neurological conditions, in terms of enhancing the quality of life for people with long-term conditions, helping people to recover from episodes of ill health and injury and ensuring that people have a positive experience of care. The following indicators from the NHS Outcomes Framework are particularly relevant:

2. Health related quality of life for people with long-term conditions; and

2.1 Proportion of people feeling supported to manage their condition.

These indictors will be measured through the GP Patient Survey and, while these are generic measures, it should be possible to break down the responses into patients with various specific long-term conditions, including neurological conditions.

In the White Paper *Equity and Excellence: Liberating the NHS*, the Government made a commitment to expand the collection of patient reported outcome measures (PROMS) wherever practicable. The department has commissioned a number of pilots to meet this commitment. This includes a pilot that covers six conditions in primary care, including epilepsy. Patients were sent a questionnaire to collect baseline data in 2011 and the follow-up will take place this year. From these it will be possible to work out the changes to patient reported health. The pilot is expected to report later this year.

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

To ask Her Majesty's Government whether they will take steps to increase data collection on neurological conditions at general practice, clinical commissioning group, primary care trust and provider level. [HL759]

Earl Howe: The Government's overall policy on data collections aims to ensure that proposals for new or continued data collections reduce the burden on local bodies by ensuring that wherever possible all data collected nationally are of value locally.

The NHS Outcomes Framework already defines and enables measurement of the key outcomes that matter to patients. All five domains within the framework have relevance to long-term neurological conditions, while domain two, enhancing the quality of life for people with long-term neurological conditions, seeks to capture specific information on how successfully the National Health Service is supporting people with long-term conditions to live as normal a life as possible.

Health: Rare Diseases

Question

Asked by ***Baroness Masham of Ilton***

To ask Her Majesty's Government what assessment they have made of the suitability for use of the process of assessment of treatments for rare diseases developed by the Advisory Group on National Specialised Services. [HL945]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Advisory Group for National Specialised Services (AGNSS) is an independent stakeholder advisory group, which advises Ministers on the highly specialised services and technologies which should be commissioned nationally. In making its recommendations to Ministers, AGNSS is guided by a decision-making framework which was developed through wide-ranging consultation. The department has made no separate assessment of the processes used by AGNSS.

Healthcare: Costs

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government, since European Union Regulation 883/2004 entered into force on 1 May 2010, (1) which countries are charging healthcare cost on an actual basis for United Kingdom pensioners residing in those countries; (2) how many pensioners were involved in the most recent year; (3) what were the total (a) actual, and (b) average pensioner charges per country respectively; and (4) what were the actual payments to those countries charging on an average costs basis. [HL793]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The following countries charge actual costs for state-funded healthcare under 883/2004: Austria, Belgium, Bulgaria, Cyprus (after two years), Czech Republic, France, Germany, Greece, Latvia, Lithuania, Luxembourg, Poland, Romania, Slovakia and Slovenia. The number of United Kingdom state pensioners registered in these countries is shown in the following table:

Number of registered UK state pensioners residing in another EEA member state

Austria	557
Belgium	521
Bulgaria	363
Czech Republic	81
France	41,444
Germany	2,729
Greece	2,690
Italy	2,881
Latvia	36
Lithuania	17
Luxembourg	51
Poland	413
Romania	11
Slovakia	14
Slovenia	54
Republic of Cyprus	11,029
Total	62,891

Claims for payments for pensioners under European Union Regulation 883/2004 have only recently started to be received, and so no payments have yet been made against such claims. The 18-month deadline under the new regulations refers to the date the claim is submitted to the UK, not the date of treatment. The processing of all claims by the UK and against the UK under the new regulations is within the above 18-month deadline. We anticipate that the first payments under Regulation 883/2004 will be made in late July 2012.

Higher Education: English Students

Question

Asked by ***Lord Janner of Braunstone***

To ask Her Majesty's Government what is their assessment of the 10% drop in English students applying for September 2012 university places compared to 2011. [HL854]

Baroness Verma: Application rates for 18 year-olds are an important guide to demand for higher education as they have generally not previously had the opportunity to apply. The application rate is down 0.9% from 32.4% to 31.5%. This is still higher than the 2010 rate of 31.4%—so the application rate for 18 year-olds, which allows for the decline in the total population of 18 year-olds, has remained strong. The proportion of English school leavers applying to university is the second highest on record.

It is encouraging that applications from people from some of the most disadvantaged backgrounds remain strong. The independent information provided by UCAS shows that the application rate for people

from the most disadvantaged backgrounds is holding up with only a 0.2% drop for those applying by the January 15 deadline.

Even with a small reduction in applications, there have already been more applicants than there will be places. This will still be a competitive year like any other as applicants appreciate that university remains a good long-term investment in their future.

Houses of Parliament: Scrutiny Override

Question

Asked by ***Lord Boswell of Aynho***

To ask Her Majesty's Government, for each Department, from July to December 2011, (1) on how many occasions the scrutiny reserve resolution in the House of Lords was overridden, (2) on how many occasions the scrutiny reserve resolution in the House of Commons was overridden, and (3) in respect of how many documents an override occurred in (a) both Houses or (b) either House. [HL687]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): The Government will always seek to avoid breaching the scrutiny reserve resolutions of either House of Parliament. We will continue to account for their actions in writing to the Chairmen of the scrutiny committees in each House when this happens.

Due to the parliamentary recess, the second half of the year always presents more of a challenge for the scrutiny process; 25 of the overrides occurred when Parliament was in recess. Thirty-five of the overrides involved fast-moving sanctions and restrictive measures proposals in relation to countries such as Libya, Syria, and Iran. It was important that proposals were agreed urgently so that measures were implemented quickly. Regrettably, this meant that on several occasions the Government had to agree proposals before the committee had the opportunity to scrutinise the documents. The Foreign and Commonwealth Office ensured that the committee was notified in writing of each of these overrides and that the committee was subsequently given the opportunity to consider each of these documents.

With regards to those scrutiny overrides that did not relate to fast-moving sanctions and restrictive measures proposals or did not fall over parliamentary recess, six overrides related to fast-moving discussions in the World Trade Organisation where there was not enough time to seek scrutiny clearance between the Commission proposal and the date for Council agreement for these discussions and regrettably the Government had to override scrutiny. Similarly, three scrutiny overrides related to programmes on financial assistance to Portugal and Ireland where there was not enough time to seek scrutiny clearance between the Commission proposal and the date for Council agreement for these discussions. In these cases Her Majesty's Treasury wrote to the scrutiny committees to flag the tight timetable and committed to provide the scrutiny committees with the Explanatory Memoranda within five days rather than 10 and highlighted that the Government would vote in favour. Two other scrutiny overrides related to fast-moving negotiations on European market infrastructure regulation and the annual budget and, again, scrutiny was overridden in both these cases because negotiations were moving so quickly. In both these cases the final compromise reached was acceptable to the committees.

There were a further two scrutiny overrides so that the UK could adopt the UK's opt-in as a justice and home affairs obligation.

The figures requested are set out in the table below:

Department	*(1) House of Lords override*	*(2) House of Commons override*	*(a) No. of overrides in both Houses*	*(b) Total no. of overrides*
Department of Business, Innovation and Skills	0	7	0	7
Department for Culture, Media and Sport	0	1	0	1
Department of Environment, Food and Rural Affairs	0	2	0	2
Foreign and Commonwealth Office	36	40	36	40
HM Treasury	4	2	1	5
Department for Transport	1	0	0	1
	41	52	37	56

Immigration: Children

Question

Asked by ***Lord Lester of Herne Hill***

To ask Her Majesty's Government, further to the Written Answer by Lord Henley on 11 June (*WA 196*), how many children under 18 have been placed in immigration detention at Heathrow Airport since 16 December 2010; and whether they will in future collect statistics on the number of children placed in immigration detention at airports. [HL753]

The Minister of State, Home Office (Lord Henley): We are unable to provide any statistics for the number of children under 18 who have been placed in immigration detention at airports since 16 December 2010.

The Home Office does publish statistics on children in detention but this excludes short-term holding rooms at ports and airports (for less than 24 hours). These data on children in detention can be found on the Home Office website. I have placed a copy of the latest figures (relating to April 2012) in the Library of the House and these are also available at: http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/child-detention-apr2012.

There has been a previous request under the Freedom of Information Act 2000 asking for information on children held at ports. Please find the information

relating to children held at Heathrow that was released under this request in the table below.

Breakdown of the number of children held at Heathrow Airport between May 2011 and the end of August 2011

May-11	Unaccompanied	In Family
Heathrow Terminal 1	3	5
Heathrow Terminal 3	1	8
Heathrow Terminal 4	4	28
Heathrow Terminal 5	4	0
Jun-11	Unaccompanied	In Family
Heathrow Terminal 1	1	14
Heathrow Terminal 3	2	44
Heathrow Terminal 4	11	30
Heathrow Terminal 5	4	8
Jul-12	Unaccompanied	In Family
Heathrow Terminal 1	11	16
Heathrow Terminal 3	2	43
Heathrow Terminal 4	13	51
Heathrow Terminal 5	13	18
Aug-11	Unaccompanied	In Family
Heathrow Terminal 1	6	14
Heathrow Terminal 3	11	52
Heathrow Terminal 4	1	55
Heathrow Terminal 5	3	14

These data are based on management information only and have not been subject to the detailed checks that apply for national statistics publications. These figures are provisional and are subject to change.

Immigration: Deportation

Question

Asked by ***Lord Lester of Herne Hill***

To ask Her Majesty's Government by what process the UK Border Agency deported a Turkish national in March 2012, despite the existence of a court order prohibiting deportation; what steps they are taking to comply with Mr Justice Singh's order that they find the individual and bring him back to the United Kingdom; and what steps they are taking to prevent further breaches of court orders prohibiting the removal of asylum seekers. [HL776]

The Minister of State, Home Office (Lord Henley): We cannot comment on individual cases. However, whenever we are notified of a barrier to removal, including a claim for asylum, we will take all the necessary steps to halt removal directions.

Immigration: Detention

Questions

Asked by ***Lord Hylton***

To ask Her Majesty's Government what is their assessment of the level of (1) mental illness, and (2) HIV infection among (a) African, and (b) other women in United Kingdom detention and removal centres, and of the adequacy of treatment available in those centres for such conditions. [HL656]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): Information about the level of mental illness and human immunodeficiency virus infection among African women and other women who are held in immigration and removal centres (IRCs) is not collected centrally.

Although the United Kingdom Border Agency (UKBA) operating standards require that all detainees must have available to them the same range and quality of health services as the public receives from the National Health Service, both the Department of Health and Home Office agreed that the necessary level of clinical expertise to inform commissioning of healthcare or standard-setting rests firmly with NHS organisations.

Currently, the majority of IRC healthcare facilities are provided by private providers who are contracted by the UKBA. The department is now working with the UKBA on a phased programme to transfer commissioning and funding responsibility for healthcare provision within IRCs fully to the NHS from April 2014.

Asked by ***Lord Lester of Herne Hill***

To ask Her Majesty's Government, further to the Written Answer by Lord Henley on 11 June (*WA 196*), why the UK Border Agency does not maintain central records of the number of individuals placed in immigration detention who claim to have been tortured, claim to have mental health problems or about whom mental health problems have been observed; and whether they will do so in future. [HL833]

The Minister of State, Home Office (Lord Henley): The UK Border Agency has no plans to create a central record of the number of individuals placed in immigration detention who claim to have been tortured, claim to have mental health problems or about whom mental health problems have been observed.

Case owners take a number of factors into consideration, including any claim to have been tortured and reported or observed mental health issues, in order to reach a decision on whether detention or continuing detention is appropriate.

There are processes to inform the ongoing individual risk assessment for each case. A centralised record of torture claims and mental health issues would not alter the decisions made in each individual case but would result in resource implications to capture, monitor and maintain the record across a number of directorates and immigration removal centres.

Asked by ***Lord Lester of Herne Hill***

To ask Her Majesty's Government, further to the Written Answer by Lord Henley on 11 June (*WA 196*), what information is known by immigration detention centre managers and the UK Border Agency about the mental health status of individual detainees. [HL834]

Lord Henley: Medical records for detainees are confidential. Medical information is not shared with UK Border Agency staff unless the detained person has given explicit consent.

Where a medical practitioner believes that a detainee's health is likely to be injuriously affected by continued detention or suspects a detained person of having suicidal intentions, he or she is required to inform the UK Border Agency.

Asked by ***Lord Lester of Herne Hill***

To ask Her Majesty's Government, further to the Written Answer by Lord Henley on 11 June (*WA 197*), what measures they (1) have taken, (2) are taking, and (3) will take, to avoid any and all further deaths during enforced returns. [HL835]

Lord Henley: The UK Border Agency paused the use of restraint techniques on scheduled removal flights for 10 days following the death of Mr Jimmy Mubenga in October 2010. Restraint techniques for all escorted scheduled removal flights were reinstated on 25 October, when the UK Border Agency was satisfied that restraint techniques were not inherently dangerous.

While the UK Border Agency is satisfied that techniques are safe, no use of restraint can be totally risk-free, which is one of the reasons why it is used only as a last resort. Professionals in the use of restraint from the National Offender Management Service are reviewing the techniques used on aircraft in order to see if they can be made even safer.

The UK Border Agency is co-operating fully with the investigations being conducted by the police, the Prisons and Probation Ombudsman and the coroner into the circumstances surrounding Mr Mubenga's death and will carefully consider the outcome and findings of these investigations.

Israel

Questions

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what representations they have made to the Government of Israel on its compliance with United Nations Security Council Resolution 1860. [HL741]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): We remain concerned about the situation in Gaza and the constant risk of an escalation of violence. We condemn any attacks involving the targeting of civilians, including rocket attacks by militant Palestinian groups from Gaza into southern Israel. We regularly make representations on this issue and call on all sides to show restraint.

In close co-ordination with our European Union partners and the Office of the Quartet Representative, we continue to press the Israeli Government to ease restrictions on Gaza. We have called for a sustained increase in the flow of humanitarian aid, commercial goods and persons from and to the Gaza Strip and on improved access to agricultural and fishing areas. The Israeli restrictions do significant and measurable damage to the economy and living standards of ordinary people in Gaza and only serve to strengthen, not weaken, Hamas.

A solution to the Israeli-Palestinian conflict is needed urgently to give the Palestinian people the state that they need and deserve, and the Israeli people the security and peace that have eluded them for so long. We regularly urge both sides to focus on dialogue, to avoid steps that could undermine the prospects for peace and to work towards the resumption of direct negotiations.

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

To ask Her Majesty's Government whether the United Nations has passed resolutions requiring Israel to allow the International Atomic Energy Agency to inspect its nuclear facilities; and what assessment they have made of the reaction of the Government of Israel. [HL745]

Lord Howell of Guildford: United Nations Security Council Resolution 487 in 1981 called on Israel to place its nuclear facilities under the safeguards of the International Atomic Energy Agency (IAEA). The United Nations General Assembly and IAEA have also passed several resolutions relating to this issue. Israel has maintained a policy of ambiguity surrounding its nuclear status. The Israeli Government responded to the United Nations Security Council resolution at the time by rejecting it, describing it as "biased and one sided". However, Israel has voluntarily allowed safeguards at the US-supplied research reactor at Nahel Soreq.

The UK has consistently called on Israel to sign up to the non-proliferation treaty and to agree a full scope comprehensive safeguards agreement with the IAEA.

Israel and Palestine

Questions

Asked by ***Lord Judd***

To ask Her Majesty's Government, further to the Written Answer by Lord Howell of Guildford on 11 June (*WA 207*), whether they will make representations to the Government of Israel about the transfer of Palestinian child prisoners to detention facilities located in Israel, in the light of Article 76 of the Fourth Geneva Convention. [HL720]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): Our embassy in Tel Aviv lobbies the Israeli authorities regularly on the issue of Palestinian child prisoners.

In addition to our lobbying of the Israeli authorities, the UK has supported research into this issue by leading UK and international lawyers; the report is due to be published in late June/early July.

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what assessment they have made of the Government of Israel's compliance with the terms of the 14 May agreement concerning Palestinian prisoners. [HL841]

Lord Howell of Guildford: On the 16 May 2012, the Secretary of State for Foreign and Commonwealth Affairs, my right honourable friend the Member for Richmond (Yorks) (Mr Hague), welcomed the deal reached between the prisoners and the Israeli authorities. Our embassy in Tel Aviv and consulate-general in Jerusalem have been working closely with both sides to encourage a resolution of this issue, which we hope will be fully implemented over the coming weeks. However, we have continuing concerns over the reported extension of administrative detention orders. We also continue to raise our concerns with the Israeli authorities about the extensive use of administrative detention, pressing for Israel to either charge or release administrative detainees.

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what representations they have made to the Government of Israel about ending the practice of administrative detention, in the light of reports from Amnesty International that a further 30 detention orders have been renewed, and three new ones issued, since the 14 May agreement with Palestinian hunger strikers was made. [HL842]

Lord Howell of Guildford: On the 16 May 2012, the Secretary of State for Foreign and Commonwealth Affairs, my right honourable friend the Member for Richmond (Yorks) (Mr Hague), welcomed the deal reached between the prisoners and the Israeli authorities. Our embassy in Tel Aviv and consulate-general in Jerusalem have been working closely with both sides to encourage a resolution of this issue, which we hope will be fully implemented over the coming weeks. However, we have continuing concerns over the reported extension of administrative detention orders. We also continue to raise our concerns with the Israeli authorities about the extensive use of administrative detention, pressing for Israel to either charge or release administrative detainees.

Asked by ***Lord Hylton***

To ask Her Majesty's Government what support they are giving to the Parents Circle Families Forum in Israel and Palestine. [HL929]

Baroness Northover: The UK welcomes the work of the Parents Circle Families Forum (PCFF) in promoting reconciliation between families on both sides of the Palestinian-Israeli conflict. We are not currently providing financial support to the PCFF in Israel or the Occupied Palestinian Territories. However, PCFF has participated in a UK-funded project on the use of social media by human rights organisations.

Libya

Question

Asked by ***Lord Janner of Braunstone***

To ask Her Majesty's Government what is their latest assessment of Libya's transition towards democracy. [HL821]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): Libya has made important progress in the last year. On 7 July, the country is scheduled to have its first democratic elections in over 40 years. It has worked rapidly, supported by the United Nations (UN), to prepare for National Assembly elections and, while there will no doubt be some irregularities and setbacks, this will be a significant achievement of which the Libyan people should be proud. The UN estimates that 78% of all those eligible have registered to vote and around half of these are women.

However, there is undoubtedly much still to be done. It is important that the new Libya upholds its commitments to human rights and the rule of law, and addresses concerns we have about reports regarding the treatment of detainees in custody. It is also important that the Libyan Government restore security to the streets and militias are properly reintegrated into society, and make further progress with restarting the economy and building government institutions.

Nuclear Security

Question

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

To ask Her Majesty's Government what steps they are taking to increase capacity in the United Kingdom nuclear risk market to facilitate the future nuclear new build programme. [HL662]

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Lord Marland): The Government continue to work with nuclear operators and insurers to encourage them to enter the nuclear insurance market and/or to provide coverage for all elements of operators' third-party liability.

Olympic and Paralympic Games 2012: Transport

Question

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what is their present assessment of the readiness of the transport infrastructure to cope with the additional journeys as a result of the Olympics and Paralympics this summer. [HL813]

Earl Attlee: Some £6.5 billion has been invested in transport infrastructure and detailed operational planning. Additional park and ride, direct coach services and extended national rail, Tube and DLR services are all ready.

We are confident that the transport system will be able to get people to and from Games events but we encourage all spectators to plan their journeys in advance and to allow sufficient time.

We are also confident that we can keep London and the UK moving and "open for business". An extensive programme of engagement is under way to assist those travelling in areas affected by the Games to plan their journeys and, where appropriate, consider alternative times, routes or modes of transport.

Further details can be found at www.getaheadofthegames.com.

Overseas Aid

Question

Asked by ***Baroness Nicholson of Winterbourne***

To ask Her Majesty's Government what percentage of the United Kingdom's bilateral aid is spent in low-income countries. [HL714]

Baroness Northover: In 2011, 41% of the United Kingdom's bilateral aid was directly attributable to low-income countries. This is the highest level since 2007. In addition, a further 40% is regional spend, a substantial proportion of which will include low-income countries. The breakdown of this regional spend will not be available until autumn when *Statistics on International Development* is published.

The remaining 59% of bilateral aid includes middle-income countries such as Ghana and Nigeria, which remain DfID focus countries because they are assessed to be in need of development assistance given their levels of poverty.

The coalition Government have closed many programmes in middle-income countries, such as Russia and China.

Pakistan

Question

Asked by ***Lord Wills***

To ask Her Majesty's Government what advice they have sought and received on the legality of the United States' use of drones in Pakistan. [HL732]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): Drone strikes are a matter for the United States and Pakistan, which are facing a shared and dangerous threat from terrorists. Naturally, we expect all concerned to act in accordance with international law.

Pensions

Question

Asked by ***Lord Janner of Braunstone***

To ask Her Majesty's Government what actions they will take following the release of figures from the Office for National Statistics indicating that their plans to link the state pension age to life expectancy will disproportionately affect people in the north of England because they live shorter lives. [HL856]

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud): The Chancellor announced at this year's Budget that there will be an automatic review of the state pension age to ensure it keeps pace with increases in longevity. Details of how this will operate will be published later this year.

Pitcairn Island

Question

Asked by ***Lord Ashcroft***

To ask Her Majesty's Government what proposals they have discussed regarding the construction of a light aircraft landing strip on Pitcairn to promote tourism. [HL671]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): The Government keep all options for developing a sustainable economy in the Pitcairn Islands under review, but specific proposals for a light aircraft landing strip are not under discussion. Current strategies for developing tourism on Pitcairn are based around increasing tourist numbers arriving by cruise ship, by private yacht and on the scheduled sailings of the MV "Claymore II".

Prisons: Mothers and Babies

Questions

Asked by ***Baroness Benjamin***

To ask Her Majesty's Government how many women in England and Wales were refused a place on a mother and baby unit in prisons in each of the past five years. [HL796]

To ask Her Majesty's Government how many women currently serving custodial sentences in England and Wales have children under the age of 18 months with them in prison. [HL797]

To ask Her Majesty's Government what is the annual cost of a place on a mother and baby unit. [HL798]

To ask Her Majesty's Government how many women gave birth whilst serving a custodial sentence in England and Wales in each of the past five years. [HL799]

The Minister of State, Ministry of Justice (Lord McNally): For the week ending 24 July 2012, 46 women currently serving custodial sentences in England and Wales had children under the age of 18 months with them in prison.

The National Offender Management Service (NOMS) began to centrally collect information on how many women in England and Wales were refused a place on a mother and baby unit (MBUs) in prisons from 2010. The number of women who applied for a place on a MBU from 2010-12 was 528, of whom 69 were refused a place. Data for 2007-09 are not available.

NOMS does not centrally record information on how many women gave birth whilst serving a custodial sentence in England and Wales in each of the past five years. NOMS is required only to collect information relating to pregnant mothers and babies in prison to aid the management of places on MBUs. Wider data on births during a custodial sentence are maintained locally; to provide information on the number of mothers who gave birth would require us manually searching an excess of 4,000 prisoner records in the 13 women's prisons in England and Wales to collate the information for the period in question.

NOMS also does not centrally collect information on the annual cost of a place on a mother and baby unit. NOMS holds information only on prisoner costs at establishment level. The average resource cost of a female prisoner is £49,000 per annum. This is based on the overall average costs per prisoner, for 2010-11, published as part of the management information addendum to the NOMS annual report and accounts 2010-11.

Railways: Fare Evasion

Questions

Asked by ***Lord Bradshaw***

To ask Her Majesty's Government what evidence they have that gating schemes at ticket barriers are more effective at reducing fare evasion than "on train" ticket inspections. [HL780]

Earl Attlee: Several factors affect a passenger's decision to evade paying the correct fare, including revenue protection staff, gating schemes and the level of penalty fares. The evidence available to the department from train operating companies is that an effective strategy to reduce ticketless travel uses all three approaches. Gating and ticket inspectors can both be effective strategies and train operators will usually choose the most cost-effective balance for their franchise area.

Asked by ***Lord Bradshaw***

To ask Her Majesty's Government whether they allow rail franchisees to choose their own method of reducing fare evasion on trains. [HL781]

Earl Attlee: The Department for Transport considers that, where possible, forthcoming franchises should permit train operators to address ticketless travel in the way they consider to be the most effective. A number of the franchises let by the previous Government include a so-called "cap and collar" provision. This makes the department liable, in certain circumstances, to provide revenue support to the franchisee. The presence of such arrangements can dilute the commercial incentives on train operators to protect revenue and tackle fare evasion. In some cases, this has meant that contractual obligations have been imposed through the franchise requiring certain actions to be taken on ticketless travel and gating.

Rwanda

Question

Asked by ***Lord Hylton***

To ask Her Majesty's Government whether they will suspend budgetary and military aid to Rwanda until the Government there cease their support of military commanders and militias attacking the Democratic Republic of Congo, following the precedent set by Sweden and the Netherlands in 2008. [HL804]

Baroness Northover: The Minister of State for the Foreign and Commonwealth Office, Lord Howell, and the Secretary of State for International Development, the right honourable Andrew Mitchell, have expressed concerns about the situation in the Kivus recently, in person, to the Rwandan Foreign Minister. They have also emphasised the need for the Congolese Government, with support from the United Nations Stabilization Mission in the DRC (MONUSCO), to tackle all armed groups in the region, including the Democratic Forces for the Liberation of Rwanda (FDLR) and M23, and bring to justice perpetrators of crimes of international concern. The UK and its partners continue to monitor the situation closely, on which basis it will consider any further action.

Social Care: Funding

Questions

Asked by ***Lord Warner***

To ask Her Majesty's Government how much local authorities spent on adult social care (in constant prices) in 2008–09, 2009–10, 2010–11 and 2011–12. [HL626]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): Outturn figures for local authority net current expenditure for 2008-09 can be found from revenue outturn data on the Department for Communities and Local Government website at: http://www.communities.gov.uk/documents/statistics/xls/140135413.xls.

2009-10 outturn figures can be found at: http://www.communities.gov.uk/documents/statistics/xls/2031748.xls.

2010-11 outturn figures can be found at: http://www.communities.gov.uk/documents/statistics/xls/2123435.

2011-12 figures are not comparative with previous years, due to transfers of responsibility between the NHS and local government.

2011-12 budget figures can be found from revenue account budget data at: http://www.communities.gov.uk/documents/statistics/xls/1933882.xls.

Figures for the GDP deflator can be found on the HM Treasury website http://www.hm-treasury.gov.uk/data_gdp_fig.htm.

Asked by ***Lord Warner***

To ask Her Majesty's Government what proportion of the additional funding for rehabilitation and adult social care services made available to the National Health Service and local government following the 2010 Budget has been spent on the services for which the money was intended; and what measures are in place to monitor whether that funding is used for the purposes intended. [HL627]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): In recognition of the pressures on the social care system in a challenging local government settlement, the Government have allocated an additional £7.2 billion by 2014-15 to support the delivery of social care. As part of this, the National Health Service will provide support to local authorities by funding measures that support social care. This will promote improved joint working between the health and social care systems.

Of this additional funding for 2011-12, £648 million was allocated for transfer by the NHS to local authorities, with another £150 million allocated to primary care trusts (PCTs) for spending on reablement services, which help people to regain their independence after a crisis.

PCTs and local authorities are expected to work together to agree jointly appropriate areas for social care investment, with a shared analysis of need and a common agreement on the outcomes to be met. We will also expect them to monitor how this funding has been used and to report back to the department.

NHS planning assurance indicates that, at the end of 2011-12, all of the £150 million was planned for spending on reablement and that there were plans for the full £648 million to be transferred to local authorities.

In September 2011, the department collected information from primary care trusts to understand how the transfer of NHS money was progressing and on which services it was being used. A demonstrative graph of all of the forms that the money is being spent on can be found in the NHS publication *The Quarter*, a copy of which has been placed in the Library.

Somalia

Question

Asked by ***Lord Avebury***

To ask Her Majesty's Government what representations they will make regarding the request by the Prime Minister of Kenya for European Union assistance in capturing the port of Kismayo, Somalia from al-Shabaab. [HL778]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): The Government have no current plans to make representations regarding the request by the Prime Minister of Kenya for European Union assistance in capturing the port of Kismayo. We welcome the formal agreement between the African Union and the Government of Kenya to integrate Kenyan troops into the African Union Mission in Somalia (AMISOM) signed on 2 June, and strongly encourage Kenya to co-ordinate all its activities through the AMISOM command and control structures.

Spencer Perceval

Question

Asked by ***Lord Laird***

To ask the Chairman of Committees whether he will invite the House Committee to support placing a plaque on the spot where Spencer Perceval was shot on 11 May 1812 and moving the incorrectly placed tiles. [HL792]

The Chairman of Committees (Lord Sewel): The placement of a plaque on the site of the assassination, in St Stephen's Hall, would require approval from both Houses. In the House of Lords, approval would be needed from the Administration and Works Committee. In the House of Commons, the Administration Committee would consider such matters and make a recommendation to Mr Speaker, who would decide whether to approve it. I would be content to put this matter before the Administration and Works Committee for consideration if the noble Lord was to write to me with a formal proposal.

The floor tiles around the area of the assassination were badly damaged during the Second World War and have been repaired over the years with spare tiles which were in stock. Three years ago, the Parliamentary Estates Directorate embarked on a programme to repair the tiles in St Stephen's Hall and, as part of that programme, the original pattern of tiles around the site of the assassination will be restored, with replicas where necessary. It is hoped that this work will be completed in the next 12 months.

Sudan

Question

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

To ask Her Majesty's Government whether any UK Government officials attended a meeting held at the London Embassy of Sudan on 30 May; and, if so, what was the purpose of that meeting; how many UK companies were represented, and what are their business interests in Sudan; whether any UK Government official spoke during the proceedings, and if so what was said and whether reference was made to the indictment of the President of Sudan for crimes against humanity, the alleged aerial bombardment of South Kordofan or human rights abuses in Sudan. [HL831]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): An official from UK Trade and Investment (UKTI) was invited to an event at the Sudanese embassy in London on 30 May, hosted by the Middle East Association. The Middle East Association invited approximately 20 companies to discuss a potential visit to Sudan organised by the association.

The UKTI official was asked to speak about the opportunities and obstacles to trade with Sudan. In this context the official covered the effect of US trade sanctions, difficulties companies have experience with banking services in Sudan, Sudanese efforts to diversify from oil to agriculture industries, and UKTI services.

Syria

Questions

Asked by ***Lord Hylton***

To ask Her Majesty's Government whether they have made an estimate of the number of refugees and asylum-seekers from Syria in (1) Turkey, (2) Lebanon, and (3) Jordan. [HL717]

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): The number of Syrian nationals officially registered as refugees in neighbouring countries as at 11 June totals 75,173, distributed as follows: Turkey—27,405; Lebanon—19,068; Jordan—24,151; Iraq—4,549. We understand there are a further 11,000 refugees awaiting registration, and unofficial estimates suggest there are over 89,000 Syrians in need of assistance in neighbouring countries. The UK remains concerned about the number of Syrians fleeing the violence in Syria. We are engaging regularly with agencies and Governments in neighbouring countries to ensure an effective response.

The Department for International Development has committed to date £8.5 million towards the humanitarian assistance effort in Syria and neighbouring countries through humanitarian partners including the United Nations. This includes, on 19 April 2012, our announcement of £2 million funding to the United Nations Refugee Agency (UNHCR) to contribute to meeting critically assessed needs of up to 96,500 refugees in the region.

The UK also provides substantial core contributions to UNHCR to cover its operations worldwide including the Middle East region. We are in frequent contact with the United Nations High Commissioner for Refugees (UNHCR) with regard to the numbers of people affected and what further assistance may be needed from the international community.

Asked by ***Lord Hylton***

To ask Her Majesty's Government whether they will contribute to the appeal of the International Organization for Migration in conjunction with the United Nations High Commissioner for Refugees, for funds to meet the needs of Syrian refugees in northern Iraq. [HL863]

Baroness Northover: The UK has committed £2 million to support the UN Refugee Agency (UNHCR) to assist Syrian refugees in neighbouring countries, including Iraq. This is in addition to substantial core funding which the department provides to UNHCR for its global operations. We are not contributing directly to the International Organization for Migration (IOM) appeal, but UNHCR is working in partnership with local partners and other humanitarian agencies, including IOM, to ensure aid reaches those who need it most. The UK has also committed £2 million to the UN-managed Emergency Response Fund to support the humanitarian response in Syria and the region, through which IOM would be eligible to access further funding. We are engaging regularly with our humanitarian partners as to what further help may be needed.

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