Vol. 740
No. 54

Wednesday
24 October 2012

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

Questions
Isles of Scilly: Helicopter Services
EU: UK Net Contributions
Schools: Pupil Premium
Unemployment: Young People

Civil Aviation Bill
Order of Consideration Motion

Financial Services Bill
Committee (9th Day)

Piracy
Question for Short Debate

Grand Committee

Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012
Considered in Grand Committee

Defence Capabilities: EUC Report
Motion to Take Note

Written Statements

Written Answers

For column numbers see back page

£3·50

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

The bound volumes also will be sent to those Peers who similarly notify their wish to receive them.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
www.publications.parliament.uk/pa/ld201213/ldhansrd/index/121024.html

PRICES AND SUBSCRIPTION RATES

DAILY PARTS

Single copies:
Commons, £5; Lords £3·50

Annual subscriptions:
Commons, £865; Lords £525

LORDS VOLUME INDEX obtainable on standing order only.
Details available on request.

BOUND VOLUMES OF DEBATES are issued periodically during the session.

Single copies:
Commons, £105; Lords, £60.
Standing orders will be accepted.

THE INDEX to each Bound Volume of House of Commons Debates is published separately at £9·00 and can be supplied to standing order.

All prices are inclusive of postage.

© Parliamentary Copyright House of Lords 2012,
this publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

House of Lords

Wednesday, 24 October 2012.

3 pm

Prayers—read by the Lord Bishop of Leicester.

Isles of Scilly: Helicopter Services

Question

3.06 pm

Asked By ***Lord Berkeley***

To ask Her Majesty's Government what steps they are taking to ensure a lifeline passenger service to the Isles of Scilly following the closure of the helicopter service on 1 November 2012.

Earl Attlee: My Lords, the Isles of Scilly Steamship Company, which operates the ferry and fixed-wing services, has already announced plans to increase those services to meet some of the passenger demand following the closure of the helicopter service. My honourable friend the Parliamentary Under-Secretary of State, Mr Norman Baker, has recently met, and is due to meet again, delegations including the Isles of Scilly Council to discuss transportation to and from the Isles of Scilly.

Lord Berkeley: I am grateful to the Minister for that reply because it marks some progress, even if the Isles of Scilly Steamship Company is now a monopoly supplier of transport services. Is he aware that during the five months between now and the beginning of next April, there will be only a small fixed-wing service of aeroplanes that are susceptible to wind and fog—for example, the service did not run yesterday? If the evidence of last winter is taken into account, the service would not run for 22 days over five months. With a population of around 2,000 people earning the fourth lowest wages in the UK and a reliance on tourism, those who use the aeroplane service have to pay £140 return. Does the noble Earl agree that in Scotland, most of the islands have both air and ferry services as lifeline services, and the fare for the equivalent distance is £25 return? Will the Government now look at a lifeline service for the Scilly Isles so as to take this forward and make the service comparable with that in Scotland?

Earl Attlee: My Lords, the noble Lord used the word "monopoly", which implies that there can be only one operator. It is a free market and other operators can come in. We need to see how the market develops. The noble Lord also talked about the "lifeline", which is a term generally used to describe vital transport connections between mainland and island communities. However, it carries no formal or legal status. The Government recognise that many people regard maritime passenger and freight services to the Isles of Scilly as a lifeline, and that is why we have said that we are committed to ensuring that these continue.

Lord Cameron of Dillington: My Lords, are the Government aware that the cost of transport to the Isles of Scilly is four times more expensive than that from the mainland to the Scottish islands over an equivalent distance? As a result, businesses and the tourist industry in the Scilly Isles are suffering badly and are in rapid decline when compared with those industries in the Scottish islands. The total absence of a ferry service, as already mentioned, between November and March means that running a business or even leading a normal life is becoming a pretty precarious enterprise in the Scilly Isles.

Earl Attlee: My Lords, I have read carefully the report produced by the Council of the Isles of Scilly comparing transport services to the islands with those of Scotland. It is a well written report, but I would point out that the situation in Scotland is different because it involves much more complicated and wide-ranging services that cannot be operated on a commercial basis. At the moment, the service to the Isles of Scilly is operated on a commercial basis.

Baroness Trumpington: Perhaps I might ask the Minister whether the air ambulance service will operate in that area when the ordinary air service ceases.

Earl Attlee: As ever, my noble friend asks a very good question. There is an air ambulance service that can deal with medical emergencies. In addition, there is the search and rescue service from the Royal Naval Air Station at Culdrose.

Lord Teverson: My Lords, following up the point made by my noble friend Lady Trumpington about medical services, these are very important because one of the key issues that has been identified is that fixed-wing services cannot substitute for the helicopter service in terms of speed or indeed handling individuals. I understand that the cost of RNAS Culdrose offering that service is £14,000 per return trip. What provision will be made over this winter for medical emergencies, not just for individuals but for medical supplies and blood samples, so that the islands are not isolated in this key way?

Earl Attlee: My Lords, the problem we face is that we have lost the helicopter service to the Isles of Scilly for the time being. I understand that the Isles of Scilly Steamship Company, which operates a fixed-wing air service, has now made arrangements with the local primary care trust to take over some of the transportation of patients and medical supplies, including blood products and samples, which were previously carried by helicopter, having secured the appropriate CAA licences. Noble Lords will recall that the noble Lord, Lord Berkeley, identified that there were only a few days in the year when helicopter services could go to the Isles of Scilly but fixed-wing aircraft could not.

Lord Greenway: My Lords, is it not the case that the Isles of Scilly Steamship Company also operates two cargo vessels, one of which sails three times a week during the winter, and which carries a few passengers?

[Lord Greenway]

Earl Attlee: The noble Lord is correct. However, we must also understand that the problems of transport services to the Isles of Scilly make for increased costs for the people living on the islands, so we need a solution that is not too expensive but which meets the needs of the people on the islands.

Baroness Dean of Thornton-le-Fylde: My Lords, I was pleased to hear that the Minister has read the comparative study produced by the Council of the Isles of Scilly, which demonstrates very clearly—and factually—just how poorly the Isles of Scilly compare with the islands of Scotland. The Minister has just said that they are different. They are different because we recognise in Scotland that these services are not commercially viable and therefore the Government pay, but the Isles of Scilly is a commercial arrangement. Will the Minister consider changing the designation for the Isles of Scilly to give them the same status as that of the islands of Scotland?

Earl Attlee: My Lords, we could make a public service obligation if the market failed. The market has not yet failed. In addition, there would have to be a competitive bidding process. We do not want to interfere at this point because we want to see whether there will be a commercial solution to the problem.

Lord Davies of Oldham: My Lords, the Minister has given some encouraging news about the increase in services, but he will appreciate that the House is still greatly exercised about communication with the Scilly Isles, particularly during winter. If we find that the Scilly Isles are effectively cut off for a number of days in winter, I hope that the Minister will return to this issue and take some action.

Earl Attlee: My Lords, I assure the House that my honourable friend Mr Norman Baker takes these matters very seriously and is on the case.

EU: UK Net Contributions

Question

3.15 pm

Asked By ***Lord Vinson***

To ask Her Majesty's Government how the rise in the UK's net annual contributions to the EU budget to over £10 billion per annum (as set out in the Pink Book 2012) relates to public sector cuts in other areas.

The Commercial Secretary to the Treasury (Lord Sassoon): My Lords, the UK's net contributions to the European Union have indeed increased over recent years. This is mainly the result of unacceptable increases in the annual EU budget and to changes to the calculation of the UK abatement, agreed by the previous Administration. This Government's top priority is budgetary restraint, thereby ensuring that the EU budget contributes to domestic fiscal consolidation.

Lord Vinson: I thank the Minister for his considered reply. Does he appreciate that while we practice austerity here in the UK, our net contribution to the EU has doubled since 2006 to over £10 billion a year? The UK has to borrow every penny of it from others, thus increasing our national indebtedness. As our Government were outvoted in their attempt to reduce the 2013 budget, will the Minister strive to get a better deal in the forthcoming negotiations, not least by withholding our £5 billion a year contribution to the structural funds? If invested here in our infrastructure, it would help to create over 250,000 badly-needed jobs.

Lord Sassoon: My Lords, as the House is aware, we are coming up to the negotiations of the multi-year financial perspective. That agreement requires unanimity of member states. My right honourable friend the Prime Minister has made it clear in a statement, jointly with other European colleagues, that the maximum acceptable expenditure increase through that period is a real freeze in payments. That continues to be the Government's position. As for structural funds, we cannot just opt out of any particular area of EU expenditure, although I agree that in the area of structural and cohesion funds, it is absurd that so much money is recycled from wealthy member states back into other wealthy regions of Europe. That is one of the many issues that need to be addressed.

Lord Pearson of Rannoch: My Lords, to put this question into everyday perspective, do the Government accept that £10 billion per annum equates to the annual salaries of 91,320 nurses being thrown away down the Brussels drain—or policemen, soldiers, or any other public servants at £30,000 per annum? Does this Question not remind us that there is no such thing as EU aid to the United Kingdom? For every pound that Brussels sends us, we have sent them £2.20.

Lord Sassoon: My Lords, the UK benefits from its membership of the EU. The UK should make a proper contribution to the net EU budget, but we have to see that the completely unacceptable proposals from the European Commission for the next multi-year period are reined back. The Commission's proposals, as opposed to a real freeze, would mean an increased UK contribution of £10 billion, or £1.4 billion a year. That is indeed many nurses, policemen and other front-line public servants.

Lord Wigley: My Lords, the Minister said that the UK benefited from membership of the EU, and I think that many people will be glad to hear him say that. However, will he confirm that it is not just the rich regions of Europe that benefit from the structural funds? In fact, Wales, with the lowest GVA per head of any country or region in the UK, gets considerable benefit. If there were to be changes in this direction, can he give a guarantee that those sums will still come to Wales?

Lord Sassoon: My Lords, I certainly accept that money should be targeted at the regions where it is most needed. I merely say that recycling money into the wealthiest regions seems like wasteful activity.

Lord Dykes: Can my noble friend reassure the House that there will be a friendly compromise on this matter when the full negotiations take place?

Lord Sassoon: I would love to see that happen. Of course, I cannot give any assurances about how it will play out.

Lord Davies of Oldham: My Lords, of course we agree that the European budget needs to be tightly controlled and, if possible, redirected towards jobs and growth. We are not too confident that this Government will produce the same priorities. However, can the Minister confirm that the Prime Minister will be calling on his many friends among the leaders in Europe in this negotiation?

Lord Sassoon: What I can confirm is that the UK's priorities for expenditure include the following: substantial cuts to the common agricultural policy. However, I agree with the noble Lord that priorities for the UK include growth and competitiveness, climate change and external action. I am not going to speculate on how the negotiations will play out.

Lord Hamilton of Epsom: Will my noble friend confirm that, in the absence of any compromise, what is being asked for by the European Commission is a 6.8% increase in the budget? Is this not an extraordinarily high figure which shows an unbelievable insensitivity to the problems that Governments are facing across the EU as they try to rein back their deficits?

Lord Sassoon: Yes, I completely agree with my noble friend.

Lord Tebbit: My Lords, did my noble friend say—did I hear him correctly—that this proposal requires unanimity? If so then surely there is no need to negotiate. All one has to do is simply say no.

Lord Sassoon: My Lords, would that life were so simple.

Schools: Pupil Premium

Question

3.22 pm

Asked By ***Baroness Massey of Darwen***

To ask Her Majesty's Government how the pupil premium will be monitored to ensure that it benefits individual children.

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): My Lords, we want to help schools to narrow attainment gaps. One way of doing that is through the pupil premium, which represents additional funding rising to £900 per pupil next year for children on free school meals. From this September, schools have to publish details of how they use their premium. My department publishes in the school performances tables information about disadvantaged pupils' achievement. Ofsted has a closer focus on how the premium is used and on how it benefits pupils.

Baroness Massey of Darwen: I thank the Minister for that reply. I am sure he is aware that a recent Ofsted report states that very few teacher leaders think that the pupil premium has changed the way in which they support disadvantaged pupils. I understand from him that Ofsted will in future be asked to comment specifically on the use of the pupil premium. What effective measures will be chosen to assess those reports?

Lord Hill of Oareford: The principle that we are adopting generally in introducing the pupil premium is to leave discretion on how it is spent as much as possible to individual heads because they will know the circumstances of the children for whom they are responsible. However, the noble Baroness is right that those approaches that are working well—which we will discover through the publication online of details of how schools have done, through inspections by Ofsted and through spreading good practice through the education endowment fund—should be spread as widely as possible, with lessons being learnt from them.

Lord Storey: My Lords, the Minister will be aware that, according to an Ofsted survey of, I think, 300 schools, 50% were using the money effectively and were seeing real changes. How can we ensure that the other 50% are using the money, which we have heard is going up next year, in such an effective way?

Lord Hill of Oareford: My answer makes a similar point. It is important that we learn lessons from the ones that are spending it effectively. We will do that through the work of the Education Endowment Foundation, which was set up specifically to spread good practice and help other schools learn the most effective ways of tackling disadvantage. It is early days, but as more information is published, the fact that from this September schools are having to account for how they have spent their money and what they have spent it on, and demonstrate a linkage between that money and results, will help us achieve the goal of my noble friend Lord Storey.

Lord Touhig: My Lords—

Baroness Whitaker: My Lords, is the Minister aware that almost all Roma children, no matter how poor they are, do not qualify for the pupil premium because their parents may not have been here long enough. What can the Government do to remedy this manifest inequality?

Lord Hill of Oareford: I understand how dear a subject that is to the noble Baroness, Lady Whitaker. The reason that we have gone for a single and simple measure of eligibility, based around free school meal status, is that we think it is important to keep the pupil premium as simple as possible so that we can learn the lessons and not make it too complex. The best proxy

[Lord Hill of Oareford]
that we felt that we could have was economic disadvantage, because we know the difference there is between how the poorest children achieve and how better-off children achieve. That is why we went for that simple measure.

Baroness Howe of Idlicote: My Lords, given that 50% of the schools are perhaps not using the pupil premium effectively, what role does the Minister expect school governors to play in ensuring that the money does in fact go to the right pupils?

Lord Hill of Oareford: I know that the noble Baroness, Lady Howe of Idlicote, agrees with me on the importance of the role of governors generally in concentrating on the performance of the school and the achievement of pupils. One of the key indicators that there will be, through Ofsted and the performance tables, is how schools are doing, particularly for children on free school meals. Governors can play an extremely important part in holding the head, and the rest of the school, to account for delivering that.

Lord Avebury: My Lords—

Lord Touhig: My Lords—

The Chancellor of the Duchy of Lancaster (Lord Strathclyde): My Lords, noble Lords cannot speak at the same time. I think it is my noble friend's turn.

Lord Avebury: Further to the question asked by the noble Baroness, Lady Whitaker, will my noble friend confirm that, in future, Ofsted inspections will pay specific regard to the position of GRT—Gypsy, Roma and Traveller—pupils, bearing in mind that they are the most deprived group of any section of the community in terms of educational achievement and attainment?

Lord Hill of Oareford: My Lords, as I think I said to the noble Baroness, Lady Whitaker, the focus of the Ofsted inspection is particularly on children suffering from economic disadvantage—those on free school meals—and those are the criteria and judgments that Ofsted will be using.

Lord Touhig: My Lords, three tries for a Welshman. Many parents, including those with autistic children, are told that schools do not have funding to support their child's special educational needs. I do not think they are helped by the fact that the Government have failed to publish guidance to schools on the use of the pupil premium. Can the noble Lord tell us whether the reforms of the SEN system will ensure that the pupil premium is now better used to help children with special needs?

Lord Hill of Oareford: My Lords, generally the reform to the special educational needs system through the Bill that the Government will be bringing forward next year will help tackle the needs of all children with special needs more effectively than the current system. Not all those children will be suffering from economic disadvantage, so, in addition, the pupil premium will, I hope, help to tackle that issue. I agree with the noble Lord, Lord Touhig, that we need to make sure that we spread good practice. The Government have a role through things like the Education Endowment Foundation, which is an independent organisation that can spread good practice. We certainly need to make sure that best practice on how money is spent on children with special educational needs is spread through the system.

Lord Lucas: My Lords, is my noble friend aware that there is a lively business among private companies in helping kids who have left school with no English or Maths to get up to Level 2 standard and that they charge rather less than a pupil premium for doing it? Does he think that schools might make use of that resource as well as employers?

Lord Hill of Oareford: One of the important principles of the pupil premium is that schools can decide how to spend that money. If they are sensible they will go to a range of providers to help to narrow those gaps.

Baroness Hughes of Stretford: My Lords, it is welcome news that in the future schools will be required to report on how they spend the pupil premium but many pupils have already lost out because, according to Ofsted, the money that schools have had has been misspent. Will the Government go further now and ring-fence the pupil premium and give schools the proper guidance that my noble friend Lord Touhig referred to? That would ensure that the money really is focused on individual disadvantaged children with schools purchasing interventions that we know work.

Lord Hill of Oareford: Spreading good practice, yes, ring-fence, no, my Lords.

Unemployment: Young People
Question

3.31 pm

*Asked By **Lord Bates***

To ask Her Majesty's Government what further steps they will take to reduce the level of unemployment, particularly among young people.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud): The recent rises in employment and falls in unemployment, including among young people, are encouraging. We are committed to providing support to young people to give them the work experience and skills they need to find sustained employment. This includes the youth contract, which will provide nearly half a million new opportunities to young unemployed people over the next three years, as well as the Jobcentre Plus offer and the Work Programme.

Lord Bates: I am very grateful to my noble friend for a very encouraging answer. It is wonderful to see more young people getting a job, but would he agree with me that there is one thing better than getting a job, and that is creating a job? Would he therefore consider bringing in new measures to encourage more young people—be they unemployed, school leavers or

graduates—to set up their own businesses and thereby unlock the vast creative capital among our young unemployed?

Lord Freud: Yes, my Lords, my noble friend makes a most valuable point. We are expanding the New Enterprise Allowance to encourage more people—in particular young people—to start up businesses. While this includes financial aspects such as offering loans and financial support, it is the mentoring tied up with that process that helps the youngster, or indeed anyone taking part, in actually making that business a success.

Baroness Wall of New Barnet: The noble Lord, Lord Bates, has referred to creating jobs, and having a job is really important. But would the Minister agree that having a career that includes an apprenticeship gives those very young people a substantial opportunity to grow? In the funding that is available there are opportunities for young people to go straight into apprenticeships, which creates an income, not only for themselves, but for UK plc going forward.

Lord Freud: The noble Baroness is absolutely right. Apprenticeships are a vital route for youngsters to get into the workforce. We have put a lot of extra funding into apprenticeships, and the numbers are going up pretty steeply.

The Lord Bishop of Leicester: My Lords, could the Minister tell us what the Government are doing to ensure that the most vulnerable young people who enter the Work Programme are not simply parked by contractors because it is not financially viable to invest the resources needed to support them into work?

Lord Freud: Well, my Lords, the structure of the Work Programme is designed to make sure that no one is parked in that way. There are specific measures to prevent that happening. The main way in which to get the people who are the most difficult to get into work is by pricing; we price those people more highly than people who are simpler to get into work. We have also, as noble Lords will be aware, introduced a subsidy programme to encourage employers to take youngsters who are NEET into the workforce.

Lord Martin of Springburn: My Lords, the Minister will readily acknowledge that because of unemployment, some young people are unable to get work until they are 19 or 20. I know that he does not have the information now, but could he place in the Library the figure for how many UK adult apprenticeships there are? That would be very helpful.

Lord Freud: My Lords, the figure I have on apprenticeships for 19 to 24 year-olds is 31% of the total, which is 457,000 starts. I cannot work out the 31% in my head, but I might be able to do it later.

Lord McKenzie of Luton: My Lords, on the matter of the youth contract, how many wage subsidies have been taken up to date? How does the Minister consider that sustainable employment opportunities for young people would be enhanced by denying the right for under-25s to access housing benefit?

Lord Freud: My Lords, the wage subsidy is paid after six months. It was introduced at a time when remarkably few came into the workforce, so we would expect to see the figure start to move in the months to come and will be publishing the information on that basis. As to the second question, that is not government policy, although it is a matter of debate what is the right level of support for youngsters in the housing market.

Lord Roberts of Llandudno: Is the Minister aware that the youth unemployment situation varies from area to area: in some places it is very severe; in other places it is more favourable? What are the Government going to do to concentrate any extra resources in those areas that are really in most desperate need?

Lord Freud: My Lords, we have a whole range of programmes now. All of them are much more individualised than previous programmes, so there should be a response to different regions so that the money goes where the need is. I have previously cited the figure for how many youngsters are inactive and unemployed. In the most recent set of figures, I am pleased to say that we have got that figure down to 1.36 million, which is below the level at the last election. So we are doing something about that terrible structural problem of the NEETs, which has been growing over the past decade.

Civil Aviation Bill

Order of Consideration Motion

3.37 pm

Moved by ***Earl Attlee***

That the amendments for the Report stage be marshalled and considered in the following order:

Clauses 1 to 13, Schedule 1, Clauses 14 to 30, Schedule 2, Clauses 31 to 47, Schedule 3, Clauses 48 and 49, Schedule 4, Clauses 50 to 55, Schedule 5, Clauses 56 to 59, Schedule 6, Clauses 60 to 72, Schedule 7, Clauses 73 to 76, Schedules 8, 9 and 10, Clauses 77 and 78, Schedule 11, Clauses 79 to 82, Schedule 12, Clauses 83 to 90, Schedule 13, Clauses 91 to 99, Schedule 14, Clauses 100 to 112.

Motion agreed.

Financial Services Bill

Committee (9th Day)

3.38 pm

Relevant documents: 4th and 8th Reports from the Delegated Powers Committee.

Clause 63 agreed.

Clause 64: Cases in which Treasury may arrange independent inquiries

Amendment 190AA

Moved by ***Baroness Noakes***

190AA: Clause 64, page 140, line 36, leave out subsection (4) and insert—

"(4) If subsections (2) or (3) apply, the Treasury must arrange for an enquiry to be held under section 65 unless the Treasury consider that it is not in the public interest that there should be an independent inquiry into the events and the circumstances surrounding them."

Baroness Noakes: My Lords, I shall also speak to Amendments 190B and 192ZA in this group. These amendments, and others in the group, concern the inquiry and investigation provisions of Part 5. I should say at the outset that I regard the provisions of Part 5 as crucial to the Bill. The earlier parts of the Bill created new regulations with very significant powers, and it is entirely likely that the new regulators will make mistakes in the use of those new powers and that things will go wrong, so we need strong provisions in the Bill—

Lord Newby: My Lords, I remind your Lordships that if you are leaving the Chamber, please do so as quietly as possible.

Baroness Noakes: My Lords, I was saying that Part 5 of this Bill is crucial because it sets up the provisions that will deal with things when they go wrong—if the regulators make mistakes or if things do not turn out well. Part 5 ensures that there are proper investigations and proper reporting of those investigations. I remind the Committee that there have been problems in this area in the very recent past. It took the heroic efforts of the Treasury Select Committee in another place to get the FSA's report on the failure of RBS into the public domain. We still have nothing on HBOS. The FSA's reports on both RBS and Northern Rock were internal reports, and therefore non-independent. The Bank of England, which will be the new home for the PRA, is not itself a beacon of good practice when it comes to reviews of its own performance. So we need to be sure that we get this part of the Bill absolutely right.

I welcome the new duties in Clauses 69 and 70 on the FCA and the PRA to investigate and report on possible regulatory failures. I similarly welcome the powers in Clause 73 which allow the Treasury to direct the regulators to carry out investigations in certain circumstances. However, internal investigations will often not be good enough, which is why in principle the powers in Clause 64 are very welcome. These allow the Treasury to arrange independent inquiries where there have been certain events which, to paraphrase, threatened the stability of the financial system or risked or caused significant damage to the interests of consumers or businesses.

The first amendment that I tabled to Clause 64 was Amendment 192ZA, which is one of our familiar and much-loved may/must amendments. I could see no circumstance in which the Treasury, having satisfied itself that a public inquiry is in the public interest, should have any optionality about whether to set up an independent inquiry. Amendment 192ZA would change that "may" into a "must" so that, if the public interest test is met, the Treasury must set up an independent inquiry. Having looked at this a second time, however, I tabled Amendment 190AA, which would replace subsection (4) and turn it round. Under my proposed new subsection (4) the Treasury must arrange an inquiry unless it believes that the inquiry is not in the public interest. I believe that this more naturally represents the thought process that would go on in the Treasury; that is, the Treasury would order an inquiry unless there was a sound reason for not doing so. For good measure I have also tabled in this group Amendment 192ZA, which is another may/must amendment, this time to Clause 73, which allows but does not require the Treasury to direct the FCA or the PRA to carry out an internal investigation. My amendment would require a direction.

I am aware that the wording and structure of Clause 64 follow that of Section 14 of FiSMA. However, I do not believe that that is necessarily conclusive. The new duties set out in Clauses 69 and 70 in respect of regulatory failure positively require the PRA and the FCA to organise investigations in specified circumstances. The only let-out is if the Treasury directs them that they are not required to carry out investigations. Can the Minister explain why "must" is the correct formulation for the PRA and the FCA, but not the correct formulation for the Treasury?

I hope that the Minister will explain the relationship between Clause 64 and Section 14 of FiSMA. It seems to me that Section 14 becomes redundant when this Bill is made law, but I could not find any provision for its repeal. So I ask my noble friend whether it is to remain in force, and if so, for what purpose?

Lastly, I ask the Minister to explain in what circumstances the Government would intend to use the independent inquiry route in Clause 64, as opposed to the self-investigation route in Clauses 69, 70 and 73. I tried to research how often Section 14 of FiSMA has been used but drew a blank; in fact, I am not sure that it has ever been used. I hope that the Minister will be able to explain in what circumstances the Government would want to use the independent inquiry route, rather than relying on self-investigation. For example, given the circumstances surrounding the financial crisis, would they have thought it appropriate to have ordered an independent inquiry—that is, one not left simply to the regulator concerned—or do the Government believe that self-inquiry is the appropriate route? If there is no independent inquiry for something as grave as the financial crisis that we have recently experienced, what is Clause 64 for? I look forward to hearing my noble friend's response. I beg to move.

3.45 pm

The Lord Speaker (Baroness D'Souza): In calling Amendment 190AA, I must advise noble Lords that if this amendment is agreed to I shall not be able to call Amendment 190B by reason of pre-emption.

Lord Peston: My Lords, I hope that I have heard the gist of what the noble Baroness was trying to say. She ended by asking the fundamental question, which is not only what Clause 64 is here for but what this whole section of the Bill is here for. That is not very clear. If these powers had been enshrined in statute, are we to believe that the catastrophes of the recent past would not have occurred? Is that the purpose? I cannot believe that you do investigations to prevent a catastrophe occurring; what you do is intervene and stop it. This section must therefore be there simply to say, "Look, we made a mess of things, including ourselves as policymakers and regulators, so we're setting up this inquiry to discover what we can learn from the mess

that we've got ourselves involved with". I take it that that is probably the answer to the noble Baroness's question but, like her, I look forward to hearing what the Minister has to say.

Lord Barnett: As I originally put down the first "may" or "must" group of amendments, together with my noble friend Lord Peston, I have some sympathy with the noble Baroness. We were told by the Minister—I forget whether it was on the sixth, seventh or eighth day—that he had asked his officials to go through the whole Bill for the mays and musts to see which were appropriate. Knowing Treasury officials, I am sure that they will have come back with something to say whether they thought a "may" should be changed to a "must". Was this group included in that? Perhaps the Minister could tell us. It looks as though the noble Baroness is quite right and that this is one of those occasions where the word should be "must". I would welcome the Minister's reply. My own experience of the thinking of Treasury officials goes back too far for me to be sure, as I last took advice from Treasury officials more than 30 years ago and I may have forgotten a bit about how they operate. However, I am sure that they are still as good today as they were then, and I would welcome the Minister telling us what they came back with to his request.

Lord Davies of Oldham: My Lords, I hope that the noble Baroness, Lady Noakes, can stand the accolades that are coming from this side of the House after her speech. I think that she has posed the Minister some very appropriate questions, while my noble friend Lord Peston goes a little further by saying, "What's the clause here for at all?". So the Minister has quite a lot on his plate in responding to this debate already, and all this puts the official opposition amendments very much into the minor case. Our amendments in this group, Amendment 192ZZA, 192ZZB and 192C, call for the directions to be laid before Parliament. These are directions in respect of a direction to the FCA from the Treasury to carry out an investigation into possible regulatory failure. Of course, I am at one with my noble friend Lord Peston when he indicates that investigations are about what has gone wrong, and the lessons which can be learnt in order to prevent any reoccurrence. Intervention in time is what is needed if one wants to prevent things going badly wrong. Therefore, with these amendments, we are merely seeking for the issues to be open and transparent. Nothing could make them more transparent than that they should be laid before Parliament.

In passing, on other amendments in this group, those in the name of my noble friend Lord McFall also have some merit. He calls for the person appointed to chair any inquiry set up under these provisions to be "suitably qualified and experienced"; I hope that the Minister can give a positive response to that. He also calls for an exemption for information in respect of which a claim to legal professional privilege could be made; I am sure that the Minister will look sympathetically on that. Of course, his Amendment 193 says that any investigator appointed must be "suitably qualified and experienced". Now, the Minister and I understand that he only has to reply to the amendment that has been moved in this group but, as we are in Committee, it might be useful if the Minister gives us as comprehensive a reply as possible to the whole group.

Lord Desai: My Lords, before the Minister replies, I am puzzled, given what the noble Baroness has said, when I read the clause. What are the circumstances under which the Government will not order an inquiry? Are they things like when we had the fiasco with RBS, where an inquiry was conducted, hushed up and not published until we literally marched in the streets for the FSA to do so? Can the Minister explain under what circumstances the Treasury would not order an inquiry if such events had happened?

The Commercial Secretary to the Treasury (Lord Sassoon): My Lords, I will try to address a number of those points. I will stick to the amendments that have been moved or spoken to rather than those that have not.

This group of amendments, as we have heard, relates to two of the mechanisms by which the PRA and the FCA can be held to account for regulatory failures. One of the key lessons learnt from the crisis, of course, is that we need greater openness and transparency about where things go wrong and about what lessons can be learnt. In that context, I think that my noble friend has got it completely right about the circumstances in which an independent inquiry might be called for, as opposed to self-investigation. I will leave that one at that.

I would also just say to my noble friend that Section 14 of FiSMA is being repealed. That is dealt with in Clause 5(1). However, the Treasury can use the new power in Clause 64 to arrange an inquiry into action that predates the Bill.

Baroness Kramer: I appreciate the Minister giving way. I request some clarification. He talked about investigations into the FCA and the PRA, but surely the regulatory body referred to in subsection (3)—the clearing house—is actually the Bank of England. Can he confirm that it is included in this rubric, as it were?

Lord Sassoon: I believe that that is the case. If it is not, I will clarify things as I reply to my noble friend Lady Noakes.

Lord Peston: My Lords, I did not catch the last few words that the Minister said before the noble Baroness asked her question. I thought he said that if the Bill is enacted, this part would enable the Treasury to set up inquiries into what happened in the past few years. Did he actually say that?

Lord Sassoon: In so many terms, yes. In reply to my noble friend's question about the repeal of Section 14 of FiSMA, I wanted to make it clear that a gap is not left in the Treasury's ability to arrange inquiries into events, even though they might be ones that predate the coming into force of the Bill.

Lord Peston: The provision would then become much more significant. If we pass this Bill into law and it becomes an Act then the disasters of the past few years could be inquired into by a major independent committee, which might tell us who were the real architects of the disaster and where policy failed. If the Bill is to enable that to happen—and it seems to me overwhelmingly that it must happen—then we really do need the word "must" in this case.

Lord Sassoon: I will get there eventually. If the Committee will permit me, I will address the point. I will not necessarily give complete satisfaction but we will get there.

The Bill makes a number of provisions that are intended to deliver greater accountability and carries forward the power of the Treasury to arrange independent inquiries into regulatory failures. It also provides for new duties on the two authorities to carry out investigations of their own—if necessary, at the instigation of the Treasury—and report their findings to the Treasury where there has been regulatory failure and certain other criteria are met.

I turn first to Amendments 190B and 192ZA, which probe why, if the public interest test is met, the Bill provides that the Treasury "may" require an inquiry. By changing "may" to "must", their intended effect—as we have heard—is that in all cases where the test is met, the Treasury should have to require an inquiry. Amendment 190AA achieves the same end by a different means, specifying that the Treasury must arrange an inquiry where the two conditions in Clause 64 are met unless there is a public interest in not doing so. I agree with my noble friend that, if there is an overwhelming public interest in having an independent inquiry or in the regulator carrying out an investigation, the Treasury should step in to ensure that that happens. As it stands, the Bill gives the Treasury a little bit of discretion here. This is not about wriggling out of the need to call for an inquiry; it simply acknowledges that in reality, circumstances may dictate that even though the test is met, an inquiry or an investigation under this Bill is not necessarily the best course of action.

For example, there may already be an alternative independent inquiry going on—perhaps a parliamentary commission or other parliamentary inquiry—or an inquiry under the Inquiries Act. In the case of the provisions relating to investigations carried on by the regulator, the regulator itself may already be carrying on an investigation under Clauses 69 or 70. However, as my noble friend is aware, and as the noble Lord, Lord Barnett, has reminded us, I have already confirmed that I am giving careful thought to the wider use of "may" and "must" throughout the Bill. This is a huge exercise, taking up some mighty brains. All I would say at this stage is that although there are certainly not many cases that deserve intense scrutiny, this is certainly one of the instances that merit serious consideration. I will leave it at that. We will come back if we find any suitable candidates for changing.

Amendment 193 to Clause 79 seeks to place an explicit duty on the regulators to ensure that when a complaint against a regulator needs to be investigated, they appoint an investigator who is suitably qualified and experienced. This amendment is not necessary; it has also not been spoken to by the noble Lord, Lord McFall of Alcluith, so I will leave it at that. I shall turn to Amendments 192ZZA, 192ZZB and 192C.

Lord Barnett: Perhaps I misheard the Minister on the must/may argument, which he did not seem fully to explain. He must have had a major reply from officials to his request on a Bill as huge as this, with so many musts and mays throughout. What exactly did they recommend? Did they recommend, as always, that there must be agreement with the noble Lord or was there a point at which they said that it is possible that must might be better than may? Is this one of them?

4 pm

Lord Sassoon: My Lords, I do not want to get the Committee too excited about this matter because, as any noble Lord, including the noble Lord, Lord Barnett, will know, it is very rare for a piece of considered legislation, particularly coming from the Treasury, to get any of these matters wrong in the drafting. I really do not want to raise false expectations.

All I would say is that the exercise is carrying on and that the matter raised by my noble friend Lady Noakes is certainly one of the may/must instances that merits serious consideration. When there is anything more news to report to Peers who are interested in this Bill, we have plenty of ways of communicating it. If there is anything to say, the noble Lord, Lord Barnett, will be among the first to hear.

The group of amendments on which the noble Lord, Lord Davies of Oldham, spoke rather modestly towards the end of this discussion nevertheless are ones which we need to take seriously. Amendment 192ZZA would provide that if the Treasury issues a direction to the FCA not to proceed with an investigation into possible regulatory failure, that direction must be laid before Parliament. Amendment 192ZZB makes similar provision for such investigations by the PRA.

Amendment 192C would provide that where the Treasury issues a direction specifying the parameters of an investigation into regulatory failure by the PRA or FCA, or suspending or halting such an investigation, that direction must be laid before Parliament.

The Bill is drafted to give the Treasury some discretion here and, all things being equal, we had wished to preserve this. However, in this instance I am somewhat persuaded by the case that noble Lords have made. The Government are very much committed to greater openness and transparency in our regulatory architecture. With that in mind, I am happy to confirm that I will be taking on board the insightful comments of this Committee and will return to this issue on Report, placing the Treasury under a duty to disclose any directions issued under Clause 74, unless doing so would not be in the public interest.

I know that the noble Lord, Lord Davies of Oldham, is looking a bit surprised by this turn of events. On previous occasions he has compared himself and his batting average to the late, great Sir Donald Bradman and I really did not want to disappoint this Committee by seeing his batting average going down too far. I do not think that the noble Lord does himself justice: he is a great strike bowler when it comes to this type of

thing. By my reckoning, the noble Lord's success rate is now back up to around 20%. I have no idea how one translates that into a conventional bowling average but I think that it is pretty good. I note that his fellow Lancastrian, Jimmy Anderson, is on 30.41 for his test average. I think we can say that the noble Lord, Lord Davies of Oldham, is close to that. However, I am left with the question as to why the noble Lord is not being promoted to the strike bowler role. He comes on as the first change bowler day after day; we want to see him, like Jimmy Anderson, as the strike bowler from hereon.

I hope I have reassured the Committee that we share its desire to see accountability and transparency in the system, and that my noble friend will be prepared to withdraw her amendment.

Baroness Noakes: My Lords, despite having spent a couple of years in the Treasury in the dim and distant past, I could never do cricketing talk so I shall not try to follow my noble friend the Minister. I am sure that the noble Lord, Lord Davies of Oldham, is thrilled with his success in this opening group of amendments. I am very grateful for the support of noble Lords opposite for my amendments and I was pleased to hear what my noble friend had to say. I look forward, as do we all, to the outcome of the may/must investigations which are clearly occupying the great brains that live in the Treasury night and day. With that, I beg leave to withdraw the amendment.

Amendment 190AA withdrawn.

Amendment 190B not moved.

Clause 64 agreed.

Clause 65 : Power to appoint person to hold an inquiry

Amendment 191 not moved.

Clause 65 agreed.

Clause 66 : Power to appoint person and procedure

Amendment 192 not moved.

Clause 66 agreed.

Clauses 67 and 68 agreed.

Clause 69 : Duty of FCA to investigate and report on possible regulatory failure

Amendment 192ZZA not moved.

Clause 69 agreed.

Clause 70 : Duty of PRA to investigate and report on possible regulatory failure

Amendment 192ZZB

Moved by **Lord Davies of Oldham**

192ZZB: Clause 70, page 144, line 3, at end insert—

"( ) Any direction under subsection (5) must be laid before Parliament and published."

Lord Davies of Oldham: I beg to move.

Lord Skelmersdale: My Lords, as an observer of this scene, it is clear to me that my noble friend Lord Sassoon has said that he will take into consideration the two amendments in the name of the noble Lord, Lord Davies of Oldham, and bring something back—whether it is a total positive or a half positive, we do not yet know—at the next stage of the Bill. Therefore, it would be appropriate if the noble Lord would also withdraw this amendment.

Lord Davies of Oldham: My Lords, I apologise to the House. I am sure that the noble Lord is absolutely right and that I got lost in my cricketing batting average. I beg leave to withdraw the amendment.

Amendment 192ZZB withdrawn.

Clause 70 agreed.

Clause 71 agreed.

Clause 72 : Modification of section 70 in relation to Lloyd's

Amendment 192ZA not moved.

Clause 72 agreed.

Clause 73 agreed.

Clause 74 : Conduct of investigation

Amendment 192A

Moved by **Lord Hodgson of Astley Abbotts**

192A: Clause 74, page 145, line 20, at end insert—

"( ) In carrying out an investigation, the regulator must have regard to its regulatory principles and act proportionately, reasonably and fairly."

Lord Hodgson of Astley Abbotts: My Lords, after that diversion through a possible Division and a discussion of batting averages, I rise to move Amendment 192A and shall also speak to Amendment 192B. We discussed, in relation to the previous amendment moved by my noble friend Lady Noakes, whether an investigation should take place. My amendments are concerned with Clause 74 and the way investigations take place once they are under way—the conduct of investigations, as in the heading of the clause.

At our Committee session just before we rose for the Summer Recess on 25 July, I moved a series of amendments which were designed to ensure that the regulatory approach was properly balanced and appropriate. Those amendments related to a point some way back in the Bill, on page 28, where we were looking at the regulatory principles to be applied by both regulators. My noble friend, who is not here at present, was able to reassure me on a number of the amendments that I moved, but on one I fear he failed. I argued that it was not sufficient for a regulator to be only proportionate in his activities; he also needed to be reasonable and fair. I then gave the Committee some practical examples of where, in the view of many in the financial services industry, the regulator may have been acting proportionately but was not acting

[Lord Hodgson of Astley Abbotts]
reasonably or fairly. Therefore, my Amendments 192A and 192B are concerned with Clause 74, which relates to the conduct of investigations, and they seek to bring those two words into the phraseology of the clause.

At present in Clause 74 the wording is quite strange in the sense that in subsection (2) the regulator has only to,

"have regard to the desirability of minimising any adverse effect that the carrying out of the investigation may have on the exercise by the regulator of any of its other functions".

It says nothing about the investigated firm; it refers only to the duties and responsibilities of the regulator. When my noble friend on the Front Bench comes to reply to the debate, it would be helpful if he could explain the exact purpose of this clause and what its practical effect would be.

Amendment 192A is designed to make it clear that investigators must be not only proportionate but, for the reasons that I have made clear, fair and reasonable in their work. Amendment 192B amends subsection (3) of the clause and provides for the postponement or suspension of the investigation where those regulatory principles are not being met.

When we discussed the "fair and reasonable" issue on 25 July, one reason that my noble friend gave was:

"The provision itself in Amendment 134 is unnecessary".

He went on to say:

"The regulators have a duty under public law to act reasonably and can be challenged in the Upper Tribunal or by way of judicial review if they fail to discharge that duty, which would be broadly the case if the requirement were on the face of the Bill. The regulators are already under a duty to comply with the rules of natural justice—in other words to follow procedures and processes which are fair".—[*Official Report*, 25/7/12; cols. 794-5.]

My noble friend read his speaking note beautifully but he cannot really believe its consequences. He is far too experienced a campaigner to consider that judicial review provides an answer to a firm that has been unfairly and disproportionately treated. A judicial review will take months and perhaps years to complete, whereas the effective life of a financial services firm in these circumstances can be measured in days. Confidence, as all of us who work in the City know, is an essential part of any firm's reputation. Confidence is a fragile flower and news of an impending judicial review will cause it to wither and die. Indeed, fighting the regulator by means of a judicial review will increase the damage to the firm. Even if, after several months, the judicial review finds in favour of the firm, the firm will most likely then be only a pile of ashes.

When my noble friend replied, he said that "proportionate" equalled "fair" equalled "reasonable", so I have since spent a little time with the *Shorter Oxford English Dictionary*. At page 2372—so "shorter" is not very short—"proportionate" is defined as:

"That is in … proportion (*to*); appropriate, proportional, corresponding".

The example given there is:

"The toll … on the canal is proportionate to weight".

In other words, there is a fixed relationship. There is no flexibility. There is the weight of the goods and that is what is going to be charged.

Turning to "reasonable", the definition is:

"Having sound judgement; ready to listen to reason, sensible".

That seems to be a slightly different relationship. It is slightly more of a two-way relationship which the definition of proportionate did not imply. So I would argue, despite my noble friend's persuasive remarks in July, that fair and reasonable are not otiose in relationship to "proportionate".

4.15 pm

Another issue that one has to guard against is that one is seen as being interested only in reducing regulatory stringency. It is not about reducing regulatory stringency in any way. These amendments are about ensuring that the regulator, first, engages with regulated firms in a positive and constructive way and, secondly, demonstrates some imagination as to the consequences of any action he may take. The regulator and the regulatee have at least some symbiotic relationships, and not entirely pedagogic ones, which are implied by the Bill as presently drafted.

Last week, my concerns were further enhanced by the publication by the FCA of its document, *Journey to the FCA*. I am not alone in my concerns. The Lex column in the *Financial Times* on 17 October says that,

"the exact route of the FCA's journey is still unclear and, despite its insistence that companies doing the right thing have nothing to fear, both the industry and investors who have backed it should be wary. First, while the FCA's paper gives a nod to innovation and new ideas, they are not its core purpose. If the FCA makes overactive use of its power to ban products, the industry will lose its incentive to innovate. Just look at the impact of growing regulation on the pharmaceutical industry.

Second, the government is trying to rope the FCA in to its drive for more competition in financial services. That suggests a wider remit—market structure is not the same as market conduct and the FCA could struggle to combine the two.

Finally, it is not clear whether the FCA will look at consumer conduct. The wave of claims for mis-sold payment protection insurance (over a quarter of which, according to some banks, are fraudulent) demonstrates a growing enthusiasm for launching legal complaints at the drop of a hat, raising costs for both investors and other customers. The danger is that, encouraged by their PPI success, claims management companies swiftly move on to another target. This type of financial services conduct should also be covered by the FCA's journey".

It is only in chapter 6 of the document, headed "Maintaining effective relationships", that you get to the beginnings of something about relationships. However, the effective relationships that are being listed there are, first:

"We will be part of the wider family of regulatory bodies that are in place";

secondly:

"We will shape policies and drive the consumer protection agenda in Europe";

thirdly:

"We may take action to address domestic issues even if standards are due to be set internationally at a later date";

fourthly:

"We will work with consumer groups to help us … understand issues";

and finally:

"Our communication with firms will also improve. There will be more regional workshops and roadshows to clarify our expectations."

All the wording is a one-way street which will not be "fair and reasonable", but will just be a pedagogic relationship without the firms, or the interests of the industry, being properly considered.

Against this background there is a growing fear and suspicion in the City that investigations are becoming fishing expeditions. The regulator cannot find the evidence to support his suspicion, however flimsy and unsubstantiated, and sets up an investigation to see if anything can be found. Investigations need to be carefully circumscribed, both as to their inception and their conduct. That is what Amendments 192A and 192B seek to do by adding "fair and reasonable" to "proportionate". I beg to move.

Lord Flight: My Lords, I wish to speak in support of my noble friend's amendment. It touches on unfortunate developments. The reaction of regulators to being criticised for what were described as the failures of light-touch regulation have increasingly led to a much more tough-guy, macho approach by them. In turn, I find major, totally responsible financial services businesses saying to me when they are unhappy and think some regulatory proposals are mistaken, "But we don't want to talk to the regulators in case they punish us". An unfortunate culture has developed of seeing the regulators as being very likely to use their powers against you, if you fall out with them.

The whole light-touch regulation story is a misinterpretation. What was wrong with FiSMA in that territory was the assumption that large institutions could be left to run their own affairs, which, as I warned at the time, missed out the fact that when large institutions go wrong they risk bringing down the whole system. The amendment may be belt and braces—I agree with my noble friend that to rely on complicated legal processes to get justice is not satisfactory—but I think it is perfectly straightforward, sensible and common sense to have that guideline as regards how investigations are handled. In the present climate, I think that is necessary.

Viscount Trenchard: My Lords, I, too, support my noble friend's amendment. I apologise for going back to the regulatory principles, but I continue to believe that it is a huge pity that the regulatory principles, by which both the PRA and the FCA are bound to operate, do not contain, to my mind, the very necessary principle that they should have regard to maintaining the competitiveness of the marketplace on which the United Kingdom depends so much for tax revenues, for prosperity, for employment and for all kinds of things.

I also speak with the experience of having been a member of the executive committee of a regulated firm for several dark years. I can assure the House that at least 90% of the time of an executive committee is spent discussing how to respond to regulators. There is a real fear of increased supervision and a more intrusive approach and, nowadays, many firms spend very little time talking about how to develop and to expand the business in order to provide further employment and earn more money so that the business can be consolidated and maintained in London. In the absence of, to my mind, such necessary principles, which ought to be there and by which the new regulators ought to have to abide, it is more necessary than it otherwise would have been that the regulators should act, as my noble friend's amendment suggests and requires, "proportionately, reasonably and fairly". I wholly support the amendment and I look forward to hearing the comments of the Minister.

Lord Peston: We are indebted to the noble Lord, Lord Hodgson of Astley Abbotts, for raising these matters, although we discussed similar matters last week under the guidance of the noble Lord, Lord Flight, and my noble friend Lady Hayter. The central question here is our fear—fear in the relevant sector as well—that the regulators damage our financial services sector rather than improve its performance. I think that is the theme that lies behind these matters. I have two questions, but I am bad at reading amendments, so I want to be certain about them. Presumably the new subsection proposed in Amendment 192A would come before subsections (1) to (7) in Clause 74. Am I right that it would be the lead-in?

Lord Hodgson of Astley Abbotts: Yes.

Lord Peston: It would establish the principle which everything else must follow. That is fine; I understand what the noble Lord is saying. That leads me to ask two central questions. In Clause 73, and I think in something similar earlier, subsection (2) refers to "Relevant events" that occur in relation to,

"(b) a person who is, or was at the time … carrying on a regulated activity".

What worries me as a matter of logic is whether we will end up with the regulator having to investigate him or herself? If these people have not met the standards, who is responsible? They are partly, of course, but this would also be an indication of regulator failure. To my way of looking at it, we have a part of the Bill that is totally bizarre. From a logical point of view, the answer to the question "Quis custodiet ipsos custodes?" is that the regulator is the custodes himself, if you like. I would certainly welcome an analysis from the Minister in his reply which shows that we are not seriously involved in a logical contradiction here.

My second question is whether the fact of an investigation of the kind we are discussing is to be in the public domain. In other words, will it be publicly known that the regulator is investigating one of the things going on here? It may be that I have not read it properly, but is not that itself potentially enormously damaging, again a point that was raised last week? I should like the answer to these two questions. It may be that Treasury officials will have to do a bit of thinking about this part of the Bill when they are not thinking about the logical nature of "may" versus "must". As I have pointed out before, there is a vast philosophical literature on this. How much of it they will have time to read, I do not know. However, the central point is to get a rational response to the amendment moved by the noble Lord, Lord Hodgson.

Lord Davies of Oldham: My Lords, I am grateful to the noble Lord, Lord Hodgson, for identifying this issue, but I must say that if noble Lords opposite do not think that the nation is expecting a Bill and eventually an Act of Parliament that tightens up regulation

[Lord Davies of Oldham]
in the wake of the circumstances we suffered four to five years ago, then all I can say is that such a position is not tenable. The noble Lord, Lord Hodgson, is indicating that the principles of the regulator should be expressed in these terms. Who can be against the principles of fairness? Of course we want and expect the regulators to act fairly, but let us remember that they may be acting under a direction from the Treasury because something has gone wrong. The idea that the first thing the regulator must do is consider the principles on which it must act rather than in fact investigate the nature of the problem, as it has been instructed by the Treasury to do, seems to put the cart very firmly before the horse.

In responding to this amendment, I am sure that the Minister will have some warm words for his noble friends who have spoken in favour of the amendments, but I hope that he will defend the basic objective of the Bill. I shall give way to the noble Lord.

Lord Hodgson of Astley Abbotts: I am extremely grateful. I did not want to interrupt his peroration, but dare I say that if he had listened carefully, he would know that I said that this is not about reducing regulatory stringency? I made that absolutely clear and I said it in terms; there is no question about that. This is a question about being fair and reasonable, it is not about reducing regulatory stringency. I do not want that particular line of attack attached to my amendments. I could not be clearer than that, and I think my noble friends on this side of the Committee are all as one so far as that is concerned.

Lord Davies of Oldham: The noble Lord will forgive me if the consideration that others might have with regard to a regulator potentially operating under direction from the Treasury to deal with a serious situation is that it should be dealing with it quickly and efficiently, and not just having regard to how much it acts appropriately or fairly, in the way in which the noble Lord has indicated. Of course, regulators know that if they act entirely improperly, even unlawfully, legal action will follow against them, but, in a Bill that is concerned to make regulation more effective, it surely cannot be that the principles upon which the regulators must act are more important than the effectiveness with which they carry out their role.

4.30 pm

Lord Newby: My Lords, I will start by giving the Government's response to the first of these two amendments, and then come to the specific points that have been raised by a number of noble Lords.

As noble Lords have pointed out, Clause 74 provides in some detail how investigations should be conducted in order to deliver transparency and confidence, which, as I think everybody agrees, well conducted and appropriate inquiries should bring about. Amendment 192A seeks to add to these requirements by setting out that,

"the regulator must have regard to its regulatory principles"

in carrying out these inquiries, and to act proportionately, reasonably and fairly. I agree that high standards of conduct should apply as much to the conduct of an investigation as to the regulator's normal regulatory work, but the noble Lord, Lord Hodgson, will probably not be totally surprised when I say that there are two reasons why the amendment is not necessary.

First, on proportionality, we do not believe that it is necessary to put this in the Bill again because the regulator already has to have regard to the regulatory principles in exercising its general functions, and the regulatory principles include proportionality, under proposed new Section 3B. Proportionality is already built in to the way that the regulator does everything so we do not think it is necessary here.

Secondly, as the noble Lord has set out, and we have set out before, public law already requires regulators to act reasonably, and the principles of natural justice require the regulator to deliver procedural fairness. The noble Lord talked about the problem of judicial review. I think everybody agrees that if you have to initiate a judicial review, this is an extremely expensive, long, drawn-out process, but if the noble Lord's amendment was accepted, my understanding is—I may be wrong—that if the regulator were to be challenged it would be under a judicial review anyway, so the same problem would arise. The noble Lord, Lord Flight, said that this amendment was a question of belt and braces. We agree, but in legislation you do not need belt and braces—you need a good belt or good braces, and we think we have got that.

The other thing that is possibly slightly confusing is that the investigations we are talking about in this part of the Bill are investigations into regulatory failure rather than the conduct of firms. The noble Lord, Lord Peston, asked whether an investigation would come into the public domain. The real concern, which we have debated before, relates to the conduct of business of a company—has it been misbehaving?—which is different from the issue of regulatory failure, which is what Clause 74 deals with.

Lord Peston: The noble Lord did say that this will be an investigation into regulatory failure. Therefore, the investigator is investigating himself or herself. After all, who has failed? It is the regulator.

Lord Newby: My Lords, we come to the noble Lord's point which concerns Clause 73(2)(b). The architecture is that the regulator will look at the failure of firms and of regulatory failure. We have seen this with the work the FSA did on RBS. It produced a comprehensive report on what it saw as regulatory failure. Although there were arguments about what would or would not be published, in terms of whether the regulator did a good job and whether it is capable of doing so, the answer we would draw from that investigation is that it did do quite a good job. There will be many cases when it is appropriate for the regulator to look back at what has happened in the past—

Lord Peston: I am sorry to interrupt the noble Lord, but I am trying to get some sense of reality about this. It is the Treasury that considers that something needs to be done. Therefore, the Treasury must suspect

something. Where, for example, does the Treasury get its information from, for it to feel that it has to issue this directive? What does the Treasury know that the regulator did not? Then it tells the regulator to look at something because it observes regulatory failure. The whole thing seems to be an intellectual mess. That is my point. It is not necessarily the point that was made by the noble Lord, Lord Hodgson. Like my noble friend Lord Davies, I am keen to have a powerful and effective regulatory system. I am also keen that we do not have a botch of a regulatory system. What we have said on the previous two Committee days on the Bill is that we think quite a few aspects of this are a botched job. Is that going too far in criticising? I do not think so.

Lord Newby: My Lords, the noble Lord asks a number of questions. First, why might the Treasury have a role and why is the regulator not doing it already? There may be a number of occasions when the Treasury first gets information from somebody and wants to tell the regulator. There are some occasions when the Treasury might want to prod the regulator into action. I have been critical of occasions when I felt the regulator has not moved as quickly as I would have liked in undertaking investigations. This part of the Bill enables the Treasury to give it a kick if it is needed. The other point, which is a valid point, is that if there is a really serious problem of regulatory failure, this is not the only way in which the Treasury can make sure that an investigation is undertaken. The Treasury can appoint any kind of investigator that it wants. This part of the Bill simply explains how the Treasury operates and the rules which apply if there is a lesser regulatory failure which probably happened some time in the past, where it seems appropriate for the regulator to have a look. I understand the noble Lord's concerns, but he should not be as worried as he is.

I will respond to the second amendment in this group, which we have not debated at great length. It seeks to add to the grounds on which the regulator may decide to postpone or suspend an investigation if the investigation did not meet the principles by which the investigator must abide. Unlike with the previous amendment, where we agree with what the noble Lord seeks to achieve but do not think that he needs to have his belt and braces, we think that this amendment could have perverse and unexpected effects by enabling the regulator to stop an investigation for any reason it wanted. For example, it could realise that an investigation was going to be very time-consuming and burdensome, perhaps because of the level of detail involved. Under this proposal, it could end an investigation and argue that it was doing so because the investigation breached its principle on economic and efficient use of resource. For those reasons, we cannot support that amendment.

A number of noble Lords, including the noble Lords, Lord Hodgson and Lord Flight, expressed broader concerns about the FSA and the noble Lord, Lord Hodgson, quoted Lex in aid of that. The noble Viscount, Lord Trenchard, and the noble Lord, Lord Peston, said that the FCA should have regard to competitiveness. These are broader issues that go beyond the scope of the amendments, but on the concerns expressed by Lex, I can understand why people are at this stage worrying about whether the balance that the regulators strike between the interests of the firms and those of the consumers of their products is right. We are pretty confident that it will be. The noble Lord, Lord Davies, pointed out that it is important that the regulators are rigorous and balance the interests of the firms and those of their consumers. The way in which the Bill is structured should enable them to do that and we are confident that they have that very much in mind.

Competitiveness has been debated previously and we have already agreed that we will look at this issue, particularly the degree to which the PRA and FCA should have regard to the importance of economic growth. We have said that we will return with further amendments in this area on Report, when we will no doubt have an extremely interesting debate on them. For today, however, I hope that the noble Lord, Lord Hodgson, will decide not to press his amendments.

Lord Hodgson of Astley Abbotts: My Lords, I am grateful to my noble friend Lord Newby for that extensive and courteous response. I am grateful to the noble Lord, Lord Flight, and the noble Viscount, Lord Trenchard, for their support. I can accept that this is a part of the Bill where the particular concerns that I have do not weigh as heavily as they did on the regulatory principles on page 28 of the Bill which we debated before we broke for the Summer Recess. I am happy to withdraw my amendment today, but I am not yet convinced that "reasonably and fairly" is not a useful addition in some part of the Bill even if it is not here. I beg leave to withdraw the amendment.

Amendment 192A withdrawn.

Amendments 192B and 192C not moved.

Clause 74 agreed.

Clauses 75 to 78 agreed.

Clause 79 : Arrangements for the investigation of complaints

Amendment 193 not moved.

Amendment 193A had been retabled as Amendment 187TA.

Clause 79 agreed.

Clause 80 : Relevant functions in relation to complaints scheme

Amendment 193B

Moved by ***Lord Sassoon***

193B: Clause 80, page 149, line 13, leave out ", 318 or 328" and insert "or 318"

Amendment 193B agreed.

Clause 80, as amended, agreed.

Clauses 81 to 83 agreed.

4.45 pm

Amendment 193BA

Moved by ***Lord Sassoon***

193BA: Before Clause 84, insert the following new Clause—

"Objectives and conditions

(1) The Banking Act 2009 is amended as follows.

(2) In section 3 (interpretation: other expressions), after "this Part—" insert—

""client assets" means assets which an institution has undertaken to hold for a client (whether or not on trust, and whether or not the undertaking has been complied with),".

(3) In section 4 (special resolution objectives), after subsection (8) insert—

"(8A) Objective 6, which applies in any case in which client assets may be affected, is to protect those assets.

(8B) Objective 7 is to minimise adverse effects on institutions (such as investment exchanges and clearing houses) that support the operation of financial markets."

(4) In section 8(2) (Condition A: private sector purchaser and bridge bank)—

(a) in paragraph (b) for "the banking systems of the United Kingdom, or" substitute "those systems,", and

(b) after paragraph (c) insert ", or

(d) the protection of any client assets that may be affected."

(5) In section 47 (restriction of partial transfers), for subsection (3) substitute—

"(3) Provision under subsection (2) may, in particular, refer to—

(a) particular classes of deposit;

(b) particular classes of client assets."

(6) In the Table in section 261 (index of defined terms), after the entry relating to "central counterparty clearing services", insert—

"Client assets (Part 1)	3"."

Lord Sassoon: My Lords, last week I introduced the first set of amendments that seek to extend the UK's resolution regime for banks to investment firms, group companies and UK clearing houses. Today, I am introducing the remaining amendments, which put in place a regime that gives the Government and the Bank of England the powers to take action when one of these institutions is likely to fail, allowing them to resolve the situation in an orderly manner in order to maintain the financial stability of the UK.

Amendment 193BA adds two new special resolution regime objectives. The collapse of Lehman Brothers in 2008 and MF Global in late 2011 highlighted the difficulties and uncertainties surrounding the treatment of client assets and money when an investment firm enters insolvency. During normal business, client assets and money are held by the investment firm on behalf of the client, in segregated or non-segregated accounts. Firms also rehypothecate client assets, borrowing them to use for their own purposes. There can be complex arrangements to unwind if a firm enters insolvency or resolution.

The new objective 6 is intended to ensure that the resolution authorities look to protect not only cash deposits but also shares and other assets. The new objective will apply to any resolution where client assets are held by the firm, whether it is a bank that offers investment services or an investment firm which is not a bank. To complement this legislation, the FSA has recently launched a wide-ranging consultation on client money and client asset rules. The Government will report to Parliament on the review of the special administration regime—the bespoke insolvency regime for investment firms —by February 2013.

The new objective 7 will help minimise the adverse effect on financial market infrastructure, such as investment exchanges and clearing houses, when stabilisation powers are used. For example, in resolving an investment firm, this objective will require the resolution authorities to consider the impact of their actions on exchanges and clearing houses in which the investment firm was a participant.

Under the Banking Act 2009, no special resolution scheme objective is prioritised over any other—the regulator must take each into account equally. The same will apply to the new objectives inserted by these amendments, so the resolution authority will have to balance the objective of protecting client assets with the objective of minimising the adverse effects on financial market infrastructure.

The public interest test in Section 8 of the Banking Act 2009 for the exercise of stabilisation powers currently refers to the protection of depositors. Subsection (4) of the proposed new clause therefore adds reference to the protection of client assets. In line with the extension of the special resolution regime beyond banks, the proposed new clause also amends the reference to the "banking systems" of the UK in the public interest test in Section 8 into a reference to the UK's financial systems. This makes Section 8(2)(b) of the Banking Act suitable for the resolution of all the types of firm that we propose to be eligible for the special resolution regime.

The effect of the new clause inserted by Amendment 193F is to extend the resolution tools under the special resolution regime to investment firms and their group companies. In doing so, it is important that this legislation captures only those firms that are deemed systemic to the financial stability of the UK. Casting the net too wide, and unnecessarily capturing firms whose failure would not pose a threat, could adversely affect the UK's competitiveness. On the other hand, we do not want to exclude from the special resolution regime those firms that, in normal market circumstances, would not be seen as systemic but which, in times of market crisis, might pose systemic risks.

This is a difficult balancing act. With an eye to developments in Europe, particularly the European Commission's recovery and resolution directive, the legislation adopts a wide definition of "investment firm" from European law but also confers on the Treasury a power to exclude categories of firm from the special resolution regime. In this way, we can ensure that smaller firms that clearly do not pose a threat to financial stability—such as a small stockbroker or financial adviser—will not be subject to the new regime, while on the other hand providing the necessary flexibility to react as circumstances change. I beg to move.

Lord Barnett: My Lords, this is a big enough Bill without two more new clauses being put in it. I hope the noble Lord will forgive me but the amendment refers of course to the Banking Act 2009. Why have we got these amendments here? We have got a banking Bill wending its way through the House of Commons which will no doubt arrive here soon, so why do these new clauses not go into the banking Bill and we could consider them then?

The likelihood is—certainly I want to see it—that the present situation will be substantially changed so that investment firms, which are referred to in both these new clauses, are no longer part of the main bank. There will be a separate bank looking at investment firms so these amendments, it seems to me, are certainly very relevant to the new banking Bill. Why are they here? Perhaps the noble Lord could first tell us the answer to that one?

Are we now to understand that the Government are absolutely set on accepting the Vickers report? I have not yet seen the details of what they are accepting, but I hope the noble Lord will forgive me since there are enough papers to look at on this huge Bill without looking yet at the banking Bill. I am sorry if I am straying into areas I should not be entering—except that these two major amendments are related to banking. I wonder why they are here.

Lord Flight: My Lords, in relation to these proposed new clauses, can the Minister tell me where lender-of-last-resort doctrine stands with regard to this legislation? A brief piece of history I observed in the course of my career was that at the time of the collapse of Johnson Matthey and Barings, there was a change in lender-of-last-resort doctrine. Since the 1870s it had operated on the basis that, in the event of a run, the central bank stood behind any bank that was properly managed. It was changed to stand behind any banks which were too big to fail. That led on to moral hazard and cartel, and a lot of smaller banks like Hambros closed, resulting in much less competition. At the time I had conversations and correspondence with Eddie George when he was Governor of the Bank of England, who virtually said he agreed with me but it was the way the then Conservative Chancellor of the Exchequer, Ken Clarke, had cast things.

Some of what the Minister just talked about touched slightly on the issue, but I would very much hope that the intent is to go back to lender-of-last-resort arrangements as originally intended, and as operated amazingly well for more than 100 years. I am not at all clear where we are.

Baroness Kramer: I have a couple of comments—they are really questions—on both amendments. Amendment 193F, as the Minister has said, essentially extends the Banking Act 2009 special resolution regime to investment firms. In the next two groups there are similar amendments extending that same resolution regime to holding companies and clearing houses. I am sure the Minister does not want me to speak three times on the same point, so perhaps he could extend his comments to those two groups as well.

I share some of the concerns expressed by the noble Lord, Lord Barnett, that we are getting a set of amendments which, by definition, will have to change fairly significantly because this area is being driven by European directives. Even the definition that we are using for an investment firm is a European directive. It is very difficult to understand how this works when the context and framework will be constantly changing. Perhaps the Minister could help us understand how that process is going to happen. With ring-fencing likely to change the way in which we look at and define an investment firm, that is one obvious set of problems. It may end up being different under European law from the application in the UK, because we may draw lines at different points. We may choose ring-fencing, and others separation. I cannot see how this set of language manages to comprehend all those complexities.

It is not just me who is concerned; I know that I have raised this issue before. This time, the BBA is very concerned about marching all the troops up the hill in one direction, finding that there has to be substantial change, and marching them all the way down and back up in another direction. I cannot understand why we are doing this now when we will have clarity in just a few months' time.

I also want to raise a question which I have asked before but to which I have not had much of an answer, under Amendment 193BA. Again, it concerns the central clearing houses and the central counterparties. I am trying to understand if that amendment deals with an issue that concerns me: the waterfall of the resolution and whether, at the end of that waterfall, it is permissible under the legislation to tear up contracts. That is a reading which the Minister will know that the industry has asked about. When he talks about the protection of client assets, does that apply to contractual relationships—for derivative contract or whatever else—where the clearing house may not be able to meet its obligations because it has got into difficulties and has been put into a resolution procedure? I am unclear whether the legislation establishes that that contract may be torn up as the last resort in the resolution process. That is a big issue that needs general discussion, if that is right. It would be extremely helpful if the Minister could give us some clarity on that.

Lord Davies of Oldham: My Lords, the Minister has a few interesting issues to respond to, but I must say that I am very much on the Government's side with regard to these two amendments. After all, they are the result of consultation. We agree with the Government that investment firms and clearing houses have the potential to cause instability in the financial system and that therefore, including them within this scheme to ensure their orderly resolution or, perhaps, wind-down in the event of failure, is obviously sensible.

I am slightly embarrassed by the fact that, although 35 years ago, as his PPS, I was used to agreeing with every word that my noble friend Lord Barnett uttered as a Member of Parliament, I have to say to him today that I do not quite agree with the line which he has adopted. I entirely recognise that we will be enmeshed in many of these issues in the not too distant future with another significant Bill but, on the whole, when the Government have a good and constructive idea, it is best for the Opposition to seize it with both hands as early as possible, and that is what I want to do.

Lord Sassoon: My Lords, I am very grateful to the noble Lord, Lord Davies of Oldham, because he has got it exactly right. The previous Administration brought forward the 2009 Bill, which necessarily came forward in a hurry as a proper part of the response to the crisis. This Bill picks up a lot of other lessons from the crisis, but the Banking Act 2009 put in place some arrangements for banks. We have now seen through the examples of what happened in the crisis and, regrettably, to MF Global and others since, that the 2009 Act, although it put in place some important new powers, did not cover the waterfront. We are therefore seeking to ensure that we learn the lessons and that arrangements are made that cover other very important parts of the sector.

As I said to the Committee last week, I think that we would be very severely criticised as a Government and as a House of Parliament if we were to delay putting in place an extension of a regime that is already based on one that is in law in the 2009 Act. The banking reform Bill has not yet started its passage in another place and it will be some time after the completion of this Bill that it comes into law. We really should get on and make proper provision, as I said last week, for situations that we do not anticipate. In this very uncertain environment one can never be sure what may next hit the system. It is important, therefore, that we get on to it. In answer to my noble friend Lady Kramer, if there are changes coming out of the banking reform Bill or out of Europe, then in due course we will amend these provisions to take account of that. However, we would be putting ourselves in a terrible position if we said that we can only move at the speed of Europe or at the speed of some slower Bill that is coming on. It is better to put these necessary clauses and arrangements in place now and change them later if we have to.

5 pm

Lord Lawson of Blaby: What my noble friend has said is most helpful. Can he give us an indication of when the banking reform Bill is likely to reach this House? I am sure that noble Lords on all sides will be greatly interested in this.

Lord Sassoon: I shall probably get into trouble if I say anything that is terribly helpful. However, the Government want to get on with it as quickly as we reasonably can. I would like to think that it will not be very many months before the Bill gets here. But, whenever it arrives, it is no excuse for not getting on with these clauses.

Lord Barnett: My Lords, perhaps I may make it clear that I do not disagree with the two new clauses. I was saying that we will have a banking Bill in this House shortly. This Bill relates to banks and investment firms. However, if the banking Bill is amended to allow two separate companies, as I hope it will be, so that investment firms are handled quite separately from the way they are handled in the present situation, it would change the whole process. The Minister says that we must get on with it. But this Bill will not be an Act until approximately the end of the year. The new Bill will be before us a few months later. Does the Minister know of some crisis that we do not know about?

Lord Sassoon: No, my Lords. I have already answered these questions. I know of no crisis. However, we would be remiss if, having identified a sensible, consulted-on extension of the regime that came in under the Banking Act 2009 to cover these other, systemically important parts of the system, we did not act. If we left even a few months, having identified what needed to be done, we would be open to very heavy criticism as a House and as a Government. Now is not the time to discuss the ins and outs of the banking reform that is proposed. However, it is certainly not the case that—as the noble Lord, Lord Barnett, put it—investment firms and banks will be in separate groups. They will not be.

As I say, if the detail of the resolution arrangements changes, then of course these clauses can be amended to take account of the new structure. We have future-proofed them as far as we can, in the sense that my noble friend, quite rightly, talks about the European approach. As I said last week but will say again, of course we are going to remain fully consistent with the European approach to these matters and indeed we are actively taking part in shaping it. The fact that we have a worked-out solution ahead of others in Europe itself puts us in a very good position to influence things, and the legislation—the proposals that we are introducing and considering today—is consistent with what is set out in the Financial Stability Board's document on key attributes for an effective resolution regime. We have taken every possible step to ensure consistency with Europe.

Lord Peston: I am sorry to interrupt the Minister but I want to ensure that noble Lords understand what he is saying. He is saying that the Treasury has discovered two problems that can be dealt with rapidly by mending the Banking Act 2009 and he is therefore using this Bill, which is not specifically about banking, as a convenient vehicle to put those into law. That is the result of the Treasury's work; it has found those two things and feels that it ought to act rapidly. I also therefore infer, validly, that the Treasury has not found any other changes that need to be made rapidly and could well have been dumped in this Bill as well—just these. That is my interpretation—that they have found these two and we must get a move on. Am I right?

Lord Sassoon: First, my Lords, these clauses fall properly in the Bill because essentially we are giving powers to the Bank of England to resolve things. I would not like to leave the thought that we were somehow using the Bill as a Christmas tree to add on other unrelated things; this is definitely related to the purpose of the Bill because we are talking about the powers of the authorities.

Secondly, the noble Lord, Lord Peston, could be mistaken for giving the impression that somehow we just discovered these things last week or last month. As I have already said, very important new powers were put in place in the Banking Act 2009. Over a period it was then, partly after seeing the collapse of other investment firms and partly by talking to the market, a consultation process, so this is not something that has just emerged. In this area, we have nothing

else up the Treasury's sleeve, as it were. If anyone identifies any other gaps in the regime, of course we will consult on them and do all the proper things that Parliament would expect us to do.

That leaves one area that my noble friend Lord Flight asked about: the doctrine of "lender of last resort". Fascinating and important though it is, I am reluctant to get into this area because it does not directly impact on where the lender of last resort doctrine, as he puts it, has now got to. It was the Banking Act 2009 that made sure that the authorities, including the Bank, had the full suite of powers. The Bill further improves those tools and clarifies responsibilities, but of course it does not alter the basic premise that the Bank will continue to be the lender of last resort to the banking sector and to the resolution authority for a variety of firms. As for the precise doctrine of how they operate, that is a matter for the Bank of England and should remain so. I recognise that that is clearly called into question by the events in 2007 and 2008, but I assure my noble friend that it is not affected by the substance of the clauses that we are discussing today.

Baroness Kramer: Will the Minister basically send me a note on how the resolution process is going to work with the clearing houses? I have an outstanding concern. In our discussions in Committee last week, he was very keen to assure the House that, in a resolution situation, clearing houses would not turn to their members and ask for additional funds in order to meet their outstanding obligations. He made it clear that the resolution process would contain the liability that would fall on members. However, we have had no discussion of what happens with an outstanding contract entered into in good faith by a party with that clearing house for, say, the future delivery of FX, or foreign currency. What happens to the person with that outstanding contract in a case of resolution? Where do they stand in that process? We need some clarity at some point on who is carrying the liability. Of all the innocent parties involved, they would seem to be the main one.

Lord Sassoon: I apologise to my noble friend because I forgot to answer her question. The answer to her question on whether contracts will be torn up is an unequivocal no. Contracts will not be torn up. That is quite clear. In answer to the other question—

Baroness Kramer: Can I ask—

Lord Sassoon: If my noble friend will forgive me I will answer the other question first. It is an important question about the call on members and shareholders of firms. I thought that I had made the position completely clear last week: there will be no new powers here to call on shareholders and members to put up new funds, except in circumstances where there are already agreements in place for contingent calls or other ways of calling down funds in arrangements that exist before this situation kicks in. I know very well that there are one or two clearing houses and others who do not seem happy to accept that assurance of last week. I can only give it again—that is the position under the clauses that we have been debating. There is nothing here that causes calls to be made on members if it is not under an existing arrangement.

Baroness Kramer: I am afraid that the Minister misunderstands where my concern is coming from. I recognise that there are some in this House who are very concerned to give that kind of assurance to the various members of the clearing house—that there will be no further call other than that which has been agreed in their fundamental arrangements. However, that leaves open the question of the open contracts that are left if a clearing house fails. This becomes very serious as we move to a limited number of extremely large clearing houses with a very significant number of contracts in their hands. Who will meet the obligation under those outstanding contracts? If it is not going to be the members of the clearing house, because there can be no further call on them, will it be the taxpayer? If the taxpayer is not standing behind this then we are in a "tear up contract" situation. We really need to understand how that waterfall is going to work rather than end up in the actual situation in life and find that we have lawsuits served from every direction and some real undermining of the whole system. That is what I am trying to get to the bottom of. If the Minister has not really sat down and addressed that question, perhaps somebody in his team could send me a note.

Lord Sassoon: My Lords, we have addressed the situation. First, the contracts are the contracts. They need to be enforced by the appropriate mechanisms, whatever they are, which may require legal routes to be gone through. What we are trying to do here is to make sure that, as far as possible, we put in place arrangements and tools which mean that some of the difficult unwinding of contracts, such as were seen in MF Global, for example, can be dealt with more quickly and effectively.

As for who pays up at the end of the day, there are well established procedures to make sure that, first, the shareholders pay, subject to the limitations on shareholders as we understand them—my noble friend is not challenging that. Then, of course, there may be holders of debt. Beyond that, the normal arrangements that exist through the financial services system will apply as regards where the liability falls. Nothing we are doing in these clauses makes any changes to the arrangements that are generally in place about the split between the taxpayer and other parts of the financial services industry to pick up liabilities.

Amendment 193BA agreed.

Clause 84 : Private sector purchasers

Amendment 193C agreed.

Clause 84 agreed.

Clause 85 agreed.

Clause 86 : Reports following exercise of a stabilisation power

Amendment 193D agreed.

Clause 86 agreed.

5.15 pm

Amendment 193E

Moved by ***Lord Sassoon***

193E: After Clause 86, insert the following new Clause—

"Groups

(1) The Banking Act 2009 is amended as follows.

(2) In section 1 (overview), for the entry in the Table relating to sections 82 and 83 substitute—

"Sections 81B to 83	Groups".

(3) In section 20 (directors), after subsection (1) insert—

"(1A) Subsection (1) also applies to a director of any undertaking which is a banking group company in respect of a specified bank."

(4) After section 36 insert—

"36A Directors

(1) A property transfer instrument may enable the Bank of England—

(a) to remove a director of a specified bank;

(b) to vary the service contract of a director of a specified bank;

(c) to terminate the service contract of a director of a specified bank;

(d) to appoint a director of a specified bank.

(2) Subsection (1) also applies to a director of any undertaking which is a banking group company in respect of a specified bank.

(3) Appointments under subsection (1)(d) are to be on terms and conditions agreed with the Bank of England."

(5) For the italic heading before section 82 substitute "Groups", and after that heading insert—

"81B Sale to commercial purchaser and transfer to bridge bank

(1) The Bank of England may exercise a stabilisation power in respect of a banking group company in accordance with section 11(2) or 12(2) if the following conditions are met.

(2) Condition 1 is that the PRA is satisfied that the general conditions for the exercise of a stabilisation power set out in section 7 are met in respect of a bank in the same group.

(3) Condition 2 (which does not apply in a financial assistance case) is that the Bank of England is satisfied that the exercise of the power in respect of the banking group company is necessary, having regard to the public interest in—

(a) the stability of the financial systems of the United Kingdom,

(b) the maintenance of public confidence in the stability of those systems,

(c) the protection of depositors, or

(d) the protection of any client assets that may be affected.

(4) Condition 3 (which applies only in a financial assistance case) is that—

(a) the Treasury have recommended the Bank of England to exercise a stabilisation power on the grounds that it is necessary to protect the public interest, and

(b) in the Bank's opinion, exercise of the power in respect of the banking group company is an appropriate way to provide that protection.

(5) Condition 4 is that the banking group company is an undertaking incorporated in, or formed under the law of any part of, the United Kingdom.

(6) Before determining whether Condition 2 or 3 (as appropriate) is met, the Bank of England must consult—

(a) the Treasury,

(b) the PRA, and

(c) the FCA.

(7) In exercising a stabilisation power in reliance on this section the Bank of England must have regard to the need to minimise the effect of the exercise of the power on other undertakings in the same group.

(8) In this section "financial assistance case" means a case in which the Treasury notify the Bank of England that they have provided financial assistance in respect of a bank in the same group for the purpose of resolving or reducing a serious threat to the stability of the financial systems of the United Kingdom.

81C Section 81B: supplemental

(1) In the following provisions references to banks include references to banking group companies—

(a) section 10(1), and

(b) section 75(5)(a).

(2) Where the Bank of England exercises a stabilisation power in respect of a banking group company in reliance on section 81B, the provisions relating to the stabilisation powers and the bank administration procedure contained in this Act (except sections 7 and 8) and any other enactment apply (with any necessary modifications) as if the banking group company were a bank.

(3) For the purposes of the application of section 143 (grounds for applying for bank administration order), the reference in subsection (2) to the Bank of England exercising a stabilisation power includes a case where the Bank of England intends to exercise such a power.

81D Interpretation: "banking group company" &c.

(1) In this Part "banking group company" means an undertaking—

(a) which is (or, but for the exercise of a stabilisation power, would be) in the same group as a bank, and

(b) in respect of which any conditions specified in an order made by the Treasury are met.

(2) An order may require the Bank of England to consult specified persons before determining whether the conditions are met.

(3) An order—

(a) is to be made by statutory instrument, and

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(4) If an order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without complying with subsection (3)(b)—

(a) the order may be made, and

(b) the order lapses unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of dissolution, prorogation or adjournment of either House for more than 4 days) beginning with the day on which the order is made.

(5) The lapse of an order under subsection (4)(b)—

(a) does not invalidate anything done under or in reliance on the order before the lapse and at a time when neither House has declined to approve the order, and

(b) does not prevent the making of a new order (in new terms).

(6) Undertakings are in the same group for the purposes of sections 81B, 81C and this section if they are group undertakings in respect of each other.

(7) Expressions defined in the Companies Act 2006 have the same meaning in section 81B and this section as in that Act."

(6) In the Table in section 259 (statutory instruments), in Part 1 after the entry relating to section 78 insert—

"81D	Meaning of "banking group company"	Draft affirmative resolution (except for urgent cases)"

(7) In the Table in section 261 (index of defined terms), after the entry relating to "bank insolvency order" insert—

"Banking group company	81D"."

Lord Sassoon: My Lords, the purpose of Amendment 193E is to extend powers available under the special resolution regime, or SRR, to group companies. It will

grant the Bank of England the power to exercise share and property transfer powers in respect of companies in the same group as the failing entity in order to facilitate the resolution of the failing entity. We believe that extending these powers is necessary because the situation could arise where exercising powers over only the failing entity may not be sufficient to fully protect the public interest.

For example, the business of a failing bank may rely on assets or services provided by another group company which is itself in trouble and the only way to preserve a viable and coherent business may be to transfer those assets or facilities out of the other group company. Having said what I said about the previous amendments and clauses, we now move on to another area which will be of interest to my noble friend Lady Kramer, because we think that, in particular circumstances, it is also right to call in assets or facilities out of another related group company.

The legislation will give the Treasury the power to set conditions to the exercise of powers over group companies. The Government intend, for example, to set the condition that the group in question must be engaged primarily in financial services in order for these powers to be exercisable. We will also set a requirement that the Bank of England exercise powers at the lowest level of the group. The clauses also give the Bank powers similar to those available to the Treasury to remove or vary the appointments of directors of failing entities and, if necessary, to group companies where it exercises stabilisation powers.

It may be useful for me to give an example of how this power might be exercised. There could be a large listed entity—a retailer, for example—that has subsidiaries engaged in banking or other financial services as well as in traditional retail businesses. The extension of powers that we are introducing will ensure that the Bank of England has the ability to exercise share and property transfer powers over financial subgroups operating under the listed retailer, but not in respect of the retailer itself.

The legislation we are debating today contains further safeguards. The Bank of England will only be able to exercise powers over group companies where necessary in the public interest, and it must have regard to the need to minimise any adverse effect of its actions on the rest of the group. Therefore, although these are broad powers, the Bank will only exercise them where necessary, and must do so proportionately.

The order-making power will be subject to approval by both this House and the other place, either on a draft order or, where the power is exercised in an emergency, within 28 sitting days. I beg to move.

Amendment 193E agreed.

Amendment 193F

Moved by ***Lord Sassoon***

193F: After Clause 86, insert the following new Clause—

"Application to investment firms

(1) The Banking Act 2009 is amended as follows.

(2) In section 1 (overview), after the entry in the Table relating to sections 84 to 89 insert—

"Section 89A	Investment firms".

"(8) Section 89A applies this Part to investment firms with modifications."

(4) In section 75(5) (power to change law: application to other institutions), omit the "or" following paragraph (c) and after that paragraph insert—

"(ca) to investment firms,".

(5) After section 89 (and in Part 1) insert—

"Investment firms

89A Application to investment firms

(1) This Part applies to investment firms as it applies to banks, subject to the modifications in subsection (2).

(2) Ignore sections 1(2)(b), 4(2)(b) and (6), 5(1)(b), 7(7), 8(2)(c) and 14(5)."

(6) After section 159 insert—

"159A Application to investment firms

This Part applies to investment firms as it applies to banks."

(7) After section 258 insert—

"258A "Investment firm"

(1) In this Act "investment firm" means a UK institution which is (or, but for the exercise of a stabilisation power, would be) an investment firm for the purposes of Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions.

(2) But "investment firm" does not include—

(a) an institution which is also—

(i) a bank (within the meaning of Part 1),

(ii) a building society (within the meaning of section 119 of the Building Societies Act 1986), or

(iii) a credit union (within the meaning of section 31 of the Credit Unions Act 1979 or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985), or

(b) an institution which is of a class or description specified in an order made by the Treasury.

(3) An order—

(a) is to be made by statutory instrument, and

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(4) If an order contains a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the order without complying with subsection (3)(b)—

(a) the order may be made, and

(b) the order lapses unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of dissolution, prorogation or adjournment of either House for more than 4 days) beginning with the day on which the order is made.

(5) The lapse of an order under subsection (4)(b)—

(a) does not invalidate anything done under or in reliance on the order before the lapse and at a time when neither House has declined to approve the order, and

(b) does not prevent the making of a new order (in new terms).

(6) In subsection (1) "UK institution" means an institution which is incorporated in, or formed under the law of any part of, the United Kingdom."

(8) In the Table in section 259 (statutory instruments), in Part 7 after the entry relating to section 257 insert—

"258A	Meaning of "investment firm"	Draft affirmative resolution (except for urgent cases)".

(9) In the Table in section 261 (index of defined terms), after the entry relating to "inter-bank payment system", insert—

"Investment firm	258A".

Amendment 193F agreed.

Amendment 193G

Moved by ***Lord Sassoon***

193G: After Clause 86, insert the following new Clause—

"Application to UK clearing houses

(1) The Banking Act 2009 is amended as follows.

(2) In section 1 (overview), after the entry in the Table relating to section 89A, insert—

"Sections 89B to 89G	UK clearing houses".

"(9) Section 89B applies this Part to UK clearing houses with modifications."

(4) After section 39 insert—

"39A Banks which are clearing houses

Sections 89C to 89E (clearing house rules, membership and recognition) apply in relation to a bank which would be a UK clearing house but for section 89G(2) (exclusion of banks etc from definition of UK clearing house) as they apply in relation to a UK clearing house."

(5) In section 75(5) (power to change law: application to other institutions), after paragraph (ca) insert—

"(cb) to UK clearing houses, or".

(6) After section 89A (and in Part 1) insert—

"UK clearing houses

89B Application to UK clearing houses

(1) This Part applies to UK clearing houses as it applies to banks, subject to—

(a) the modifications specified in subsections (2) to (5), and in the Table in subsection (6), and

(b) any other necessary modifications.

(2) For section 13 substitute—

"13 Transfer of ownership

(1) The third stabilisation option is to transfer ownership of the UK clearing house to any person.

(2) For that purpose the Bank of England may make one or more share transfer instruments."

(3) For sections 28 and 29 substitute—

"28 Onward transfer

(1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a UK clearing house, in accordance with section 13(2) ("the original instrument").

(2) The Bank of England may make one or more onward share transfer instruments.

(3) An onward share transfer instrument is a share transfer instrument which—

(a) provides for the transfer of—

(i) securities which were issued by the UK clearing house before the original instrument and have been transferred by the original instrument or a supplemental share transfer instrument, or

(ii) securities which were issued by the UK clearing house after the original instrument;

(b) makes other provision for the purposes of, or in connection with, the transfer of securities issued by the UK clearing house (whether the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).

(4) An onward share transfer instrument may not transfer securities to the transferor under the original instrument.

(5) The Bank of England may not make an onward share transfer instrument unless the transferee under the original instrument is—

(a) the Bank of England,

(b) a nominee of the Treasury, or

(c) a company wholly owned by the Bank of England or the Treasury.

(6) Sections 7 and 8 do not apply to an onward share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes, including for the purposes of the application of a power under this Part).

(7) Before making an onward share transfer instrument the Bank of England must consult—

(a) if the UK clearing house is a PRA-authorised person, the PRA, and

(b) the FCA.

(8) Section 26 applies where the Bank of England has made an onward share transfer instrument.

29 Reverse share transfer

(1) This section applies where the Bank of England has made a share transfer instrument in accordance with section 13(2) ("the original instrument") providing for the transfer of securities issued by a UK clearing house to a person ("the original transferee").

(2) The Bank of England may make one or more reverse share transfer instruments in respect of securities issued by the UK clearing house and held by the original transferee (whether or not they were transferred by the original instrument).

(3) If the Bank of England makes an onward share transfer instrument in respect of securities transferred by the original instrument, the Bank may make one or more reverse share transfer instruments in respect of securities issued by the UK clearing house and held by a transferee under the onward share transfer instrument ("the onward transferee").

(4) A reverse share transfer instrument is a share transfer instrument which—

(a) provides for transfer to the transferor under the original instrument (where subsection (2) applies);

(b) provides for transfer to the original transferee (where subsection (3) applies);

(c) makes other provision for the purposes of, or in connection with, the transfer of securities which are, could be or could have been transferred under paragraph (a) or (b).

(5) The Bank of England may not make a reverse share transfer instrument under subsection (2) unless—

(a) the original transferee is—

(i) the Bank of England,

(ii) a company wholly owned by the Bank of England or the Treasury, or

(iii) a nominee of the Treasury, or

(b) the reverse share transfer instrument is made with the written consent of the original transferee.

(6) The Bank of England may not make a reverse share transfer instrument under subsection (3) unless—

(a) the onward transferee is—

(i) the Bank of England,

(ii) a company wholly owned by the Bank of England or the Treasury, or

(iii) a nominee of the Treasury, or

(b) the reverse share transfer instrument is made with the written consent of the onward transferee.

(7) Sections 7 and 8 do not apply to a reverse share transfer instrument (but it is to be treated in the same way as any other share transfer instrument for all other purposes including for the purposes of the application of a power under this Part).

(8) Before making a reverse share transfer instrument the Bank of England must consult—

(a) if the UK clearing house is a PRA-authorised person, the PRA, and

(b) the FCA.

(9) Section 26 applies where the Bank of England has made a reverse share transfer instrument.”

(4) For sections 45 and 46 substitute—

“45 Transfer of ownership: property transfer

(1) This section applies where the Bank of England has made a share transfer instrument, in respect of securities issued by a UK clearing house, in accordance with section 13(2) (“the original instrument”).

(2) The Bank of England may make one or more property transfer instruments.

(3) A property transfer instrument is an instrument which—

(a) provides for property, rights or liabilities of the UK clearing house to be transferred (whether accruing or arising before or after the original instrument);

(b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities of the UK clearing house (whether the transfer has been or is to be effected by the instrument or otherwise).

(4) The Bank of England may not make a property transfer instrument in accordance with this section unless the original instrument transferred securities to—

(a) the Bank of England,

(b) a company wholly owned by the Bank of England or the Treasury, or

(c) a nominee of the Treasury.

(5) Sections 7 and 8 do not apply to a property transfer instrument made in accordance with this section.

(6) Section 42 applies where the Bank of England has made a property transfer instrument in accordance with this section.

(7) Before making a property transfer instrument in accordance with this section, the Bank of England must consult—

(a) if the UK clearing house is a PRA-authorised person, the PRA, and

(b) the FCA.

46 Transfer of ownership: reverse property transfer

(1) This section applies where the Bank of England has made a property transfer instrument in accordance with section 45(2) (“the original instrument”).

(2) The Bank of England may make one or more reverse property transfer instruments in respect of property, rights or liabilities of the transferee under the original instrument.

(3) A reverse property transfer instrument is a property transfer instrument which—

(a) provides for transfer to the transferor under the original instrument;

(b) makes other provision for the purposes of, or in connection with, the transfer of property, rights or liabilities which are, could be or could have been transferred.

(4) The Bank of England must not make a reverse property transfer instrument unless—

(a) the transferee under the original instrument is—

(i) the Bank of England,

(ii) a company wholly owned by the Bank of England or the Treasury, or

(iii) a nominee of the Treasury, or

(b) the reverse property transfer instrument is made with the written consent of the transferee under the original instrument.

(5) Sections 7 and 8 do not apply to a reverse property transfer instrument made in accordance with this section.

(6) Before making a reverse property transfer instrument in accordance with this section, the Bank of England must consult—

(a) if the UK clearing house is a PRA-authorised person, the PRA, and

(b) the FCA.

(7) Section 42 applies where the Bank of England has made a reverse property transfer instrument in accordance with this section.”

(5) For section 81 substitute—

“81 Transfer of ownership: report

(1) This section applies where the Bank of England makes one or more share transfer instruments in respect of a UK clearing house under section 13(2).

(2) The Bank must report to the Chancellor of the Exchequer about the exercise of the power to make share transfer instruments under that section.

(3) The report must comply with any requirements as to content specified by the Treasury.

(4) The report must be made as soon as is reasonably practicable after the end of one year beginning with the date of the first transfer instrument made under section 13(2).”

(6) The table mentioned in subsection (1)(a) is as follows—

Provision	*Modification*
Section 1	Ignore subsection (2)(b) and (c). In subsection (3)(c), for “to temporary public ownership” substitute “of ownership”. In subsection (4)(a), for “15, 16, 26 to 31 and 85” substitute “15, 26 and 28 to 31”.
Section 4	Ignore subsection (2)(b) and (c). Ignore subsection (3)(a), (b) and (ba). In subsection (5), for “banking” substitute “financial”. In subsection (6), for “protect depositors” substitute “maintain the continuity of central counterparty clearing services”. Ignore subsections (8A), (8B) and (9).
Section 5	Ignore subsection (1)(b) and (c). In subsection (3)— (a) for “Sections 12 and 13 require” substitute “Section 12 requires”, and (b) ignore the words “and temporary public ownership”.
Section 6	In subsection (4)— (a) after “Before” insert “issuing or”, and (b) ignore paragraph (d). In subsection (5) after “after” insert “issuing or”.
Section 7	In subsection (1), for “PRA” substitute “Bank of England”. In subsection (2), for the words following “satisfy the” substitute “recognition requirements”. The Bank of England may treat Condition 1 as met if satisfied that it would be met but for the withdrawal or possible withdrawal of critical clearing services by the UK clearing house. In subsection (3), for “satisfy the threshold conditions” substitute “maintain the continuity of any critical clearing services it provides while also satisfying the recognition requirements”. In subsection (4), for “PRA” substitute “Bank of England”. Ignore subsection (4A). In subsection (5)— (a) for “PRA” substitute “Bank of England”, and (b) ignore paragraph (a) unless the UK clearing house is a PRA-authorised person, in which case for “Bank of England” substitute “PRA”. Ignore subsections (7) and (8). For the purposes of section 7— (a) “critical clearing services” means central counterparty clearing services the withdrawal of which may, in the Bank of England’s opinion, threaten the stability of the financial systems of the United Kingdom, and (b) “recognition requirements” means the requirements resulting from section 286 of the Financial Services and Markets Act 2000.

Provision	*Modification*
Section 8	In subsection (1), omit "in accordance with section 11(2) or 12(2)". Ignore subsection (2)(c) and (d). In subsection (3), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person. In subsection (4), ignore the words "in accordance with section 11(2) or 12(2)".
Section 9	Ignore section 9.
Section 11	Ignore subsection (2)(a).
Section 13	See above.
Section 14	Ignore subsection (5).
Section 16	Ignore section 16.
Section 20	Ignore subsections (2) and (4).
Section 24	In subsection (1), ignore paragraph (c) unless the UK clearing house is a PRA-authorised person.
Section 25	Ignore section 25.
Section 26	In subsection (1), for "11(2)" substitute "13(2)". In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person. In subsection (6), for "11(2)" substitute "13(2)".
Sections 26A and 27	Ignore sections 26A and 27.
Sections 28 and 29	See above.
Section 30	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 31	In subsection (4), for "7, 8 and 51" substitute "7 and 8". In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 41	In subsection (1), ignore paragraph (c) unless the UK clearing house is a PRA-authorised person.
Section 42	In subsection (5), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 42A	In subsection (5), for "7, 8 and 50" substitute "7 and 8". In subsection (6), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 43	In subsection (6), for "7, 8 and 52" substitute "7 and 8". In subsection (7), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Section 44	In subsection (5), for "7, 8 and 52" substitute "7 and 8". In subsection (6), ignore paragraph (a) unless the UK clearing house is a PRA-authorised person.
Sections 45 and 46	See above.
Sections 49 to 53	Ignore sections 49 to 53.
Section 54	In subsection (1), for "A compensation scheme order" substitute "An order under section 89F". In subsection (4)(b), for "compensation scheme order" substitute "the order under section 89F".
Section 55	In subsection (10), for "to which section 62 applies" substitute "under section 89F".
Section 56	In subsection (6), for "to which section 62 applies" substitute "under section 89F".
Section 57	In subsection (1), for "A compensation scheme order" substitute "An order under section 89F". In subsection (4)(a), for "has had a permission under Part 4A of the Financial Services and Markets Act 2000 (regulated activities) varied or cancelled" substitute "no longer qualifies as a recognised body under Part 18 of the Financial Services and Markets Act 2000 (recognised investment exchanges and clearing houses) or is subject to a requirement imposed under that Part".
Section 58	In subsection (1), for "A resolution fund order" substitute "An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred". Ignore subsection (3). In subsection (4), for "A resolution fund order" substitute "An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred". In subsection (5), for "A resolution fund order" substitute "An order under section 89F that provides for transferors to become entitled to the proceeds of the disposal of things transferred". Ignore subsections (6) to (8).
Section 59	Ignore section 59.
Section 60	In subsection (3)(c), ignore the references to bank insolvency and bank administration. In subsection (4)— (a) ignore paragraphs (a) and (b), and (b) in paragraph (c), for "a third party compensation order" substitute "an order under section 89F". In subsection (5)— (a) ignore paragraph (a), and (b) in paragraph (c), for "a compensation scheme order or resolution fund order" substitute "an order under section 89F".
Section 61	In subsection (1)— (a) ignore paragraphs (a) to (c), and (b) treat the subsection as including a reference to orders under section 89F. Ignore subsection (2)(b).
Section 62	Ignore section 62.
Section 65	In subsection (1)(a)(ii), for "order" substitute "instrument". In subsection (3)— (a) in paragraph (a), ignore the words "where subsection (1)(a)(i) applies", and (b) ignore paragraph (b).
Section 66	In subsection (1)— (a) in paragraph (a), ignore the reference to section 11(2)(a), (b) in paragraph (d)(i), ignore the words following "England", and (c) ignore paragraph (d)(ii).
Section 68	In subsection (1)(a), for "order" substitute "instrument".
Section 69	In subsection (4)— (a) in paragraph (a), ignore the words "in relation to sections 63 and 64", and (b) ignore paragraph (b).
Section 70	In subsection (3)— (a) in paragraph (a), ignore the words "in relation to section 63", and (b) ignore paragraph (b).
Section 71	Ignore subsection (1)(a).
Section 72	Ignore subsection (1)(a).
Section 73	Ignore subsection (1)(a).
Section 79A	In subsection (2), ignore the words "share transfer instruments and".
Section 81	See above.
Section 81B	In subsection (1), for "or 12(2)" substitute ", 12(2) or 13(2)". Ignore subsection (3)(c) and (d). In subsection (6), ignore paragraph (b) unless the clearing house is a PRA-authorised person.
Section 81C	In subsection (2), ignore the words "and the bank administration procedure". Ignore subsection (3).
Sections 82 and 83	Ignore sections 82 and 83.

89C Clearing house rules

(1) A property transfer instrument made in respect of a UK clearing house may make provision about the consequences of a transfer for the rules of the clearing house.

(2) In particular, an instrument may—

(a) modify or amend the rules of a UK clearing house;

(b) in a case where some, but not all, of the business of a UK clearing house is transferred, make provision as to the application of the rules in relation to the parts of the business that are, and are not, transferred.

(3) Provision by virtue of this section may (but need not) be limited so as to have effect—

(a) for a specified period, or

(b) until a specified event occurs or does not occur.

89D Clearing house membership

(1) A property transfer instrument made in respect of a UK clearing house may make provision about the consequences of a transfer for membership of the clearing house.

(2) In particular, an instrument may—

(a) make provision modifying the terms on which a person is a member of a UK clearing house;

(b) in a case where some, but not all, of the business of a UK clearing house is transferred, provide for a person who was a member of the transferor to remain a member of the transferor while also becoming a member of the transferee.

89E Recognition of transferee company

(1) The Bank of England may provide for a company to which the business of a UK clearing house is transferred in accordance with section 12(2) to be treated as a recognised clearing house for the purposes of the Financial Services and Markets Act 2000—

(a) for a specified period, or

(b) until a specified event occurs.

(2) The provision may have effect—

(a) for a period specified in the instrument, or

(b) until the occurrence of an event specified or described in the instrument.

(3) The power under this section—

(a) may be exercised only with the consent of the Treasury, and

(b) must be exercised by way of provision in a property transfer instrument (or supplemental instrument).

89F Clearing house compensation orders

(1) The Treasury may by order make provision for protecting the financial interests of transferors and others in connection with any transfer under this Part as it applies by virtue of section 89B.

(2) The order may make provision establishing a scheme—

(a) for determining whether transferors should be paid compensation, or providing for transferors to be paid compensation, and establishing a scheme for paying any compensation,

(b) under which transferors become entitled to the proceeds of the disposal of things transferred in specified circumstances, and to a specified extent, and

(c) for compensation to be paid to persons other than transferors.

(3) An order—

(a) is to be made by statutory instrument, and

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

89G Interpretation: "UK clearing house" &c.

(1) In this Part "UK clearing house" means a clearing house—

(a) which is incorporated in, or formed under the law of any part of, the United Kingdom,

(b) which provides central counterparty clearing services, and

(c) in relation to which a recognition order is in force under Part 18 of the Financial Services and Markets Act 2000.

(2) But "UK clearing house" does not include a clearing house which is also—

(a) a bank,

(b) a building society (within the meaning of section 119 of the Building Societies Act 1986),

(c) a credit union (within the meaning of section 31 of the Credit Unions Act 1979 or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985), or

(d) an investment firm.

(3) Where a stabilisation power is exercised in respect of a UK clearing house, it does not cease to be a UK clearing house for the purposes of this Part if the recognition order referred to in subsection (1)(c) is later revoked.

(4) In this Part—

"central counterparty clearing services" has the same meaning as in section 155 of the Companies Act 1989 (see subsection (3A) of that section), and

"PRA-authorised person" has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000."

(7) In the Table in section 259 (statutory instruments), in Part 1 after the entry relating to section 89 insert—

"89F	Clearing house compensation orders	Draft affirmative resolution".

(8) In the Table in section 261 (index of defined terms)—

(a) after the entry relating to "bridge bank share transfer instrument" insert—

"central counterparty clearing services	89G",
"PRA-authorised person	89G", and

(c) at the end insert—

"UK clearing house	89G"."

Lord Sassoon: My Lords, as the Committee will see, we continue with a related group. Amendment 193G would apply the special resolution regime set out in Part 1 of the Banking Act 2009 to UK clearing houses with a number of important modifications. Where a UK clearing house is in serious financial difficulties that threaten its ongoing viability and pose a systemic threat, the Bank of England will be able to exercise stabilisation powers to ensure that financial stability is maintained.

These stabilisation powers are based on those applicable to the bank sector and will allow for part or all of the business of the failing UK clearing house to be sold to a commercial purchaser; for the transfer of all or part of the business of the failing UK clearing house to a company owned by the Bank of England; and for the transfer of ownership of the UK clearing house to another legal person.

The transferee could be an existing clearing house which agreed to take on the failing entity in the interests of the stability of the sector as a whole, a new entity created for the express purpose of supporting the resolution or, in extremis, a public sector entity. The transferee would ensure the continuity of vital services while the problems that necessitated the transfer were resolved. Such a transfer could be of the entirety of the equity, property, rights and liabilities of the clearing house.

The transfer of the ownership of a company does not, of itself, restore the financial condition of the clearing house. As such, in the event that a transferee is found, it is anticipated that the transferee would take steps to restore the clearing house to viability.

[Lord Sassoon]
The purpose of any such transfer is to eliminate contagion risk by ensuring the continuing function of the clearing services of the clearing house.

One of the main modifications made in the application of the special resolution regime to UK clearing houses is that the third stabilisation option provided under the SRR as it applies to banks that provides for the temporary public ownership of banks, is replaced by a power that allows for the transfer of ownership of a UK clearing house to any person by way of one or more share transfer instruments. In extremis, this could facilitate a share transfer to the Government—that is, a period of temporary public ownership. The other main modification is a reverse share transfer power to allow the Bank of England to transfer back ownership to the UK clearing house in question once the problems have been resolved. In much the same way as for the share transfer powers that I have just described, similar powers for the transfer and reverse-transfer of property rights and liabilities of UK clearing houses are also provided for.

Other modifications to the application of the SRR regime to UK clearing houses have also been provided for in this amendment, including the requirement that the Bank reports to the Chancellor when a share transfer has been enacted and provisions relating to the consequences of a share transfer on a UK clearing house's membership. This amendment also confers power on HM Treasury to make compensation orders in respect of transfers made in respect of UK clearing houses.

Finally, I should make clear that this amendment could not be used by the Bank of England to direct owners and members of a clearing house to recapitalise or refund the default arrangements of that clearing house, which was a point that I made, even if I was not being directly asked to do so, in our earlier discussion.

As I explained last week, the envisaged power of direction could not be used to do so either, unless the UK clearing house had existing contractual rights that allowed it to do so. In that case, the Bank could direct the UK clearing house to exercise its rights. However, the Government remain of the view that taxpayers should not be expected to meet the cost of restoring a failed clearing house to viability. The Government therefore wish to build on the positive developments around loss allocation rules that are already taking place in the industry. This would see changes made to the recognition requirements that would require all UK clearing houses to have in place such loss allocation rules.

Again, that is important because, as regards my noble friend Lady Kramer's quite proper points, these clauses are one part of making sure that we have the proper resolution tools in place around some of these really complex matters about how to resolve the contractual issues. The industry is, in parallel, working on loss allocation rules, which is another complementary part of what we want to see in place as a complete improvement to the picture. The authorities will consult industry further on those proposed changes in due course. I beg to move.

Baroness Kramer: Does the Minister have any sense of when we will have a feel for what these loss allocation rules are? I suspect that that is where my questions have generally been headed.

Lord Sassoon: My Lords, I do not know what the timing is but I will find out.

Amendment 193G agreed.

Clauses 87 to 90 agreed.

Schedule 17 : Amendments of Banking Act 2009 related to Part 2 of this Act

Amendment 193H

Moved by ***Lord Sassoon***

193H: Schedule 17, page 279, line 32, at end insert—

"Section 81B	(a) Treat the reference to the PRA in subsection (2) as a reference to the FCA. (b) Ignore subsection (7)(b)."

Amendment 193H agreed.

Amendment 193J

Moved by ***Lord Newby***

193J: Schedule 17, page 281, line 6, at end insert—

"( ) In subsection (6), after "filed" insert "(in Scotland, lodged)"."

Lord Newby: My Lords, this small group of government amendments are of a purely technical nature. Amendment 193J amends Section 120 of the Banking Act 2009 to reflect the terminology of Scottish law, under which documents are "lodged" with the court.

Amendments 201A, 201B and 201C are concerned with the rulebooks that the new authorities will use. The FSA's rulebook is currently made up of around 9,000 pages of rules. In the new system, these rules will become FCA rules, PRA rules, rules shared by both the FCA and the PRA, or Bank of England rules in relation to recognised clearing houses. Noble Lords will no doubt be aware that the Government intend that the new regulatory system will be put in place on 1 April next year. The Government are working closely with the FSA and the Bank of England on the practical aspects of transition to the new regulatory system, while listening to representations from industry on how disruption can be minimised in the run-up to the new system being put in place.

The amendments will give greater precision to the transition of the rulebook by enabling the new regulators to adopt relevant sections of the FSA rulebook, and its supporting materials, by designating the relevant regulatory material to the PRA and/or the FCA, or the Bank, and to make any necessary modifications. The amendments also permit the FSA and the PRA to appoint a set of persons to undertake this designation exercise. The recruitment processes to appoint members of the boards of the new regulators are well under way and the amendments will permit the future PRA and

FCA boards to be appointed so that they, rather than the current boards, can make the decisions on the designation of rules.

The new rulebooks will not come into force until 1 April next year but we need the new boards to be able to make and publish their new rulebooks as early as possible in advance of 1 April next year so that industry and the public have certainty and sufficient notice to get ready. These are technical but practical and helpful amendments and I beg to move.

Lord Davies of Oldham: My Lords, it may be a source of some surprise on the Government Bench that I rise to speak on these purely technical amendments, but I merely ask Ministers to recognise that, their having looked kindly on three amendments that I proposed earlier today, I have kept my silence on three groups of amendments that they proposed and which have gone through without dissent.

Amendment 193J agreed.

Schedule 17, as amended, agreed.

5.30 pm

Clause 91 : Power to make further provision about regulation of consumer credit

Amendment 194

Moved by ***Lord Sassoon***

194: Clause 91, page 162, line 20, at end insert—

"(ga) enable the Department of Enterprise, Trade and Investment in Northern Ireland to institute proceedings in Northern Ireland for a relevant offence;"

Amendment 194 agreed.

Amendment 194A

Moved by ***Lord Newby***

194A: Clause 91, page 162, line 23, at end insert—

"(2A) If an order under this section makes provision by virtue of subsection (2)(b) enabling the FCA to exercise any of its powers under sections 205 to 206A of FSMA 2000 (disciplinary measures) by reference to an act or omission that constitutes an offence under CCA 1974, the order must also make provision by virtue of subsection (2)(d) ensuring that a person in respect of whom the power has been exercised cannot subsequently be convicted of the offence by reference to the same act or omission."

Lord Newby: My Lords, the Government are bringing forward amendments to Clause 91 in response to concerns raised by the Delegated Powers and Regulatory Reform Committee. I am very grateful to that committee, chaired by my noble friend Lady Thomas of Winchester, for its close and rigorous scrutiny of the powers that Clause 91 will confer and for the committee's useful suggestions, which have informed the government amendments that I am now bringing forward.

Clause 91 enables the Treasury to make further provision about consumer credit following the transfer of regulation from the OFT to the FCA. It is necessary to take a power in this instance because the precise amendments that we will need to make to FiSMA and the Consumer Credit Act to effect the transfer will depend on the detailed proposals for the new FCA consumer credit regime, on which we will consult next year. These amendments clarify and put certain limits on how the power may be exercised.

Amendment 194A responds to the committee's concern about the risk of double jeopardy. The amendment provides that, where criminal sanctions under the Consumer Credit Act and regulatory sanctions under FiSMA are available to the FCA in relation to the same act or omission, a person may not be convicted if he has been the subject of regulatory sanctions under FiSMA. This approach reflects that taken in Section 41 of the Regulatory Enforcement and Sanctions Act 2008, which the Delegated Powers Committee helpfully highlighted in its report as a useful precedent.

The second set of amendments in this group responds to the committee's concern about the need to introduce certain constraints on the power in Clause 91 to ensure that it continues to be exercised in accordance with current government policy. Government Amendments 196ZA to 196ZC require the Treasury to have regard to the importance of securing an appropriate degree of protection for consumers and the principle that a burden imposed should be proportionate to its benefits.

These new duties to have regard reflect the two values underpinning the Clause 91 power. First, the Government remain very conscious of the fact that the primary rationale for the transfer of credit regulation to the FCA is to strengthen consumer protection. Thus, the requirements in the Consumer Credit Act should be repealed only where their effect can be replicated in an FCA rulebook under a FiSMA-based regime or where they are no longer appropriate. Secondly, this duty to have regard confirms that the Government remain committed to ensuring that regulatory burdens on small businesses are proportionate to the benefits.

I hope that these amendments adequately address the committee's concerns. I beg to move.

Lord Stevenson of Balmacara: My Lords, in keeping with our previous remarks, I think that we have very little of substance to make in the way of comment on these proposals, as set out by the noble Lord. As he said, they are largely technical and clarificatory, and they focus on the good work done in the committee, which we all welcome.

Amendment 194A agreed.

Amendments 195 to 196ZC

Moved by ***Lord Newby***

195: Clause 91, page 162, line 24, after "(2)(g)" insert "and (ga)"

196: Clause 91, page 162, line 30, at end insert—

"(3A) The Treasury may make provision by virtue of subsection (2)(ga) only with the consent of the Department of Enterprise, Trade and Investment in Northern Ireland."

196ZA: Clause 91, page 162, line 32, leave out from "may" to "by" in line 34

196ZB: Clause 91, page 162, line 38, at end insert—

"( ) In exercising their powers under this section, the Treasury must have regard to—

(a) the importance of securing an appropriate degree of protection for consumers, and

(b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction."

196ZC: Clause 91, page 163, line 2, at end insert—

""consumers" has the meaning given in section 1G of FSMA 2000;"

Amendments 195 to 196ZC agreed.

Clause 91, as amended, agreed.

Amendment 196A

Moved by ***Lord Sassoon***

196A: After Clause 91, insert the following new Clause—

"Suspension of licences under Part 3 of Consumer Credit Act 1974

(1) The Consumer Credit Act 1974 is amended as follows.

(2) In section 32 (suspension or revocation)—

(a) in subsection (1), omit "or suspended",

(b) in subsection (2)—

(i) in paragraph (a), omit ", as the case may be," and ", or suspend it until a specified date or indefinitely,", and

(ii) in paragraph (b), omit "or suspension" and "or suspend",

(c) in subsection (3)—

(i) in paragraph (a), omit ", as the case may be," and ", or suspend it until a specified date or indefinitely,", and

(ii) in paragraph (b), omit "or suspension",

(d) in subsection (4)—

(i) in paragraph (a), omit ", as the case may be," and ", or suspend it until a specified date or indefinitely,", and

(ii) in paragraph (b), omit "or suspension",

(e) in subsections (6) and (7), omit "or suspension",

(f) omit subsection (8),

(g) in subsection (9), omit "or to suspend", and

(h) for the title, omit "Suspension and".

(3) After section 32 insert—

"32A Power to suspend licence

(1) If during the currency of a licence it appears to the OFT to be urgently necessary for the protection of consumers that the licence should cease to have effect immediately or on a specified date, the OFT is to proceed as follows.

(2) In the case of a standard licence the OFT must, by notice—

(a) inform the licensee that the OFT is suspending the licence from the date of the notice or from a later date specified in the notice,

(b) state the OFT's reasons for the suspension,

(c) state either—

(i) that the suspension is to end on a specified date, which must be no later than the last day of the 12 months beginning with the day on which the suspension takes effect, or

(ii) that the duration of the suspension is to be as provided by section 32B,

(d) specify any provision to be made under section 34A, and

(e) invite the licensee to submit to the OFT in accordance with section 34ZA representations—

(i) as to the suspension, and

(ii) about the provision (if any) that is or should be made under section 34A.

(3) In the case of a group licence the OFT must—

(a) give general notice that the OFT is suspending the licence from the date of the notice or from a later date specified in the notice,

(b) state in the notice the OFT's reasons for the suspension,

(c) state in the notice either—

(i) that the suspension is to end on a specified date, which must be no later than the last day of the 12 months beginning with the day on which the suspension takes effect, or

(ii) that the duration of the suspension is to be as provided by section 32B,

(d) specify in the notice any provision to be made under section 34A, and

(e) in the notice invite any licensee to submit to the OFT in accordance with section 34ZA representations as to the suspension.

(4) In the case of a group licence issued on application the OFT must also—

(a) inform the original applicant of the matters specified under subsection (3)(a) to (d) in the general notice, and

(b) invite the original applicant to submit to the OFT in accordance with section 34ZA representations as to the suspension.

(5) Except for the purposes of sections 29 to 32 and section 33A, a licensee under a suspended licence is to be treated, in respect of the period of suspension, as if the licence had not been issued.

(6) The suspension may, if the OFT thinks fit, be ended by notice given by it to the licensee or, in the case of a group licence, by general notice.

(7) In this section "consumers", in relation to a licence, means individuals who have been or may be affected by the carrying on of the business to which the licence relates, other than individuals who are themselves licensees.

32B Duration of suspension

(1) This section applies where a notice under section 32A provides for the duration of a suspension under that section to be as provided by this section.

(2) The suspension ends at the end of the period of 12 months beginning with the day on which it takes effect, but this is subject to—

(a) subsections (3) and (4) (where those subsections give a later time), and

(b) the powers of the OFT under section 32A(6) and section 33.

(3) Subsection (4) applies where—

(a) the OFT gives notice under section 32 that it is minded to revoke the licence, and

(b) it gives that notice—

(i) on or before giving the notice under section 32A, or

(ii) after giving that notice but before the end of the period of 12 months mentioned in subsection (2).

(4) The period of suspension is to continue until—

(a) the time of any determination by the OFT not to revoke the licence in pursuance of the notice under section 32, or

(b) where the OFT determines to revoke the licence in pursuance of the notice, the end of the appeal period."

(4) In section 33 (application to end suspension), for subsection (1) substitute—

"(1) On an application made by a licensee the OFT may, if it thinks fit, by notice to the licensee end the suspension of a licence under section 32A, whether the suspension was for a fixed period or for a period determined in accordance with section 32B."

(5) In section 33A (power of OFT to impose requirements on licensees) after subsection (6) insert—

"(6A) A requirement imposed under this section during a period of suspension cannot take effect before the end of the suspension."

(6) After section 34 insert—

"34ZA Representations to OFT: suspension under section 32A

(1) Where this section applies to an invitation by the OFT to any person ("P") to submit representations, the OFT must invite P, within 21 days after the notice containing the invitation is given to P or published, or such longer period as the OFT may allow—

(a) to submit P's representations in writing to the OFT, and

(b) to give notice to the OFT, if P thinks fit, that P wishes to make representations orally,

and where notice is given under paragraph (b) the OFT must arrange for the oral representations to be heard.

(2) The OFT must reconsider its determination under section 32A and determine whether to confirm it (with or without variation) or revoke it and in doing so must take into account any representations submitted or made under this section.

(3) The OFT must give notice of its determination under this section to the persons who were required to be invited to submit representations about the original determination under section 32A or, where the invitation to submit representations was required to be given by general notice, must give general notice of the confirmation or revocation."

(7) In section 34A (winding-up of standard licensee's business), in subsection (2)—

(a) in paragraph (c), omit "suspend or", and

(b) after paragraph (c) insert—

"(d) a determination to suspend such a licence under section 32A (including a determination made under section 34ZA on reconsidering a previous determination under section 32A);".

(8) In section 41 (appeals) after subsection (1) insert—

"(1ZA) References in the table to a determination as to the suspension of a standard licence or group licence are to be read as references to a determination under section 34ZA to confirm a determination to suspend a standard licence or group licence."

(9) Nothing in this section affects the powers conferred by section 22 of FSMA 2000 or section 91 of this Act."

Lord Sassoon: My Lords, Amendment 196A inserts into the Bill a new clause which gives the OFT a new power to suspend a consumer credit licence with immediate effect if the OFT considers it urgently necessary to do so to protect consumers. Amendment 202 makes a consequential change to commencement provisions to accommodate this power.

This new licence suspension power is the first step on the road to greater consumer protection in the consumer credit market. It will make sure that bad practice is tackled and that consumers are protected even before the move of consumer credit regulation from the OFT to the powerful new FCA in April 2014.

Noble Lords may ask why the Government are bothering with this change now, given the move to the FCA in 2014. We think it is worth ensuring that the OFT can act as a strong and credible regulator in the interim, particularly to protect vulnerable consumers.

The power has been very well received by those working closely with consumers. For example, the consumer organisation Which? stated:

"Our research has found that people taking out payday loans are often caught in a downward spiral of debt so it is important that the Office of Fair Trading will have the power to instantly suspend the credit licences of unscrupulous lenders caught breaking the existing rules.

This is a good step towards ensuring the regulator has the powers it needs to be a more proactive consumer watchdog. The Government must now … make sure the regulator has the resources it needs, and ensure there is no gap in supervision as these powers transfer to the Financial Conduct Authority".

The current regime does not allow the OFT to do its job properly in this area. At present, where the OFT calls into question a licence holder's fitness to hold a credit licence it can take various measures, including suspending, varying or revoking the credit licence. However, under the current regime a licence holder's credit licence remains in effect until all rights of appeal have been exhausted, and the licence holder can continue to trade during this period. The appeal process may take up to two years to be completed; we saw that in the case of Yes Loans. The potential for detriment during that time is immense, particularly as rogue operators who are aware that they may soon lose their licence are incentivised to operate even more unscrupulously to maximise profits.

Amendment 196A amends the Consumer Credit Act 1974 to provide for an enhanced licence suspension power which will enable the OFT to suspend a licence with immediate effect or at a specified date, and the test is that the OFT considers it urgently necessary to protect consumers. It would be used in cases where there was an urgent need to take action in order to stop actual, or prevent further, consumer detriment.

The sorts of factors that the OFT might take into account when deciding whether or not to use the power would include evidence that the business has engaged in violence or threats of violence, fraud or dishonesty, or is targeting particularly vulnerable consumers with harmful practices. In fact the OFT issued a consultation document yesterday that sets out a number of examples of when and how they might apply the new tool.

It is important to note that the new power will have no adverse impact on businesses that comply with existing law and do not cause serious actual or potential consumer detriment. However, the Government expect it to have an important deterrent effect.

In addition, the power includes a number of safeguards. First and foremost, any suspension can only be in effect for 12 months from the date it is issued, unless during that time the OFT issues a notice that it is "minded to revoke" a licence. If no "minded to revoke" notice is issued, the suspension expires, and it cannot simply be made again.

There are also a number of procedural safeguards included in the power, setting out what notices must be given and what representations the licence holder must be permitted to make. Finally, the licence holder has the usual appeal routes open to them, although crucially a licence remains suspended while appeals are being heard.

[Lord Sassoon]

In conclusion, this is a crucial step towards affording consumers in the credit market greater protection, a matter that we have discussed in a number of contexts during Committee. It strengthens the OFT in the interim period before the FCA takes over. During that period, it will allow the OFT to take firm action against those who may be mistreating their customers. I beg to move.

Lord Borrie: My Lords, I find the Minister's explanation exceedingly clear and well justified. The case that he has put for being able to suspend a licence instantly is something that will only be rarely exercised. However, most importantly, as the Minister said, this power if exercised even once or twice will have a deterrent effect on others. Its value in the exceptional case is undoubted. I am so glad that the Minister has not been persuaded by those who say, "Oh, well, it's all disappearing into the FCA shortly so why bother at this stage?". I am glad that this has been done. It will send a message and it is very helpful for this to be put into law now.

Lord Stevenson of Balmacara: My Lords, as we have heard, this amendment would ensure that a decision by the OFT to suspend a consumer credit licence could take effect before an appeal process ends. This follows widespread concerns that appeals from consumer credit licence holders can take up to two years, as the noble Lord said, and the current law allows the trader to continue with any bad practice while the appeal is pending. We warmly welcome these amendments and are very grateful for them. The consultation paper that came out only yesterday is a very useful contribution to the debate.

However, perhaps the Minister could answer two questions—one small point and a larger one. The amendment sets up the legislation so that the OFT would suspend the whole licence; in other words, all activity covered by the licence. That generally makes sense. However, there may be circumstances where the OFT has concerns with a particular feature of a credit licence holder's business activities—say, a lender whose lending practices are all right but who perhaps has problems with debt collection practices—and the right decision might be to close down one part of the business. The noble Lord may be able to point me to where these powers already exist or, if necessary, perhaps he would reflect on this point. There may be a slight issue here, but it is not a major one. If in doubt, the right thing is to withdraw the licence.

The second point is slightly broader. To date, the OFT has done a very good job in this area, and perhaps does not receive as much thanks as it should for that. It seems to us that the main problem is that it has never had the resources that it needs to do the job it wants to do. There is little point in providing powers to a body, as in this amendment, if the resources to do the job are not also provided. So my second question is about the transition: the OFT will probably have jurisdiction on credit in this relationship for only another 18 months or so. What will happen over the transition? I would be grateful if the Minister can give us a reassurance that the transfer arrangements will be such that this amendment will survive the transfer, and that the FCA will be willing and able to provide the necessary resources so that there is a seamless handover.

Lord Sassoon: My Lords, I am very grateful to the noble Lord, Lord Borrie, for giving his clear welcome to this provision. It is always gratifying to have his agreement on such things, as he has immense background experience in this area.

I turn to the two points made by the noble Lord, Lord Stevenson of Balmacara. I believe that there is no way of partly suspending a licence; it is an all-or-nothing situation. I note his suggestion to reflect on this, and I will check that it has been taken fully into account, as I suspect it has. It reinforces the point made by the noble Lord, Lord Borrie, that it is hoped that this power is not used very often and that it will be used in what are clearly extremely egregious cases.

On the second point, I can certainly assure the noble Lord that the planning relates to the transfer being seamless and appropriate—not only that the appropriate powers are taken into account but also the appropriate resources. My understanding is that people are clearly working to ensure that we achieve the objective that he and I share in this area.

Amendment 196A agreed.

5.45 pm

Amendment 196B

Moved by ***Lord Mitchell***

196B: After Clause 91, insert the following new Clause—

"Power of the FCA to make further provision about regulation of consumer credit

(1) The FCA may make rules or apply a sanction to authorised persons who offer credit on terms that the FCA judge to cause consumer detriment.

(2) This may include rules that determine a maximum total cost for consumers of a product and determine the maximum duration of a supply of a product or service to an individual consumer."

Lord Mitchell: My Lords, by any criteria, 4,214% being charged on a personal loan is outrageous. It is usury par excellence. Yet this is the rate of interest being charged by one of our largest and most popular online payday lenders. There are many others who are charging similar amounts. This amendment does not seek to ban payday lending because it fulfils a role and, for many people, they have no choice. What we do seek is to permit the Financial Conduct Authority to place a cap on the total cost of any loan if it judges that that loan will cause consumer detriment.

Payday lending has gone viral. Noble Lords need only stand in Parliament Square this evening and see the advertising copy plastered on London buses—one says "Go on. Get money. Go on", while another one says "Arrives in 15 minutes"—in order to realise that this really is big business. Or they can do what I did, and go to Walthamstow in north-east London and there on the high street see the plethora of payday lending shops, all of which seem to be doing good

business. Or they can go on to the Blackpool FC website, there to see that this football club is selling replica kits with "Wonga" plastered all over the shirts. You can even buy a baby Blackpool FC shirt so that your baby has "Wonga" on full display.

Until a year ago, I knew nothing about payday loans. Of course I had heard about loan sharks and I knew that this is an illegal, murky underworld where desperate people seeking immediate cash can get it quickly from backstreet dealers. I also knew that if you did not repay your loan, nasty people with black gloves and baseball bats would come round and make you an offer you could not refuse. I decided to look up the definition of "loan shark", which the *OED* defines as,

"a moneylender who charges extremely high rates of interest, typically under illegal conditions".

The truth be told, loan shark is an ugly expression and baseball bats are unacceptable, so many of the new generation have gone upmarket and spruced up their image. They have become illegal and, like any good marketing company, they have rebranded their product. Now their offerings are called "payday loans", and if you do not repay, it is no longer the baseball bat but the bailiff and the threat that your personal credit rating will be shot to pieces. Some 4 million people are using these loans, and the amounts advanced exceed £2 billion. This is an industry that is enjoying stratospheric growth—no double dip here. It is a world where the companies have jaunty, blokey names like "Quick Quid", "The Money Shop", "My Advance Loan" and "Wonga". Need a few quid over Christmas? It is easy-peasy.

But I have seen another side of the fun-filled world of easy loans. I have met people whose lives have been destroyed as they are sucked into the payday loan vortex. For some of them, it becomes a never-ending cycle of payment and repayment, payment and repayment, shuffling credit cards, borrowing from one payday loan company to meet the never-ending demands of the other, and all the time the inexorable clock of compound interest keeps ticking away. It is a Kafkaesque nightmare. Once you are in, it is hard to get out. I know it shows my age, but the words from the song "Hotel California" keep reverberating in my brain:

"You can check-out any time you like,
But you can never leave".

I am in a beneficial position to understand what is going on as I come from an asset finance background. In my day, we financed capital equipment to large companies, which is clearly not the same as consumer credit, but the fact is that I totally understand the workings of compound interest and I know the games that people play.

Wonga is a good example to examine. The payday loan companies have taken to the internet like ducks to water—no shops, more upmarket and they have become very slick. They have turned loan sharking from a shabby backstreet activity into a recreational pursuit. I decided to do my own investigation. Wonga itself has no history of illegal loan sharking. It is a true 21st century online payday loan company and is by far and away the most well known and maybe the most successful, so it made sense for me to go on to its website. It is brilliant. In terms of user friendliness, it is right up there with Apple and Google; it is very seductive. To test it out, I set out to borrow £300 for a 21-day period. It was so easy. Wonga wanted my personal details—where I live and where I work—and required details of my debit card so that it could capture the repayment after three weeks. So far, so good.

Wonga was able instantly to assess my credit rating, which enabled it to accept or reject my application within minutes. It highlighted the fact that it offers straight-talking money and promotes responsible lending. It told me that it would give me a decision in six minutes and that the £300 would hit my bank in 15 minutes. It also told me clearly and upfront that I would have to repay £365 in 21 days' time. It stated, as it must, that this loan was equivalent to an annualised interest rate of 4,214%—totally transparent and totally exorbitant. Noble Lords will be pleased to hear that I did not click the "Accept" button.

Payday loan companies are correctly obliged by law to display their APR. As I say, in Wonga's case, it is 4,214%. Some are more, others are less. Most of them claim that APR is an unjust measure. "After all", they say, "how can you apply an annualised rate of interest to a loan that lasts for just a matter of days?". But the fact is that you can apply an annualised rate of interest to any loan, whether it lasts for one day or 100 years. It is the only comparative measure. Attempts to rename interest and call it a fee payment must be resisted. Payday lenders are obliged to display APR on their websites but for some reason they do not have to show it on their advertising. I think they should. Imagine a bus advertisement where one panel says, "Straight-talking money", and the other says, "APR 4,214%".

Payday lending and loan-sharking are not going to disappear. This sector provides a vital service to those in our community who cannot get credit elsewhere. In these straitened times, it is only going to get worse. This amendment gives the Financial Conduct Authority the power to act where it sees that the terms on offer cause "consumer detriment". I hope that the Government and noble Lords are able to support this amendment. I beg to move.

Baroness Kramer: My Lords, I will speak very briefly to this amendment, with which I have great sympathy.

I understand that the Government are carrying out a review of payday lending. I have two concerns. First, we really need to nail the banks, frankly, because I suspect that if the various fees charged for unauthorised overdrafts were translated into an APR, they might not be so different from that charged by Wonga. Secondly, we need to understand this dynamic between companies like Wonga and the kind of loan sharks that come after their clients with a baseball bat, because the last thing any of us want would be to see people driven back to those illegal lenders and subject to their violent and aggressive behaviour.

Would the noble Lord, Lord Mitchell, not agree that the most important way to combat this kind of exorbitant charging is to make sure that there is a proper alternative for individuals, whether it is through a credit union, community development banks—which we do not have this in this country—or some other mechanism where there is a legitimate provider that

[BARONESS KRAMER]
serves this particular market? Would he not agree that one of the frustrations with much of the language in this Financial Services Bill is that it is not taking the necessary actions to promote those kinds of organisations coming forward and to provide regulator backing to ensure that the alternatives are in place so that people do not have to resort to Wonga or to banks charging exorbitant fees for unauthorised overdrafts?

Lord Kennedy of Southwark: My Lords, I thank my noble friend Lord Mitchell for his very welcome amendment. The time has come to deal with this issue. All of us, I am sure, are greatly concerned that those in poverty or on a low income, with a poor credit rating, actually pay the most for financial services—those who can least afford it pay the most, and that is wrong.

Like the noble Lord, Lord Mitchell, I think it is outrageous that people pay 2,000%, 3,000% or 4,000% for credit. It is a great concern to me that on the streets of Walthamstow and Southwark, where I come from, you see these payday loan companies offering these services. If you are at home watching daytime television, you are bombarded with them then and at other times. It is outrageous. The Government should look to create an environment that enables people to pay a fair price for the credit they need. The noble Baroness, Lady Kramer, spoke about the credit union movement. I am a big supporter of it as well and it certainly has a role to play in finding part of the solution to this problem. The Government have got to help it. I know it had some welcome support from the Government, with £38 million from the development fund. That is great, but it needs additional support to enable it to offer some of the services discussed here today. It may also be time for the banks to do something. We often talk about the problems we have had with the banks in recent years. They could earn some credit by working to help people in this sector. These are often the people the banks do not want to lend money to. They all have charitable arms and trusts, though, so why can they not work to help those whose business the banks would not otherwise want, to access credit elsewhere? The banks should step up to the mark and look at this.

As my noble friend said in introducing this amendment, there is no attempt to stop these firms trading, but it gives power to the FCA to set the interest rate they charge. That is very welcome. My noble friend also said that the cost is displayed as an annualised rate, but it is so small, it is hard to read. What should happen is that the print is like that on a packet of cigarettes, with a great big sign saying what it costs. We should see it clearly so that if we borrow £1,000 or £2,000, we know without dispute what we are actually paying. I am delighted to support my noble friend and look forward to the response of the Government.

Lord Flight: My Lords, I shall make two brief points. First, when I started my career there was a money-lending licence. You could not be in the business unless you had one and if you did, the interest rate that you could charge was limited by law. Secondly, wearing my hat as a commissioner of the Guernsey Financial Services Commission, Guernsey has refused to allow such companies to register or operate within the States of Guernsey.

Lord Newby: My Lords, the amendment suggests that the FCA should make rules about the maximum cost and duration of a loan. Obviously the Government share many of the noble Lord's concern about some practice in the payday lending sector, including poor affordability checks, particularly in relation to rolling over loans and the unfair treatment of customers in financial difficulty. The noble Lord is absolutely right: what we have seen in the last year or two has been an explosion of this kind of loan, available within minutes over the internet. That is the new, all-pervasive problem. I, too, looked at taking out a loan and the companies vied not only to let me have a loan, but to do so quickest—almost saying how many minutes. Some would do it in half an hour, some in 15 minutes. That is a new development. I did not have to go to Walthamstow; I could do it sitting at my desk while doing other things. That is a particularly seductive approach and one of the reasons the sector has grown so quickly. It also has an aura of simplicity and respectability, which going into a shop in a high street to get a loan does not necessarily have.

The Government and I are extremely sympathetic to many of the things that the noble Lord seeks to achieve. As we see it, one of the key benefits of transferring consumer credit to the FCA is that it will equip that regulator with better tools than exist at the minute to keep up with this kind of development, particularly the new developments in respect of the internet and via text messaging. The FCA will also have greater resources to supervise the compliance of these firms and a much wider range of powers to take action when it spots a problem, either at a firm-specific or sector-wide level.

6 pm

While we think that the transfer of powers to the FCA will enable a big improvement to take place, we cannot wait until April 2014—when those powers move across—before we see any action. The OFT is halfway through a review of the compliance of payday lenders. The review involves on-site inspections of 50 major payday lenders and surveys of industry and consumer organisations. Its findings will be used to drive up standards and to take enforcement action against specific lenders where appropriate. We are of course giving the OFT a new power to suspend licences with immediate effect should this be necessary to protect customers. BIS is also undertaking a review into the case for a cap on the total cost of credit. Both these reviews are due to report in a matter of months.

In addition, in May, BIS also announced agreement from the four main trade associations representing the high-cost credit sector to strengthen the consumer protections in their codes of practice; for example, by providing increased transparency about loan repayment terms, more help for customers in financial difficulty by freezing charges and interest, and robust credit and affordability assessments to ensure loans are suitable for the customer's situation.

Returning to the amendment, I reassure the noble Lord that the Bill already contains adequate provision to enable the FCA to take effective action to tackle detrimental lending practices in respect of payday

loans. In particular, Clause 22 already provides the FCA with a broad power to make rules on products and product features, including in relation to specific product features such as the duration of contracts. It would also—this deals with the point made by the noble Lord, Lord Kennedy—enable the FCA to make rules in respect of the way in which interest rates were displayed in the marketing and other materials of payday loan companies.

I reassure the noble Lord that the powers that he seeks for the FCA already exist in the Bill. The lack of specific provision on the face of the Bill in no way reflects how seriously the Government take these issues.

Lord Mitchell: My Lords, I thank noble Lords who have participated in this short debate. To the noble Baroness, Lady Kramer, I say that credit unions are very interesting. They have started very slowly. As to the rates of interest they charge, I think that it is presently 2% per month of the capital cost and they are pushing hard for it to go to 3%. I do not know what that is when it is compounded out—I do not have my calculator with me—but it is probably about 50%. That strikes me as a reasonable amount to charge given the credit involved.

To the noble Lord, Lord Flight, I say that I think that Guernsey has probably got it right and we should pay attention to it. There is a lot of financial expertise there. I thank my noble friend Lord Kennedy for his support for the amendment. He lives in a deprived borough of London where, exactly as we saw in Walthamstow, payday loan shops are to be found everywhere.

To the Minister, I should like to make just a couple of comments. First, with online payday loan companies, ease of use is a significant issue. It is a bit like online betting: it is so easy to do; it is so fast. Let us think of people who perhaps do not have self-control or need the money quickly. It is frightening what people can do in the privacy of their front room to get money very quickly. It is not like it was before, when you would go into a payday loan company on the high street not knowing who was watching and perhaps not wanting to be seen there. This is between you and your computer, and it is very difficult.

I heard what the Minister said about compliance and licensing, but I am not sure that the issue of interest rates has been taken as the cost. It is the interest rate aspect of it that we are trying to push in this amendment, so that the FCA would have the power to control the effective interest rates being charged.

I shall reflect on the comments made and perhaps return to the matter on another occasion. I beg leave to withdraw the amendment.

Amendment 196B withdrawn.

Amendment 196C

Moved by ***Lord Stevenson of Balmacara***

196C: After Clause 91, insert the following new Clause—

"Phasing out commercial debt management

In Part 2 of FSMA 2000, after section 30 insert—

"30A Prohibition of specified fees for debt management

(1) The FCA will make rules under this section to prohibit any person whether authorised or not from charging a consumer fees of a specified description in respect of debt management services or debt solutions.

(2) For the purpose of subsection (1), rules may specify fees to be prohibited in terms that include, but are not limited to—

(a) the total amount of fees charged in respect of one or more debt solutions,

(b) the size of any particular fee payment,

(c) the timing and manner that fees fall due,

(d) the type and nature of debt management services or debt solutions, and

(e) any other matter that the FCA deems necessary to meet its objectives.

(3) The rules may define debt management services and debt solutions for the purpose of this section and this may include both regulated and unregulated activities.

(4) Subsection (5) will take effect no later than three years after rules under this section come into effect and not later than 6 years after the passing of this Act.

(5) At the expiry of the period set out in subsection (4) the FCA shall make rules prohibiting any person, whether authorised or not, from charging a consumer fees or charges of any amount in respect of an agreement for debt management services or debt solutions made after these rules come into effect.

(6) The FCA may extend the period set out in subsection (4) where it is satisfied that the prohibition in subsection (5) would result in significant detriment for consumers.

(7) Any agreement made in contravention of a prohibition in this section will be unenforceable against the consumer or consumers it relates to.

(8) A consumer who has entered into an agreement that contravenes a prohibition under this section will be entitled to recover—

(a) any money or other property paid or transferred by him under the agreement, and

(b) compensation for any loss sustained by him as a result of having parted with it.

(9) The FCA may specify persons, or classes of persons who may be exempted from the prohibitions set out in this section in respect of more or more specified debt management services or debt solutions.""

Lord Stevenson of Balmacara: My Lords, I declare my interest as chair of CCCS—soon to be re-named StepChange—the debt charity. We are the UK's leading free, independent debt advice charity and the only charitable provider of debt management plans, administering around a third of the total number in place today.

This is a probing amendment. We have considered the question of regulating debt management companies already in this Committee, but I make no apology for returning to this issue. We estimate that some 6.2 million families in this country are in financial jeopardy, and all the signs are that increasing numbers will need help, advice and solutions to their unmanageable debts over the next period. At present, there are a variety of providers, and a number of companies operating on a strictly commercial basis compete for business with the free services provided by the charitable sector.

To complicate matters, the Department for Business, Innovation and Skills is attempting to establish a voluntary protocol in this area, but we do not believe

[LORD STEVENSON OF BALMACARA]
that it will be comprehensive. Nor will it be sufficient to eliminate the poor practice that has been found to exist or ease the detriment often caused to vulnerable, indebted people who sign up with fee-charging commercial debt management companies and, as a result, end up paying more, for longer, before they are debt free.

Debt management companies, along with payday loans—about which we have just heard—and claims management companies are a new type of financial company which have come to the public notice in recent years. We must ensure that our regulatory structures look forward as well as back and that we do not miss the opportunity to protect consumers from the new problems that are coming down the track as well as learning lessons from the past.

Of course, it would be folly to believe that simply regulating debt management companies better, and including CMCs and payday lenders in the scope of the FCA more explicitly than at present, is the answer. However, it seems perverse that, while we are restructuring the conduct and prudential aspects of our present regulatory system, we are missing the opportunity to include other areas such as payday loans and claims management and debt management companies, which are currently regulated to different standards and for different purposes, and with very different resources, by other government departments. This results in a piecemeal approach and is surely a suboptimal way to proceed.

It has been argued that these areas are not "pure" financial services and therefore should not be regulated by the FCA, but I put it to the Minister that most people would regard the operations of CMCs, payday lenders and debt management companies as having a common thread of operating to earn money from helping people with their debts or future credits and, as such, they are in common parlance "financial companies". When you tell people that there is no financial regulation in these areas, and that such as there is is to be found in the Ministry of Justice or BIS, they are very confused. Surely we need to think again about this.

The proposed transfer of consumer credit regulation from the OFT to the FCA is to be welcomed. Despite the excellent work done by the OFT, the current licensing regime has arguably not provided consumers with enough protection, not least because the OFT has not been given the resources properly to police the industry. However, as I said earlier, there is a persuasive case for debt management companies, claims management companies and payday lenders to be subject to the same regulatory regime governing other financial service providers. The worst of all worlds is to be subject to different regulatory authorities, which is what we are condoning if we do nothing here.

While it has been argued that powers already exist in primary legislation, at least in so far as debt management is concerned and perhaps for payday lenders, that does not mean that the FCA will be ready and willing to move into these areas with the speed that we think may be required.

The amendment seeks a firm commitment in the Bill that the FCA will regulate commercial debt management companies. The FCA should provide clear and directly enforceable standards for both business conduct and the design of products. This could, for example, enable the FCA to stop commercial debt management firms charging excessive and exploitative fees. Firms make around £250 million every year from already over-indebted borrowers, and three quarters of them frontload their charges, with customers paying hundreds of pounds before getting a reduction in their debts. On top of this, a further slice of repayments is swallowed up by "administration fees", further extending the time taken to pay back debts.

We want threshold conditions that will keep rogue firms and harmful business models out of the market. We want tougher sanctions, including unlimited financial penalties, that enable the FCA to build a credible deterrent strategy against bad practice. We need more effective supervision and enforcement, and the power to order firms to directly compensate customers for losses arising from business conduct that falls below required standards. We also think there should be the power to ban misleading advertising. The Office of Fair Trading currently regards misleading advertising by fee-chargers as the most significant area of non-compliance with its guidance.

We think that the good commercial debt management firms would welcome such an approach, and StepChange is committed to working with them until such time as the FCA is ready to act. I beg to move.

Lord Borrie: My Lords, my noble friend Lord Stevenson has made some very powerful points with his criticism of the behaviour, over a period of time, of debt management companies—any company that eases, or purports to ease, the problems of debtors by making a plan for them to pay off their debts. What a debt management plan offers is, or may be, perfectly good and in the interests of the debtor. I would not like it to be the case that the only people in that business are not-for-profit organisations, even those such as the excellent one, StepChange, which my noble friend is involved with. He is quite right in criticising the commercial debt management companies that have been operating so far; but they have not operated without restraint, because, as he indicated, the Office of Fair Trading has been concerned with a number of their practices, including misleading advertising and exorbitant charges. A number of debt management companies have had their consumer credit licences removed after evidence was presented.

My concern about my noble friend's amendment is not over the prohibition of specified fees for debt management or the other details of this clause that he would like to insert into the Bill. I am all in favour of those. However, I am not very keen—and my noble friend has not mentioned them—on the opening words of the proposed clause, which are:

"Phasing out commercial debt management".

I do not want to see commercial debt management phased out so that it does not exist, as I do not believe that charitable organisations can provide for all the needs that debtors legitimately have and the services that they could legitimately seek and benefit from, assuming there were adequate controls over debt management companies, as there are for other firms who have to have a consumer credit licence.

The suspension of consumer credit licences, which we dealt with half an hour ago, and the increasing powers of the FCA compared with the Office of Fair Trading should do a great deal to help. It may be that an amendment of the kind that my noble friend is putting forward would be a helpful advance, but I hope he does not stick to the opening words about the "phasing out" of commercial debt management.

Lord Newby: My Lords, the Government obviously sympathise with the concerns about some of the practices in the fee-charging debt management sector, which this amendment seeks to restrict and ultimately close. Debt management firms by their very nature deal with some of the most financially vulnerable consumers in the country. It is therefore absolutely vital that there is an appropriate regulatory framework in place to make sure that these firms treat their customers fairly.

We also need to do more to make sure that there is effective signposting to free-to-customer debt advice options, such as the services provided by organisations like Citizens Advice and StepChange, of which the noble Lord is such a distinguished chair. The Government are therefore working with the debt management sector towards a protocol of best practice for the industry. The OFT has also recently updated its guidance for debt management firms, expanding on the practices that the regulator considers "unfair or improper" and could cause a business to lose its licence.

It is right that, from April 2014, the FCA's more proactive and intrusive regulatory approach, and the stronger and more sophisticated regulatory powers available under FiSMA, will extend to the debt management sector. I can give the noble Lord that assurance. The rules that the FCA will be able to make could indeed cover many of the points in his amendments, but at this point, in advance of the powers being moved across and in advance of any consultation on the details of the rules, we think it would be inappropriate to set those out in the Bill.

6.15 pm

Debt management, along with payday lending, is one of the areas where we expect the transfer from the OFT to have the most significant impact, not least because the Consumer Credit Act, as it stands, does not contain any specific requirements on debt management. Nevertheless, as the previous Financial Secretary set out in debates on similar amendments in the other place, the fact that there needs to be stronger regulation does not mean that the sector needs to be regulated out of existence. The noble Lord, Lord Borrie, set out some of the arguments on that extremely clearly. The Government are clear that consumers should have the choice of paying for debt management services if they want to. However, we want to also make sure that the services that they pay for are operated properly.

We debated this last week, and I will just say that, following the request from the noble Lord, Lord Kennedy, for us to have some further discussions about claims management companies, I have set up a meeting involving the noble Lords, Lord Kennedy and Lord Stevenson, myself and MoJ officials, which will take place very early next month, so that we can at least explore some of the issues there.

However, for the reasons I have given, we do not feel that we can agree to the amendment and hope that the noble Lord will be able to withdraw it.

Lord Stevenson of Balmacara: My Lords, I thank my noble friend Lord Borrie and the Minister for their comments. My noble friend Lord Borrie puts me in a difficult position. He is warm in his praise for the work that the not-for-profit charitable sector can offer in this area but is sceptical about the ability of the sector as a whole to rise to the challenge. I would like to reassure him about that but it would take too long, so will speak to him privately.

One thing that comes up time and time again in this area is that we sometimes pray in aid competition, as if it is the answer to many problems. In many cases it is, although there is one sense of "competition" that is used by those who benefit from it, which one has to be careful about.

There are some good debt management companies in this sector. Indeed, I was at a meeting held in Parliament only last week, where a number of MPs and Peers listened to a presentation from one of the leading firms, which was extraordinarily similar to the sort of things that I would have said, had I been in a position to make the presentation. We agreed on so many points that it was almost embarrassing to bill it as some sort of contest. In particular, this company was also very concerned about the bad practices, including advertising, up front fees and the way in which some of the marketing is carried out, and would be prepared to move much further towards the good practice that exists in the charitable sector and which I am trying to advocate through this probing amendment.

I was not, in that sense therefore, trying to phase out commercial debt management companies. Perhaps, on reflection, I could have phrased that better as phasing out bad practice within commercial debt management firms. You are often dealing with vulnerable customers who are at pains to pay off their debts, many of whom are there not because they have been feckless or in any way irresponsible but because of unfortunate circumstances, and have a commitment to work with a body such as StepChange in order to get themselves to a point where their debts are extinguished. It clearly cannot be helpful if, as a result of signing up with a commercial provider, perhaps on the basis of false information, they spend a far longer time—perhaps two or three years longer—paying off their debts and end up paying perhaps £2,000 to £3,000 more in total, when we would argue that they could get the same service by working with the not-for-profit sector.

It is in that sense that simply arguing for competition is wrong. However, I understand the point that there should be opportunities for people to choose where they take their debt management plans and to be able to sign up with the one that suits them best. I am not against that, provided certain thresholds about which we talked are met. In that sense I thank the Minister for his comments, and I particularly welcome what he said about signposting towards the free services. We are aware of the protocols and work being done by both the OFT and BIS. It is not only that there are so many but also the final transition that causes difficulties.

[LORD STEVENSON OF BALMACARA]
The more we can do to move in a coherent way towards an agreed set of rules, an agreed process and an agreed target of trying to get this area working well, the better it will be, because the numbers are quite frightening.

Finally I thank him for his offer to meet with MoJ to talk about CMCs and I look forward to that meeting. I beg leave to withdraw the amendment.

Amendment 196C withdrawn.

Clauses 92 to 94 agreed.

Amendment 197

Moved by ***Lord Flight***

197: After Clause 94, insert the following new Clause—

"Retail account transfer

Transferability of retail banking current accounts

(1) If an individual customer gives notice in writing to a bank at which he holds a personal current account (Bank A) that he wishes to transfer the balance standing to the credit of that account (Account A) to a personal current account established or to be established at another bank (Bank B) and thereafter to close Account A—

(a) Bank A shall without charge within a period of 10 working days—

(i) transfer to Bank B the balance of Account A less any charges owing in respect of that account;

(ii) notify Bank B of all standing orders, direct debits and other orders for periodical payments that the customer has created in relation to Account A;

(iii) pass to Bank B a copy of all material that it holds in relation to the customer as a result of having performed checks on his identity, the source of his funds or otherwise with regard to its regulatory obligations to counter financial crime;

(b) Bank B shall without charge—

(i) accept the funds transferred under paragraph (a)(i) and credit them without deduction to the account that the customer has applied to open (Account B);

(ii) accept the details that Bank A provides under paragraph (a)(ii) and apply them to Account B so that they operate in accordance with the customer's instructions from the date that Account B is credited under sub-paragraph (i);

(iii) save where it has grounds for suspicion, accept the material provided under paragraph (a)(iii) in lieu of performing fresh checks on the identity of the customer, the source of his funds or otherwise in relation to its regulatory obligations to counter financial crime.

(2) In this section a bank shall mean any person authorised under this Act and holding a permission for deposit taking granted by the PRA."

Lord Flight: My Lords, I hope that all sides of this House would at least agree with the objectives of my amendment. It seems self-evident that a healthy banking system should be competitive, and an important ingredient of that is to make it as easy as possible for individuals and businesses to move their bank accounts from one bank to another. Historically the hassle in doing so obstructs and constrains people from moving their bank accounts easily. Members will know the issues with transferring direct debits, standing orders and standard remittances, and the most tedious of the lot, the anti-money-laundering requirements. I think that the wrong territory has been addressed here. It should be focusing on money flows, not having hundreds of millions of people filling out these pieces of paper.

When I put down this amendment, I was not aware that in September 2011 the Payments Council—a collaboration between banks—had approved a £650 million project to design and implement a new and much easier account-switching service for bank customers. This is supposed to be operative by September 2013, with a guarantee that the customer process for switching will be completed within seven days. That means the customer will receive whatever they need to operate the new account within seven days, and the new bank will arrange for all their incoming and outgoing payment instructions to be redirected from the old bank to the new one. The customer's balance will be transferred, and any payments sent to the old account on or after the seventh working day will be automatically caught and moved to the new account. The customer will not suffer if there are any bank errors and the old current account will be closed at the end of the process. My amendment includes specifically the grandfathering of anti-money-laundering requirements, which I suggest is an important ingredient of the whole process.

I should perhaps have started by declaring an interest as a director of Metro Bank. Metro Bank has cracked the whole issue of people needing to get passports endorsed and provide originals of bills. Within the legal requirements we can obtain all the evidence we want from someone's driving licence, and they can open an account within a 15-minute period.

There are two issues within the Payments Council proposals which potentially need some degree of FCA involvement. The first is that there is no automatic agreement from all banks to participate in this scheme. I understand that 97 per cent have said they will participate, but others that have not. Whether they will or not remains to be seen, but for it to be really efficient it seems it should be universal, with all banks participating. Secondly, there is the issue of costs. I understand from HSBC—a major participant in the Payments Council initiative—that to make switching accounts straightforward it is proposed that there will not be any charges, but there is no agreement or requirement across the board. My amendment is essentially a probing one, although I would like to see its objective implemented, so does the Minister feel that the FSA needs to be given some degree of statutory power to ensure that all banks participate, and that with regard to charges there is a level playing field or no charges at all?

Baroness Hayter of Kentish Town: My Lords, I welcome this amendment. As the noble Lord, Lord Flight, has said, competition should mean that the standards of banking are driven up by consumers walking with their feet—taking their chequebooks elsewhere. We need to change a lot of banks' behaviour, not least because they seem to be the only organisations in the world that can take money from your account without sending an invoice. They can decide on a charge and take it from your bank account without your agreement. This is behaviour we need to change but, as consumers, we can only do this if we can move easily.

I particularly feel this as I am in the middle of trying to switch accounts. After 28 years with one bank, they refused a cheque that was made out to "Baroness Hayter" instead of "Dr Hayter". I would have thought they could have worked out it was the same person, but there you are. What is really interesting is that First Direct would not take my account unless I showed all my resources and assets—not that there are a lot—the sources of my assets and how I had paid off my mortgages. This was just to open a current account. Needless to say I complained and, when I did, the answer was that it was anti-money-laundering—this from a bank whose big owner has maybe done rather less about big anti-money-laundering on the other side of the world, yet is worried about my tiny bank account. My suspicion is that it wants this information to find out what else it could sell me.

If those of us who find it easy to argue and complain still find it difficult to change our accounts, how can ordinary consumers use the power and drive up standards unless moving is made easy? It is difficult with direct debits and it is even harder with payments in. I am an old-age pensioner, so I now have to find out who in the DWP pays my pension so that they can change it to a new bank.

I know that the Government are very unlikely to accept this amendment, but it raises a really important issue about whether we can leave it to the banks to reach a voluntary agreement themselves. It seems the answer is no. The noble Lord, Lord Flight, has told us that the banks say they will do this voluntarily, but my own experience suggests that they will not without a firm crack of the whip. We will be looking to the new FCA for a bit of muscle on this. We look forward with interest to the Minister's response to this amendment.

6.30 pm

Lord Newby: My Lords, this amendment seeks to codify a process for switching bank accounts and—as with a number of other amendments—we sympathise with the intention behind what the noble Lord, Lord Flight, is seeking to do, but I do not think the amendment is technically necessary for reasons which I will explain. As the noble Lord pointed out, there has been a great deal of progress since the Independent Banking Commission recommended that a new switching redirection service should be set up to ease the process of switching current accounts. The Payments Council has committed to delivering that recommendation. The new switching service will provide a safe, hassle-free and convenient service for customers to switch their bank accounts in no more than seven working days.

We believe that, working with the industry, the Payments Council is on track to deliver the new service by September next year. As the noble Lord, Lord Flight, said, all the major current account providers in the UK have signed up and the Treasury is keeping the pressure on the Payments Council via monthly working-level meetings and quarterly reports. The banks which have not yet decided to join, the 3%, obviously cover a very small percentage of the market. The reason for their having declined is usually that they do not yet offer a current account or because they are unable to update their systems in time. The Payments Council plans to launch a second wave of switches, possibly in the first quarter of 2014, to accommodate those institutions, while allowing sufficient time for the switching service to prove its stability. So we hope that the small rump will be included in the system by the first quarter of 2014.

The noble Baroness described the problems that she has had in switching her bank account. I had a better experience. When I decided to combine my bank account with that of my wife—after more than 30 years of marriage—I found that, broadly speaking, I got the service envisaged in the Payment Council's new approach. The problem I had was that although the bulk of my direct debits were satisfactorily dealt with, for reasons which were completely unclear a small number were not. Of course, one finds that out only when one gets a stiff letter saying that some essential thing which you are funding on an ongoing basis is about to be revoked because you have cancelled it. In my case, the problem was not that the intentions were dishonourable, it was simply that the system was not as effective as the two banks would have liked me to believe.

The noble Lord, Lord Flight, demonstrated the value of competition in the banking sector, in that Metro Bank seems to have achieved something in respect of money-laundering that the serried ranks of the established banks have failed to do, which is to have a simple way to prove who you are to their satisfaction. No doubt noble Lords such as me have experienced this bizarre situation in the past couple of years. I have been rung up by my bank to say that because I am a politically sensitive person, I had to prove my bona fides to the bank. Given the nature of the bank, which I had better not name, my response was to say, "I think you had better prove your bona fides to me", which did not go down desperately well. Of course, it did not have to and I did.

The noble Baroness asked a very important question: can we trust all the banks to do that in a timely manner and in a way that does not cause the sort of problems that she had? I point out that the drafting of the FCA's competition objective at new Section 1E(2)(b) requires the FCA to have regard to the ease with which consumers can switch providers in considering the effectiveness of competition. So the importance of removing barriers to switching in promoting effective competition is hardwired into the legislation. The FCA will have a lean to require the banks to behave in an efficient and effective way.

In the light of all those considerations, I hope that my noble friend will feel able to withdraw his amendment.

Lord Flight: My Lords, the first point I would like to stress is that, as I understand it, the Payments Council's proposals do not involve grandfathering anti-money-laundering. I will take that up further, but if we do not get that, it ends up achieving very little. The noble Lord has in part answered my second point: if you start off with domestic competition being an objective of the FCA, part of achieving that has to be being able to move bank accounts easily. I hope that the empowerment that the FCA has in this area, to which the Minister referred, will be adequate.

[LORD FLIGHT]

As I said earlier, this is essentially a probing amendment, but it is important. Going back to why banks make a great problem of anti-money-laundering, it is because they do not want to lose customers. It is not a question of cracking anything marvellous; anti-money-laundering requirements were wonderful for financial services businesses. They made it a hassle for everyone to move their custom somewhere else. Those businesses are not stupid. Indeed, I have regarded anti-money-laundering as almost a plot by the whole financial services industry to strengthen their oligopoly.

The Payments Council measures are crucial, and I hope that the Treasury will clarify that point in its discussions with the council. Having said that, I thank the noble Baroness, Lady Hayter, for her support—I agreed with everything she said, in truth—I hope that the profile of this issue will be raised and I beg leave to withdraw the amendment.

Amendment 197 withdrawn.

Amendment 197ZA not moved.

Clause 95 agreed.

Schedule 18: Further minor and consequential amendments

Amendments 197A to 200B

Moved by ***Lord Sassoon***

197A: Schedule 18, page 286, line 16, at end insert—

"In section 177 (offences), in subsection (2), after "director or" insert "other"."

198: Schedule 18, page 289, line 13, at end insert—

"In paragraph 8 of Schedule 6 (additional threshold conditions), in sub-paragraph (2)(b), for "the Authority" substitute "such of the FCA or the PRA as may be specified,"."

198A: Schedule 18, page 291, line 32, at end insert—

"Lloyd's Act 1982 (c. xiv)

In section 7 of the Lloyd's Act 1982 (the Disciplinary Committee and the Appeal Tribunal), in subsection (1A)(c), for "Financial Services Authority" substitute "Prudential Regulation Authority or the Financial Conduct Authority"."

199: Schedule 18, page 302, line 5, at end insert—

"Trustee Act 2000 (c. 29)

(1) Section 29 of the Trustee Act 2000 (remuneration of certain trustees) is amended as follows.

(2) In subsection (3)—

(a) for "an authorised institution under the Banking Act 1987" substitute "a deposit taker", and

(b) for "institution's" substitute "deposit taker's".

(3) After that subsection insert—

"(3A) In subsection (3), "deposit taker" means—

(a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to accept deposits, or

(b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits.

(3B) A reference in subsection (3A) to a person or firm with permission to accept deposits does not include a person or firm with permission to do so only for the purposes of, or in the course of, carrying on another regulated activity in accordance with that permission.

(3C) Subsections (3A) and (3B) must be read with—

(a) section 22 of the Financial Services and Markets Act 2000,

(b) any relevant order under that section, and

(c) Schedule 2 to that Act."."

200: Schedule 18, page 310, line 32, at end insert—

"Finance Act 2011 (c. 11)

(1) Part 4 of Schedule 19 to the Finance Act 2011 (the bank levy) is amended as follows.

(2) In paragraph 37(2), in both places, for "section 213(2)(b)" substitute "section 213(3)(b)".

(3) In paragraph 38(3)(a), for "section 139(1)" substitute "section 137B(1)".

Terrorism Prevention and Investigation Measures Act 2011 (c. 23)

In Part 1 of Schedule 1 to the Terrorism Prevention and Investigation Measures Act 2011 (measures), in paragraph 5(4), for "Part 4" substitute "Part 4A"."

200A: Schedule 18, page 311, line 16, at end insert—

"Charities and Trustee Investment (Scotland) Act 2005 (asp 10)

In section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (general interpretation), in the definition of "relevant financial institution", for "Part 4" substitute "Part 4A"."

200B: Schedule 18, page 311, line 37, at end insert—

"Part 5

Amendment of Measure of the National Assembly for Wales

Welsh Language (Wales) Measure 2011 (nawm 1)

In Schedule 6 to the Welsh Language (Wales) Measure 2011 (public bodies etc: standards)—

(a) in the Welsh text, omit the entry relating to "Awdurdod Gwasanaethau Ariannol ("The Financial Services Authority")" and at the appropriate place among the entries headed "Cyffredinol" insert—

"Awdurdod Ymddygiad Ariannol ("Financial Conduct Authority")	Safonau cyflenwi gwasanaethau Safonau llunio polisi Safonau gweithredu Safonau cadw cofnodion."

(b) in the English text, omit the entry relating to "The Financial Services Authority ("Awdurdod Gwasanaethau Ariannol")" and at the appropriate place among the entries headed "General" insert—

"Financial Conduct Authority ("Awdurdod Ymddygiad Ariannol")	Record keeping standards Service delivery standards Policy making standards Operational standards."

(c) in the Welsh text, at the appropriate place among the entries headed "Cyffredinol", insert—

"Awdurdod Rheoleiddio Darbodus ("Prudential Regulation Authority")	Safonau cyflenwi gwasanaethau Safonau llunio polisi Safonau gweithredu Safonau cadw cofnodion."

(d) in the English text, at the appropriate place among the entries headed "General", insert—

"Prudential Regulation Authority ("Awdurdod Rheoleiddio Darbodus")	Record keeping standards Service delivery standards Policy making standards Operational standards."."

Amendments 197A to 200B agreed.

Schedule 18, as amended, agreed.

Schedule 19 agreed.

Clauses 96 and 97 agreed.

Clause 98: Interpretation

Amendment 201 not moved.

Clause 98 agreed.

Clause 99 agreed.

Clause 100: Transitional provisions and savings

Amendments 201A to 201C

Moved by ***Lord Sassoon***

201A: Clause 100, page 166, line 41, at end insert—

"(aa) make provision treating any relevant instrument which was made, issued or given by the Financial Services Authority under any enactment before section 5 is fully in force and is designated by the FCA, the PRA or the Bank of England (or any two or more of them) in accordance with the order—

(i) as having been made, issued or given by the designating body or bodies;

(ii) as having been made, issued or given (or also made, issued or given) under a corresponding provision of this Act or of an enactment as amended by or under this Act;

(ab) make provision enabling a body which makes a designation by virtue of paragraph (aa) to modify the instrument being designated;

(ac) make provision treating anything done before section 5 is fully in force by persons appointed by the Financial Services Authority with the approval of the Treasury as having been done by the FCA;

(ad) make provision treating anything done before section 5 is fully in force by persons appointed by the Prudential Regulation Authority Limited with the approval of the Treasury and the Bank of England as having been done by the PRA;"

201B: Clause 100, page 167, line 1, leave out "rules made,"

201C: Clause 100, page 167, line 20, at end insert—

"(b) "relevant instrument" means rules, guidance, requirements or a code, scheme, statement or direction."

Amendments 201A to 201C agreed.

Clause 100, as amended, agreed.

Schedules 20 and 21 agreed.

Clauses 101 and 102 agreed.

Clause 103: Commencement

Amendment 202

Moved by ***Lord Sassoon***

202: Clause 103, page 167, line 41, leave out "Section 94 comes" and insert "Sections 94 and (Suspension of licences under Part 3 of Consumer Credit Act 1974) come".

Amendment 202 agreed.

Clause 103, as amended, agreed.

Clause 104 agreed.

House resumed.

Bill reported with amendments.

6.40 pm

Sitting suspended.

Arrangement of Business

Announcement

7 pm

Lord Newby: My Lords, as the Question for Short Debate in the name of the noble Lord, Lord Luce, will now be taken as last business, the time limit for the debate becomes 90 minutes rather than 60 minutes. Speeches should therefore be limited to six minutes except for those of the noble Lord and the Minister, which remain limited to 10 and 12 minutes respectively.

Piracy

Question for Short Debate

7 pm

Asked By ***Lord Luce***

To ask Her Majesty's Government what action they are taking to reduce piracy in the Indian Ocean and to help stabilise the neighbouring states in the Horn of Africa and South Arabia.

Lord Luce: My Lords, I hope that the House will agree that this is a relatively good time to focus our short debate on the progress that is being made on reducing piracy in the Indian Ocean and on helping to stabilise neighbouring states in the Horn of Africa and the Arabian peninsula. It would be valuable to hear from the Minister what our assessment is of the present position and the action that HMG are taking together with the international community. I welcome the fact that so many experienced Peers are participating in this debate, not least my former ministerial boss, the noble and learned Lord, Lord Howe.

There can be no doubt that British interests are at stake here. Something like 23,000 ships transit the Gulf of Aden each year, and nearly $1 trillion of trade to and from Europe alone travelled through the gulf last year. The total cost to British commercial interests is thought to be around $10 billion per annum. However, piracy arises from instability in Somalia, and wider regional instability is fuelled by illicit networks operating from Yemen shifting people, weapons and narcotics between Africa and the Arabian peninsula.

Moreover, the disastrous condition in recent years of both countries has provided a base for extremism, expressed through al-Shabaab in Somalia and al-Qaeda in the Arabian peninsula in Yemen. This in turn poses a threat to the international community, as well as to those countries. There is some evidence, for example, that a few British-born Muslims are radicalised by

[LORD LUCE]
events in that region. We welcome the fact that there are well over 250,000 Somalis living in Britain and something like 70,000 Yemenis, thus giving us a direct link with the region.

There is a British and international interest in reducing piracy by helping to stabilise those two countries. The lessons from the Malacca Straits are that piracy can be more easily tackled if the littoral states are relatively stable. We are helped by an excellent updated report on Indian Ocean piracy by the House of Lords European Union Committee, published on 21 August. From this we learn of the substantial reduction of piracy in the past year. In June this year, eight pirated vessels and 215 hostages were held, compared to 23 vessels and 501 hostages in June 2011.

Could the Minister indicate what lessons can we learn from this? Is the reduction caused by the fact that many ships are now allowed armed guards and that pirate shore bases have been attacked? Is it also the case that drones have been used in the Indian Ocean against pirate ships? I hope that the Minister will also want to say something about the co-ordinated progress being made with neighbouring countries such as Seychelles, Mauritius and Kenya in terms of co-operation over the trials, sentencing and imprisonment of pirates and how the international community is countering the money-laundering of the proceeds from the ransoms.

In general, we should note the value of international military co-operation, with a strong EU/NATO contribution and the participation of ships from China, India and Russia, for example. It is good that the United Kingdom provides leadership of Operation Atalanta but regrettable that we do not provide a patrol ship more regularly.

I turn now to the Horn of Africa. I first explored parts of Somaliland by camel in 1959 and worked among nomadic Somalis in northern Kenya when I became the last British district officer there in 1961. The Somalis are friendly, proud and independent-minded people, dominated by clans and pretty suspicious of foreigners. They are fiercely individualistic and resist central control. Since the 1960s they have been through the Cold War under the tough dictator Siad Barre, and for the past 20 years the country has suffered from conflict and fragmentation, thus providing material for al-Shabaab to exploit. The future of Somalis must be in the hands of Somalis, but HMG are to be congratulated on taking a lead by convening an international conference on the Horn of Africa in London this year, with a second one in Istanbul this summer. How is this being followed up now?

We can at least now welcome the fact that the international African Union force, AMISOM, with the involvement of forces from Burundi, Djibouti, Uganda and Kenya, has driven al-Shabaab out of Mogadishu and Kismayo. Against that background, the disastrous transitional Government have come to an end, and it is most welcome that President Mohamoud, who is a committed Somalian academic and activist, has been elected as president. The elected constituent assembly is tasked to develop a constitution for Somalia.

However, experts will stress that it is vital to acknowledge that, while Somalia is generally made up of a single ethnic group, the clan system means that they tend to resist strong control from central government. This has led to fragmentation, and each region is different. For example, Somaliland is now relatively stable and has an elected parliament and president, with municipal elections to follow shortly. The harsh experience of the past 40 years means that the northern Somalilanders do not want complete reintegration with the rest of Somalia. It must therefore be up to the Somaliland leaders to negotiate their future relationship with Somalia as their new constitution is being prepared. Many want independence and others some kind of confederal arrangement. The ultimate political settlement has to suit the Somali character.

Knowing the history of Somalia, I think it would be risky to be too optimistic, but the international community must continue to capitalise on recent developments and do everything to encourage its new president to work in partnership with the clans, business and civic society. We for our part must provide our development assistance only where it will be used productively, not wasted through corruption, as happened with the recent transitional Government. Are we, for example, encouraging alternative livelihoods to piracy?

I turn briefly to Yemen, where there is a close link with the Horn as many Somalis have emigrated to that country, and some to Saudi Arabia. Indeed, it is worth highlighting the fact that the camel, sheep and cattle trade across the Red Sea to Saudi Arabia is the biggest cross-border livestock trade in the world, with the potential for constructive wealth creation as opposed to piracy and conflict. The country is undergoing a fragile but significant two-year political transition process, following a popular "Arab Spring" uprising that dislodged the long-serving President Saleh from power. The international community is united in its support for the transition process but the challenges ahead are immense—namely, addressing the grievances of separatists in the south and "Houthi" rebels in the north, as well as tackling extremism. Poverty is acute, with 46% living on only $2 a day. A large number suffer from severe food shortages. Oil and water supplies are diminishing.

Chatham House should be congratulated on producing some excellent analyses and assessments of that strife-torn country. It warns of how the multimillion-dollar shadow business networks spanning the Gulf of Aden hinder counterterrorism and counterpiracy strategies. The national dialogue is due to begin in November under the stewardship of Yemen's new caretaker president. President Hadi needs to embrace all Yemenis in these discussions, to examine ways in which power can be diffused and to encourage the development of local communities. He is right to give priority to security and the defeat of al-Qaeda, but he will not be likely to carry the people with him unless he encourages economic and social development at the same time. I am glad that the United Kingdom is co-chairing, with Saudi Arabia, the Friends of Yemen international group to encourage development pledges and economic investment. Yemeni civil society organisations, however, must be allowed to play an oversight role in all this.

I hope that the Minister will give her assessment of the situation in Yemen under President Hadi. Above all, while I strongly support Britain playing its part internationally, it is the people of those countries who must be given the framework and encouragement to build their own future. It is the African Union and the Gulf countries which must play a leading and prominent role in supporting them. For our part, we must also encourage some of the Somali and Yemeni diaspora in the United Kingdom to contribute not only their very substantial remittances but also their skills to the rebuilding of their countries of origin. I commend the excellent work of the Royal African Society in facilitating contact and dialogue with the diaspora.

There is a better alternative for the region than destructive piracy, civil conflict and terrorism. We must keep on encouraging it.

7.11 pm

Lord Howe of Aberavon: My Lords, it is a privilege to follow my noble friend, who has opened this debate with characteristic clarity. He certainly indentifies a situation that clearly calls for positive consideration in the context of UK foreign policy. We certainly have a substantial interest. We also have a significant capacity to try to help. We need to follow, if we can, the advice that I so often quote:

"Give me a place to stand, and I shall move the world",

as Archimedes said. That is where my noble friend has started in this debate.

There are several helpful footholds for Britain in intervening in this. First, there is our Commonwealth membership, which gives us solidarity with the other Commonwealth states which surround the Indian Ocean, the African eastern coast and, indeed, the Aden Gulf—all of which look for relief from Somalia's problems. Secondly, we are going there putting forth propositions with the backing of the European Union. That is important. It is the first European Union naval mission. EU NAVFOR is its codename, and the additional name Atalanta almost gives it a NATO benediction as well. Certainly it is right for us to be trying to intervene and be as helpful as we are.

Other interventions are taking place in teaching the Somalis how to improve their coastal defence and train their own soldiers more effectively. They are all clearly directed towards trying to enhance the ocean's security, which will be helpful to Somalis themselves as well as to the rest of the world. We are supported in our advocacy of this approach by two major states, the United States and Russia, with whom we of course rub shoulders in NATO.

The propositions that we are trying to uphold are correct and useful. When I last spoke a year ago about Somalia, I discussed the social problems and tensions which still arose in those countries, and it looked like being a real problem for us to be intervening with it. However, their constitutional structures have at least held; they have changed substantially, as my noble friend has pointed out. Corruption and conflict have remained, not diminished. All of that increases the case for us to be trying in this way, not only to evade the risk of piracy on that part of the world, but also to enhance and improve the structure, lives and well-being of the citizens of Somalia itself. For all those reasons, I commend the analysis presented by my noble friend.

7.14 pm

Baroness Warwick of Undercliffe: My Lords, I wanted to say a few words in the debate tonight because I had the privilege of visiting Dubai and Bahrain in August this year as a member of the excellent Armed Forces Parliamentary Scheme. It was an intensive week. I spent time with our naval forces on HMS "Diamond" and HMS "Atherstone", experiencing at first hand their working lives at sea, and gaining an understanding of their mission and purpose in the Gulf and off Somalia. We were also given comprehensive briefings at the base in Bahrain by the UK Maritime Component commander and Combined Maritime Forces—CMF—and by the UK Maritime Trade Operation in Dubai.

It is a small force, yet it does vital work supporting current HERRICK operations, as well as working with partners to prevent piracy, thwart terrorism, encourage regional co-operation and to promote a safe maritime environment, as well as countering malign Iranian influence. The Gulf is a crucial waterway for oil and gas supplies, and in the central sea lane linking Europe, the Far East and the US. Yet it will be obvious that the threats are legion. At first glance, it seems a near-impossible mission: to effectively police 2.5 million square miles of ocean, where pirates and terrorists and others with criminal intent can roam freely. My visit impressed on me the international context of the UK's mission there, and the variety of collaborative partnerships which had been developed with other nations in order to build stability in the region.

It is clear that, through collaboration and sharing knowledge and expertise between the 26 nations that form the CMF, and working closely with the EU's NAVFOR operation and NATO, a strategic and effective force has been established. It is also clear that the Royal Navy exercised and exercises an important leadership role with the shipping industry as well as with other nations. It is getting results: there has recently been a reduction in the number of pirated ships. This is clearly a mission where we need to sustain our commitment.

I thought that the EU Committee's third report, referred to by the noble Lord, Lord Luce, in introducing this debate, entitled *Turning the Tide on Piracy, Building Somalia's Future* admirably summed up the issues at stake here, particularly its conclusion that,

"piracy would not be ended until the root causes of the problems in Somalia were successfully tackled".

However, Somalia remains a fragile state and one which can only too easily be exploited, to our detriment and that of the region as a whole. It is clear that unless current efforts are sustained any gains made will be nugatory. The noble Baroness, Lady Ashton, the EU High Representative for Foreign Affairs, said earlier this year:

"Fighting piracy and its root causes is a priority of our action in the Horn of Africa".

The noble Lords, Lord Luce and Lord Howe, have spelt out coherently the severity of the threats that we face. I hope that the Minister will be able to tell the

[Baroness Warwick of Undercliffe]
House that the Government will continue to support this operation and do what is needed to make the UK's action in the Gulf as effective as possible.

7.17 pm

Lord Avebury: My Lords, the capture of Kismayo makes it harder for al-Shabaab to generate income and to replenish their weapons and ammunition. However, the military success needs to be followed by the establishment of an interim administration in Kismayo and the province of Jubaland as a whole that balances the interests of the local clans. Can my noble friend say what discussions are going on between regional stakeholders to this end, and whether they might be facilitated by a disinterested chairman from either IGAD or the AU? Although the Kenyan troops were welcomed, they do not want to be seen as an occupation force, and the sooner civilian government can be established with its own police force the better.

Piracy has dropped by half this year compared with last, but there are still 11 ships and 188 hostages held at the latest count. We shall not have solved the problem until the pirate bases, almost entirely in Puntland, are taken out. An operation by Sterling Corporate Services and the Puntland Maritime Police Force to forcibly close down the bases and arrest pirates was already achieving results when it was abruptly curtailed, leaving the police and SCS staff without pay or rations. The UN was hostile to the programme because the PMPF was an armed force not subject to control by the recognised government of Somalia. It was treated as being on a par with terrorists, and its sponsors had violated the terms of the arms embargo on Somalia. But since there are 800 half-trained and well armed police at their well equipped camp, would it not be sensible to legalise them as servants of the Somali Government, or as a component of AMISOM, and allow the UAE to resume their funding and training?

Progress is being made in the region on setting up networks of courts where pirates can be tried and prisons where resultant convicts can serve their custodial sentences. Kenya's Court of Appeal has ruled that the state's courts can try pirates arrested in international waters, and I welcome that. In June, Prime Minister David Cameron signed an agreement with the Prime Minister of Mauritius to establish a court there. Subsequently, however, a row erupted between the parties because it appeared to have been agreed that we would enter into talks with them on the future of the Chagos Islands and that turned out to be a misunderstanding. Could we at least say that once the imminent court rulings on the islands are out of the way, the UK will happily enter into discussions with Mauritius on the future of the islands in the hope that good relations between our two countries can be restored and so that setting up the piracy court can be accelerated?

7.20 pm

Lord Hannay of Chiswick: My Lords, the incidence of piracy in the Indian Ocean has rather slid off the front pages of the newspapers in recent months. That is partly due to the relative success of the measures taken by the international community to combat this modern form of an ancient scourge. However, it would be ridiculously complacent to believe that the problem has gone away or been mastered. There is all the more reason, therefore, to be grateful to my noble friend Lord Luce for initiating this debate and for swinging the spotlight back onto the many aspects of this problem which have yet to be effectively addressed.

I want to concentrate my own remarks on one aspect of the problem to which the EU home affairs sub-committee, which I chair, has devoted a good deal of attention, without as yet receiving any fully satisfactory response from the Government. That is the question of the laundering of the money paid out to the pirates in ransom. Some facts are not disputed. The pirates or their sponsors—their godfathers—have received and are still receiving massive quantities of cash in ransom for ships and their crews. Much of that money is assembled in this country, which is not in any way illegal. These moneys are therefore quite evidently criminal assets—the proceeds of crime—as soon as they are handed over. Yet those assembling these ransoms are not required to file with the Serious Organised Crime Agency a suspicious activity report, as they would have to do in any other circumstances in which money was being transferred to criminals or people suspected of being criminals.

My committee has stated on several occasions that it considers this omission—the omission of the requirement to file an SAR—as quite indefensible. Moreover, it surely does hamper any attempt to prevent these moneys subsequently being laundered. More recently, in a move that I warmly welcomed, and as part of the international community's fight against piracy, it was decided to established a regional intelligence centre in the Seychelles to pursue, among other matters, the issue of money laundering. I asked in an earlier debate whether any relevant SAR material we might have would be made available to this new intelligence centre as it surely should be. The noble Lord, Lord Henley, who was at the time a Minister at the Home Office, said he would reply to that in writing, but I have still—some months later—not received any substantive reply on this point.

Therefore, I should be most grateful if the Minister would now respond to both these questions. What justification can there possibly be for not requiring the assemblers of ransoms to file an SAR? Are we making available relevant SAR material we may have to the intelligence centre in the Seychelles? Any serious campaign against piracy in the Indian Ocean must surely get to grips with the issue of money laundering.

I have one final point which was also made by speakers who preceded me. The challenge of piracy in the Indian Ocean cannot, of course, be met by naval action alone or even by naval action backed up by good intelligence. It must also involve the gradual re-establishment of stability and the rule of law in Somalia and the other countries of the region. I hope that the international community, of which we are a leading part in this region of the world, will not allow that task to fail through lack of resources and lack of political will, as it so lamentably did before in the 1990s.

7.25 pm

The Lord Bishop of St Edmundsbury and Ipswich: My Lords, I should like to echo the gratitude to the noble Lord, Lord Luce, for introducing this debate at this time. It has been heartening to hear about the reduction in the rates of piracy and also what needs to be done to establish the long-term solution to this awful modern scourge. However, I feel it incumbent on me to remind the House again of the human cost to the crews of those ships.

We are very well aware of that from that excellent organisation, the Mission to Seafarers, which works very hard to care for those who have been released from captivity. We can certainly be very glad that the number of people who are now being held captive has been reduced. Nevertheless, if the report by the Oceans Beyond Piracy group, *The Human Cost of Piracy 2011*, is anything to go by, one of the very disturbing aspects is that, while there might be fewer people being held hostage, the violence towards them is getting worse. There are very serious reports of people being horribly mistreated, such as being put in the freezers of the ships for 40 minutes or left out in the blazing sun without clothes, among other things. That is extremely disturbing, and not surprisingly leaves people horribly traumatised afterwards.

The Mission to Seafarers, a Christian maritime charity, is working with seafarers in this high-risk area and has chaplains at Dar es Salaam, Mombasa, Aqaba, Bahrain and the United Arab Emirates. Chaplains are trained in post-trauma stress counselling to help seafarers adjust when they come back. Very often, Mombasa is the port where newly released ships arrive. The welfare facilities there, with that network of chaplaincies, are able to reconnect people with their homes and families and provide counselling and debriefing.

I should like to put some flesh on this. The vessel "Asphalt Venture" was taken two years ago on a journey from Mombasa to Durban. Fifteen crewmen were initially on board when negotiations began. Six months after being taken, the ship was released after ransom was paid, along with eight seafarers. The remaining seven were taken on land into Somalia and they are still in captivity. One of them is a 27 year-old Indian seafarer called Daniston Lytton. There has been little or no movement in freeing the remaining crew, who now have now been held hostage for over two years. His family is desperate to know what more can be done. The Mission to Seafarers in south India has been providing pastoral assistance and counselling some of the families associated with the ship. The chaplain has regularly written to the Indian Government and liaised with the ship owners and agents in the hope of finding a satisfactory conclusion to this case, but nothing has come of it. The national media in India are beginning to ask whether the Indian Government have forgotten about the nationals being held hostage and there is speculation that two of them might even have died since, though there has been no confirmation of that. That is the reality of what being a hostage taken by pirates is about.

Most of the seafarers come from major labour supply countries such as India, the Philippines and others. In the light of what the Mission to Seafarers is offering at the moment in terms of counselling and help to release seafarers and help to their families, I wonder whether the Minister would be willing to meet representatives of the mission to ensure that suitable support is available in the event that British hostages—I hope this never happens—are taken. There needs to be joined-up thinking about this. As we have already heard, so many of these seafarers come from Commonwealth countries, so can the Minister indicate what assistance Her Majesty's Government might be able to offer to other nations, particularly those within the Commonwealth, which are working to secure the release of their nationals?

I hope that noble Lords will forgive me for introducing this human cost, which, of course, will be solved entirely if the measures outlined solve the international situation. An urgent human problem continues and anything that we can do from this Chamber to support those who treat and care for people in that situation, and who can do more for those who are still being held hostage, must be welcomed.

7.30 pm

Baroness Nicholson of Winterbourne: My Lords, first, I congratulate my noble kinsman Lord Luce on securing this powerfully important debate. As I perceive it, the root sources and drivers of piracy in the Indian Ocean exist on land, not only in Somalia but in other countries in the region, such as Yemen. Surely success in eradicating piracy in the Indian Ocean in the long term requires actions to boost the current extraordinarily poor quality of life and the paucity of livelihoods in Somalia and Yemen and more widely.

The action taken by Her Majesty's Government to lead the international community on Somalia and to support most strongly the re-establishment of Somalia's Government has been most welcome, as has been the opening of the FCO's office in Hargeisa in Somaliland, which I see as a welcome possible step towards wider recognition as a nation.

DfID has recently published an operational plan for its work in Yemen, having not been able to do so before due to the continuing political and security crisis. I will focus my few remarks on our Government's strategies in these two countries. The link between piracy and terrorism is now well established, particularly considering the recent history of arms flows uncovered between Yemen and Somalia, which is documented not only in UN reports but in the recent news of al-Shabaab weapons from Yemen being seized in Puntland.

The first and most obvious question to pose is: what is the Government's strategy? How are our Government, working across the relevant departments, focusing on the region? Is there such a strategy? I am not aware of one, but I would welcome learning from the Minister how the Government are co-ordinating their activities in the Indian Ocean's conflict formation, in what is undoubtedly a strategically critical geopolitical area.

Leading on from that, the House of Lords EU Select Committee's report, *Turning the Tide on Piracy*—I am sure that we will hear more on this from the noble Lord, Lord Teverson—highlights that it is key that we invest in the development of coastal communities in

[Baroness Nicholson of Winterbourne]
order to offer not just an alternative income to people but a considerably greater quality of life than they have at present. Perhaps the Minister might outline the current funding that our Government are providing for such coastal communities in Somalia, as well as in Yemen, where the south and the area around the great city of Aden are currently of particular humanitarian and security concern.

Earlier this year I had the honour of acting as the chief international election observer in Yemen, which is the second time that I have had this opportunity. This time I spent several days on that duty in Aden. I saw the shockingly low standard of life of a thoroughly civilised people who had previously—prior to their very low standards now—enjoyed what they called a European standard of life. That creates the vacuum into which al-Qaeda will draw its suicidal victims and its fighters. President Hadi, when he recently withdrew the head of the Social Fund, remarked that it was working as an alternative Government. Are the UK Government, who are putting their funding in Yemen through the Social Fund, ready to reconsider their way of spending money in the light of the President's decision?

Of course, the picture of people's daily survival and the conflict in Yemen comes through very powerfully in the figures provided by organisations such as the United Nations. The possible life expectancy of people in Yemen, for example, not just in the coastal regions but throughout the country, is one of the lowest in the world. Life expectancy is 46 and 47 years. Yemen has the lowest figures for the whole region and beyond. It is at the bottom of the pit in terms of infant mortality, maternal mortality and child mortality. When one looks at the life available to people in Aden and Yemen generally, is it any wonder that they turn to piracy to try to survive?

I therefore seek some understanding of DfID's new operational plan in Yemen. The bulk of our assistance is going to humanitarian needs but DfID is discontinuing its funding in the health and education sectors. It has already exited from maternal and neonatal health programmes. Is that really the right way to assist the people in the coastal city of Aden, for example? I would suggest that it is not a strategy for long-term future development of the people of Aden and the coastal towns around it. That is demonstrated by the fact that the women of the area are seeking training, involvement and political involvement in public-life sectors. I would like to see us supporting that.

Tonight's debate makes it very clear that detailed plans, analyses and policies are not only desirable but essential if the amount of funding that we can provide from the United Kingdom, and our undoubted influence in the region, will tilt the balance and give the people locally a better future that will end their reliance on piracy.

7.36 pm

Lord Greenway: My Lords, I, too, would like to express my gratitude to the noble Lord, Lord Luce, for introducing this debate. I would also very much like to endorse what the right reverend Prelate has said about the human element. I have had the great pleasure of working closely with the Mission to Seafarers over the past 20 or so years. It is worrying to hear that the problem, as I elaborated on when we last debated this topic, was one of malnutrition. That has now moved on into violence, which is a distressing development. As we have heard, much progress has been made and the number of attacks has been greatly reduced. However, caution must remain our watchword and any hint of complacency could see the pattern escalate again very quickly, especially now that the monsoon period has come to an end.

It has been a very worthwhile effort from all sides but it is very resource intensive. UK interests have benefited in that no UK ship has been taken for some months, and we can put this success down to three things. First, there has been best management practice. That involves ships taking the correct defence against pirate attacks, such as weaving and the use of hoses and barbed wire—anything that acts as a deterrent to stop the pirates boarding. Secondly, there have been the efforts of EU NAVFOR with Operation Atlanta and the wider international coalition's efforts. Thirdly, there has been the use of armed guards aboard ships, which has already been mentioned, although the shipping community accepted that with reluctance. In this regard, it is not keen to set a precedent that would continue. The fact that armed guards are aboard ships has worked so far, without any ship being attacked.

However, there is always the chance of something ending in a firefight in which a crew member is killed. I hope that we will not reach that position, but there is always that risk. At the moment, 1,170 pirates have been detained in 21 countries. Many of them are prosecuted in the regions to which they are taken. However, there remains an estimated 2,000 to 3,000 people engaged in piracy activity, so there still are many more people around. The risks must be seen to outweigh the rewards and we must seek to prosecute the pirates wherever possible. However, the mere removal of arms and boarding gear, such as the ladders the pirates use, from the pirate skiffs is often a sufficient deterrent, as the pirates, when they return to their bases, are not made welcome at all because the ringleaders and the investors—this is a business—are not pleased to see them return empty-handed. There are estimated to be around 20 to 30 ringleaders, of which some nine or 10 are active at the moment. Some of them have diversified, with their ill-gotten gains, into the restaurant business, selling cars and other such things.

The EU NAVFOR attack on one of the shore bases and the destruction of some of the boats has already been mentioned. That is a great move forward; I wish it had been done earlier. It has had a great effect in demoralising the pirates. There has been something of a change of tactics recently. Only two ships have been taken recently and these were a dhow and a fishing vessel, but there is a belief that these are to be used as mother ships to take the smaller skiffs out to sea—they go 1,000 miles offshore, which is a very long way.

One thing that worries the UK shipping industry is moves that I believe are taking place towards at least discussing a possible ban on ransom payments. The ability to pay ransom is important as it allows hostages—as

we have heard from the right reverend Prelate—to be retrieved and also maintains the confidence of seafarers. Intelligence and surveillance remain the key. I understand that the few maritime patrol aircraft involved have been very effective. For that reason, I cannot help regretting the fact that we destroyed those Nimrod aircraft which would have been very effective in this instance. Convoys are being used in the very congested region where ships enter the Red Sea: Japanese, Italian and Chinese ships are involved in this, but convoys are, of necessity, a quasi-military operation and not all ships, seafarers or shipping companies are keen to use their ships this way, since ships have to arrive at a certain time and so on.

Finally, I have kept clear of the political situation onshore, but it would be wonderful if Somalia could declare a 200-mile exclusive economic zone. We could then assist them to rebuild their fish plants and perhaps supply them with a number of trawlers in order to train the younger people and give them some jobs and hope. I hope that the new Administration in Somalia will begin to tackle this.

7.43 pm

Lord Teverson: My Lords, first, I thank those noble Lords who have said kind words about the report of EU Sub-Committee C, which I am privileged to chair, *Turning the Tide on Piracy*. This is an important subject around which we feel there have been a number of success stories. It may be worth mentioning some of those. Apart from the reduction in the amount of piracy, it is often forgotten that Atalanta was primarily set up for two other reasons. One was to protect the World Food Programme in distributing very important emergency aid to Somalia and, in that instance, there have been no incidents at all of piracy being successful. The second is that it is an area in which Britain has been very successful in leading a European operation—Operation Atalanta is based out of Northwood and has been a very successful operation, headed by a British admiral, showing that Britain can be very successful within a European operation.

Thirdly, it is also an area in which international co-operation on the high seas has perhaps not been recognised enough. We have players here who do not often get involved in this type of operation—China, India and the Russian Federation, as well as NATO and the European Union. The fact is that these operations and these various nationalities have, after some initial caution, operated very successfully together—international co-operation not always reflected elsewhere, particularly, ironically, between the EU and NATO, where operational co-ordination has managed to work practically very well indeed.

There are a couple of other lessons that need to be learned. One area that came to light when we undertook our inquiry around Somali piracy was what the Somalis themselves feel about these operations. I am not an expert in that area, but one thing that has to be taken into account is that one of the reasons that Atalanta was formed—part of its mission, long forgotten—was to protect fishing grounds from what are often European predator fleets taking out some of the economic ability of Somali coastal populations to make a living. That area has not been fulfilled by any of those international operations, as I understand it, and this is an area in which there has to be a balancing factor for the local population.

Another area which is a greater success now, but was not so when it started, is the inability not of the UK shipping industry but of much of the international shipping industry to take any notice at all of recommendations by Atalanta and other operations based in the Middle East to help merchant vessels avoid piracy. A lot of this was just ignored and most of the vessels that were taken captive and their crews held for ransom were those that ignored these rules. The sub-committee felt that the insurance industry in particular did not in any way help at that time to add greater caution and make sure that these guidelines were adhered to. I believe that that has got better, but I would be very interested to hear from my noble friend the Minister as to what further discussions there have been with insurers and merchant fleets to make sure that that discipline is much better than it was.

One thing we were very sure about was that without solving Somalia's problems onshore, as soon as Atalanta and the other naval operations went away piracy would return to the levels that were there before. We welcome the EU initiative to have a much more holistic policy toward Somalia and the EUCAP Nestor operation, which is trying to build up the coastguard ability and the rule of law of those coastal areas, is important in that. I thank the noble Lord, Lord Luce, for bringing forward this debate; there are some really good lessons to be learned, but at the moment, as soon as those operations disappear, piracy will return.

7.48 pm

Lord Stirrup: My Lords, I am delighted that we are able this evening to be able to debate such an important topic. I, too, thank and congratulate my noble friend Lord Luce for his persistence in securing us the opportunity. We have already heard a number of wise and powerful contributions which have made many of the points I might myself have made but will not now seek to repeat. I would, though, like to say a few words about the maritime security mission and about Operation Atalanta in particular. It has been a great success. It has been demonstrably successful in contributing to a reduction in piratings. Not all of that reduction can be attributed to naval activity alone, of course, but Operation Atalanta has, nevertheless, made a significant contribution. It has been successful in fostering maritime co-operation with nations that have little experience in working with partners and with little previous incentive to do so. The most significant example of this is China. We must not make too much of China's participation in anti-piracy operations.

It remains, after all, a difficult and uncomfortable bedfellow on a great range of international issues. Nevertheless, the role that China has played is, to my mind, a healthy and positive development in the context of wider global security. A China that plays its part in multilateral efforts to foster peace and security must be a good thing. The longest journey starts with one step.

Operation Atalanta has also been successful in demonstrating that the EU can have an important role in certain kinds of military operations. I spent too long sitting in EU military committee meetings to be

[LORD STIRRUP]
under any illusion about the organisation's capacity for the harder, more complex kind of operations. Too often, discussions were dominated by political manoeuvring and demarcation disputes with NATO. Unlike NATO, the EU has no proper, effective military strategic organisation or process. Nevertheless, when it works in concert with NATO, when it makes use of shared resources rather than trying to duplicate structures, and when it focuses on operations that make use of its political strengths and avoid exposing its military weaknesses, then the EU can be a very valuable player on the global security stage. Operation Atalanta has clearly demonstrated that.

Having said all that, we must remember that, as the noble Lord, Lord Teverson, said, Atalanta was set up with a very limited objective: to protect World Food Programme shipping. Anything else it might be able to do to counter piracy more widely was subject to it having the spare capacity, and there is not very much of that.

The area of sea space that has to be covered is immense, particularly when wide-area surveillance capability, such as that provided by maritime patrol aircraft, is so scarce. Of course, the pirates inevitably react to and counter tactics that are employed successfully against them. They have ranged ever further from shore, for example, through the use of mother ships. We should therefore expect further innovation from them. It would be dangerous to assume that any reduction in the number of successful pirate attacks will necessarily be permanent.

The military operation is an essential tool in addressing piracy but, as other noble Lords have observed, it will not provide a lasting solution. It is a truism that in the long run piracy is dealt with not at sea but on land. That is why the wider issues of Somali governance are crucial. The fact that Somalia as an entity does not really exist makes the problem even more challenging and reinforces the need for us to continue our efforts to understand and influence, for example, Puntland, which is home to so many pirates.

Finally, this is not a problem that will be resolved quickly. It has been with us for a number of years already. Operation Atalanta itself has been running for four years and we must expect that the need for the current multi-strand approach to security in the region will continue for some considerable time. That will require patience on our part and it will require persistence, but it will also require sustained investment in the kind of diplomatic and military effort which is often taken too much for granted but which does not happen by accident.

7.53 pm

Lord Triesman: My Lords, I join the House in thanking the noble Lord, Lord Luce. I admire his long attention to the detail of this issue. I also thank other noble Lords who have taken part in the debate, as well as the committee of the noble Lord, Lord Teverson, which has added a great deal to our knowledge.

In the United Kingdom there has always been an interest in Somalia, not least because so many Somali citizens live here, and I used to find that many in the interim Government held dual citizenship. Indeed, the interim President, President Yusuf, who did not hold dual citizenship none the less declaimed frequently to me that he was partially British as he had a British liver. He told me that he was the longest-surviving transplant patient with a British liver and he held this country in great esteem.

Greater action has always been needed to address state failure, failure in the rule of law, failure in civil institutions and fratricidal clan warfare—the failures on dry land, as the noble Baroness, Lady Nicholson, described them, which lie behind the piracy. The instability both internally and internationally, in the Yemen and through the Horn of Africa all make us focus on this issue. It is quite right to say that the African Union has a vital role to play. I believe that it needs and deserves greater support in what it does. It has always had painfully small resources and it has always addressed the reality that military action is not the sole response. There needs to be a much wider palette of opportunities for response.

At present, as I understand it from the One Earth Future foundation's analysis—there are probably other analyses—the annual headline cost of piracy is in the order of \$6.6 billion. Just 1% of that amount is spent on building Somali anti-piracy capacity and on prosecution. Ban Ki-Moon's special adviser on Somali piracy reported last year that just one in 10 captured pirates are brought to the point of prosecution. Convicted prisoners are held in a variety of countries, as we have heard, and many of those countries are themselves under considerable pressures, as is the Seychelles. I share the concern of the right reverend Prelate and the noble Lord, Lord Greenway, that many victims of piracy will feel that this is hardly an adequate response to some of the things that they come to suffer at the hands of the pirates.

I also know, and accept, that there have been advances, but, as the noble Lord, Lord Luce, said, the problems are still there. The advances are significant and they cover what my noble friend Lady Warwick described as 2.5 million square miles—something like 4 million square kilometres—of ocean. One good year—and it has been a good year—is not a guarantee of good years in the future. There is still a huge amount to be done, although the noble and gallant Lord, Lord Stirrup, has been absolutely right to celebrate the successes that there have been.

My feeling this evening as we debate this is that in the previous Government we sustained a naval and supply presence. That has now been cut, notwithstanding the priorities expressed by the Prime Minister. Those are matters that should concern us if we take the issue as seriously as the Prime Minister urges us to do. Therefore, what aid have Her Majesty's Government provided and will they provide to create sustainable economic opportunities in Somalia? What careful and pragmatic analysis has been made of trade opportunities that would assist? What arrangements have been made with Somaliland, Puntland and their neighbours in Kenya and Ethiopia to assist in dealing with many of the problems? My question includes Ethiopia because of the outstanding assistance that was consistently provided by the late Prime Minister, Meles Zenawi, whenever he was asked to enlist his help, particularly with clan factions.

Should not the United Kingdom, as chair of Working Group 1 of the CGPCS, deploy its frigate more frequently, and preferably permanently? The noble and learned Lord, Lord Howe, and others described that help as being a very interesting EU naval role and one that could well be better co-ordinated with NATO assistance, and I am sure that that is true as well. What future role does the Minister see the Navy playing?

Can the Minister also tell us what pressure has been brought to bear for internationally agreed standards for accredited private security companies? Those standards have been promised for a long time. How close are we to agreement on them? When will the United Kingdom ratify the 2005 protocols concerning acts of terrorism at sea and the enforcement powers that are sought to deal with it? Before the Minister tells me, perhaps I may say that I readily accept that we did not do so in the latter part of the Government in which I served; I am merely eager to know what progress there is now.

What are the Government doing to assist the Seychelles on the imprisonment problems it plainly has and which are stretching its resources to breaking point? What progress is being made on the new maritime intelligence co-ordination centre in that nation—another issue raised by the noble Lord, Lord Hannay, earlier?

Will we contribute to the Dutch-German joint investigation team which has been tasked with pursuing what they have described in their terminology as the "kingpins and financiers", the "money launderers"? It is obviously not whatever the maritime and piracy equivalent is of the term "foot-soldiers". Those are pursued, but not many are brought to trial. What about the people who organise them, finance them, and benefit from them?

Finally, what is our contribution to assist the new Somali president to build the authority of his Government, his courts and civil institutions? We have here a permanent presidency. It will succeed or fail on the basis of the tangible support that it receives, and the expertise that we are prepared to deploy.

I accept that not one of these issues is easy, but they are all essential to progress, both on land and on the water.

8 pm

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): My Lords, it is a pleasure to participate in this debate and I pay tribute to the noble Lord, Lord Luce, for raising these important issues, and for managing to gather such great experience and expertise around the House to partake in this debate. The noble Lord, as with other Lords, brings a significant depth of knowledge of the region, and the debate has been richer for that. Other noble Lords have spoken from the perspective of their valuable experience, and I thank them for their contributions.

The noble Lord, Lord Triesman, summed it up at the end, in terms of what can be done in a region which has multifaceted challenges: how is what we are doing co-ordinated, and where are we in applying specific British expertise? Are we dealing with the underlying causes, and are we going after the small number of people who are the real kingpins at the top of this chain? I hope I can answer most of those questions, but if any remain unanswered I will write to noble Lords.

Piracy is not a new phenomenon. It is a type of criminality that has existed for hundreds of years. First and foremost there is the human cost that comes as a result of piracy, and that was vividly outlined by the right reverend Prelate the Bishop of St Edmundsbury and Ipswich.

However, it also has an economic impact. British shipping generates £10.7 billion of our GDP. The impact that piracy off the coast of Somalia has had in recent times affects each of us in our everyday lives. Some 90% of global trade moves by sea: the food we eat, the gas and oil we use at home, in our cars and in industry, and the clothes that we wear all pass through there. The stretch of water between South Arabia and the Horn of Africa—the Gulf of Aden—is one of the busiest waterways in the world. Nearly $1 trillion worth of trade a year passes through the Gulf of Aden to and from European ports. This illustrates the seriousness of the threat both to the UK and other nations.

The existence of piracy stems from wider issues of instability in the Horn of Africa and South Arabia. Many of those were spoken about in the debate today. In February, at the London conference on Somalia, we reiterated the importance of supporting communities to tackle the underlying causes of piracy, such as poverty, instability, and a lack of opportunities. It is those that are contributing to the problem. This is precisely why the Government's approach to countering piracy is robust and multifaceted. We are working closely with partners in the region and beyond.

My noble friend Lady Nicholson asked about government co-ordination of activity. The UK continues to take a leading role in international efforts, including through the Contact Group on Piracy off the Coast of Somalia—the CGPCS—which has been referred to a number times today, which has over 65 participating nations and more than 25 international organisations. We contribute to all three international naval counter-piracy forces: the European Union's Operation Atalanta, referred to by the noble Lord, Lord Luce, has also been referred to by other noble Lords; NATO's Operation Ocean Shield; and the independent US-led Combined Maritime Forces, which include over 20 independent deployers including India, Russia, Pakistan and China. These nationalities, as the noble Lord, Lord Teverson, and the noble and gallant Lord, Lord Stirrup, said, have come together and not always been given credit for this unified work. Their combined efforts have contributed to reducing pirate attacks by over 65%. We also invest in building further capacity in Somalia and the region to police, prosecute, and detain those behind piracy.

We are the largest bilateral donor to the UN Office of Drugs and Crime's counter-piracy programme, and we encourage our partners to match our support. Through UNODC, the UK is helping to build and renovate prisons in Somaliland and Puntland. We also work with regional states such as the Seychelles and Kenya in furthering their counter-piracy efforts and continue to support the regional prosecution of pirates.

[BARONESS WARSI]

The noble Baroness, Lady Warwick, was right to say that we must deal with the root causes of piracy, and I am sure that the noble Baroness will welcome the fact that in Somalia we are implementing a £250 million development programme, focused on institution-building, jobs and opportunities, health, and humanitarian assistance. The hope is that it will prevent people being driven into piracy. In practice, this means supporting the creation of Somali-run ministries to allow the Somali people to manage their own affairs; the continued health and humanitarian assistance means we are keeping over a million people from starving. Through developing jobs and opportunities we are offering communities hope for themselves, their children and their future.

We continue to support the African Union Mission in Somalia—AMISOM—and the EU Training Mission for Somali national security forces. AMISOM, with the support of Somali forces, is doing an excellent job in very difficult circumstances. Their efforts to increase security in Mogadishu and southern Somalia are essential to enable progress on other fronts. Also, just last month, my right honourable friend the Secretary of State for International Development announced support of £38.3 million over three years to improve the Government of Somalia's core functions, and my right honourable friend the Foreign Secretary announced a further £10 million to help the Government with their immediate needs following the end of the transition period.

We are providing crucial support to other regional partners too. In Yemen, we are working with our Gulf and international partners to support transition, including through co-chairing the Friends of Yemen. This co-ordinates international efforts to support Yemeni-led political reform.

We are the third largest humanitarian donor after the US and the EU. My noble friend Lady Nicholson asked about that financial assistance. DfID has committed £28 million of humanitarian aid to Yemen. In Kenya, we have provided more than £11 million to support the implementation of the new Kenyan constitution, as well as police reform and training and conflict prevention activities. In Oman, we are helping the Government to invest in the coastguard, with new UK-supplied patrol vessels to be delivered early next year.

A new initiative is the unique multinational, multiagency centre, referred to by the noble Lord, Lord Hannay, which is being established in the Seychelles to investigate the kingpins of piracy. Evidence suggests that there are about two dozen individuals behind the piracy business model—if we can call it that—and prosecuting them will have a huge impact on further reducing the levels of piracy. The noble Lord, Lord Hannay, also spoke about money laundering and suspicious activity reports. I can inform the House that officials tell me that the Home Office is planning to provide the noble Lord, Lord Hannay, with an update. If that update does not arrive, I am sure the noble Lord will bring the matter to my attention and I shall ensure that he receives a full response.

My noble and learned friend Lord Howe and the noble Lord, Lord Luce, referred to piracy and terrorism. Thankfully, to date we do not have evidence that terrorists are using piracy as a means of raising funds or that pirates are engaged in their activities in order directly to support al-Shabaab. There is strong evidence to suggest that pirates continue to seek to distance themselves as much as possible from al-Shabaab activity or control. However, it is possible that some personal clan or other links may exist between individuals who are involved in pirate groups and individuals who may also be affiliated with extremist or insurgent groups in southern Somalia, including al-Shabaab. It is a matter on which the Government keep a keen interest.

The noble Lord, Lord Luce, also asked specifically whether drones are being used against pirates in the Indian Ocean. I can confirm to the noble Lord that they are not. The noble Lord, Lord Avebury, raised the issue of the Chagos Islands. I can confirm that there is no link between the issues of piracy and the Chagos Islands. The noble Lord also asked about the local facilitation of talks in Somalia. The Intergovernmental Authority on Development, IGAD, has been in negotiations with local clan leaders for some months now and the new Government of Somalia and IGAD are working towards a solution, following the fall of certain areas which were originally al-Shabaab strongholds.

The noble Lord, Lord Greenway, raised the issue of ransom payments. The noble Lord will be aware that the British Government do not facilitate or take part in concessions to hostage-takers, including the payment of ransoms. Although there is no UK law against a third party paying a ransom, we counsel against that, as we believe that that encourages future kidnappings. The noble Lord will also be aware of the piracy ransom task force, which brings together policy makers from 14 countries to gather evidence, develop an analysis and agree a set of preferred options. The final meeting for that task force is to be held in London tomorrow. As part of that process, industry has been consulted and we have taken on board its views and expertise throughout the lifetime of the task force. I cannot say what the outcome of that meeting tomorrow will be; there are no predetermined outcomes for the task force. We will not know the final outcome until after tomorrow's meeting, but the task force will deliver a series of policy recommendations to policy makers. Any decision will need to be taken by the international community outside the context of the task force.

My noble friend Lord Teverson was right to say that successful attacks are overwhelmingly against ships that do not comply internationally with approved best management practice. Self-protection measures remain the most effective method for avoiding a pirate attack and the Government strongly encourage flag states and the shipping industry to adopt and to adhere to BMP standards. We are working with international partners, the insurance industry and ship owners, via the contact group on piracy, to examine ways to encourage BMP compliance by the strongest means possible. However, I can confirm to the noble Lord that 98% of UK shipping is BMP compliant.

The sharp reduction in pirate activity that we have witnessed in the past 12 months—from 46 successful attacks last year to just five so far this year—is testament to the enduring commitment of the international community to tackle piracy and its causes head-on. We recognise that the work of the international community has been effective because it has been collaborative, co-ordinated, and in close co-operation with regional partners. A unique and positive part of the London conference was the role played by the Somali diaspora, referred to by noble Lords today. My right honourable friend the Prime Minister and I hosted key engagement events with the Somali diaspora, which has an important role to play in supporting the stabilisation of Somalia, through offering networking opportunities, investment and technical and financial assistance.

The Government are clear in their resolve to support our partners in the Horn of Africa and South Arabia in their efforts to address causes of instability in the region. There should be no room for complacency. Countering piracy is important to us all. It affects our economy, the safety of our citizens and it creates a climate of instability in a region where stability is very much required. However, as recently as Monday, reports show that we are achieving success. The International Maritime Bureau report was very positive. We are achieving success in difficult circumstances and it is in our interests to stay the course.

House adjourned at 8.13 pm.

Grand Committee

Wednesday, 24 October 2012.

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Baroness Fookes): My Lords, I give the usual reminder that if there is a Division in the Chamber, we adjourn for 10 minutes.

Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012

Considered in Grand Committee

3.45 pm

Moved by ***Lord De Mauley***

That the Grand Committee do report to the House that it has considered the Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012.

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

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley): My Lords, these regulations mark the first step in delivering the Government's policy on the use of wild animals in travelling circuses. That policy was set out in Written Ministerial Statements by my noble friend Lord Taylor of Holbeach to the House on 1 March and 12 July. The Government are introducing regulations now to address welfare concerns surrounding wild animals in travelling circuses.

Noble Lords are aware that we are intending to ban the use of wild animals in travelling circuses on ethical grounds via primary legislation. Given the time needed for the Government to prepare and Parliament to scrutinise and debate such banning legislation, as well as any reasonable time allowed for the circuses themselves to adjust to a ban, the regulations are necessary to set clear welfare standards for any travelling circus wishing to operate in England that uses a wild animal.

The regulations will fill a gap in legislation. Whereas zoos or private collections require licences to keep certain wild species, circuses keeping the same animals are exempt. Due to the travelling nature of circuses, the regulations will be administered and enforced centrally by Defra, with inspections by appropriately qualified veterinary inspectors drawn from the existing list of zoo licensing veterinary inspectors.

All travelling circuses that include wild animals will require licences. The annual fee for a licence has been calculated to cover the administration cost to Defra. Additionally, circuses will have to pay the full cost of inspections as well as for any improvements to their facilities and procedures that may be required. The inspection fee in these regulations mirrors that of zoo licensing veterinary inspections.

The number of inspections required is not stipulated in the regulations in order to allow flexibility to ensure that standards are being met. However, we envisage that there will be at least three inspections per licence period: announced inspections at winter quarters and while on tour, plus at least one unannounced inspection.

Operators will have to supply Defra with a stock list of the wild animals to be covered by the licence. Detailed records for each licensed animal must be kept. Only wild animals on the stock list may form part of the travelling circus and circuses must notify Defra when they intend to add a wild animal. They must also inform Defra of their tour itinerary well in advance of the first performance.

Each circus must appoint a lead vet who has appropriate expertise to understand the needs of, and be able to treat, licensed animals. Quarterly checks are required of all licensed animals, conducted by a veterinary surgeon with appropriate expertise, in addition to any sporadic visits, for example, to treat animal illnesses. At least two of these quarterly visits must be conducted by the lead vet, one at winter quarters and one on tour. Detailed group and individual care plans must be prepared, agreed by the lead vet, and followed at all times. They must be reviewed regularly by a veterinary surgeon.

Unsupervised access to licensed animals will be restricted to persons with appropriate qualifications or experience. Circuses must maintain a list of the persons authorised to access and care for the licensed animals, and ensure adequate staffing levels. A list of those persons on duty looking after licensed animals must be clearly displayed to staff.

The regulations also set out welfare conditions that cover a licensed animal's environment including diet, transportation, use during display, training and performance. These requirements are supported by guidance setting out good practice when meeting the needs of licensed animals. Supplementary guidance is provided for some species, especially those known to have been used recently in travelling circuses.

These regulations address concerns surrounding the use of wild animals in travelling circuses. For the first time there will be a set of clear welfare standards that all travelling circuses with wild animals must follow. While we are developing the promised ban on ethical grounds, we are confident that these regulations, combined with the provisions of the Animal Welfare Act 2006, will provide significant protection for wild animals in travelling circuses, and I commend them to the Committee.

Baroness Parminter: I thank the Minister for his comments reiterating the Government's commitment to move towards a ban on the use of wild animals in travelling circuses. That is clearly the will of the majority of the general public, the House of Commons and, I am sure, many Members in this House. Although I do not want to make any party political points, it is also Liberal Democrat Party policy.

The best that I can say about these regulations is that I do not oppose them as a temporary measure; indeed, it is clear that they may improve the protection of the welfare of animals kept in circuses. However,

[BARONESS PARMINTER]
it would be fair to say that the majority view among the welfare organisations and indeed the veterinary profession is that adequate regulations cannot be put in place to guarantee the welfare of wild animals used in travelling circuses.

I have three questions for the Minister. The first relates to the standards that have been put forward in relation to comparative industries. There is a debate about whether these regulations are at a lower standard than those of the comparable industry of zoos. The example used is that of elephants. According to these regulations they would have between one-sixth to one-quarter of the space that they would get in a standard zoo. Indeed, under these regulations elephants can be chained and confined every night on the road. Do we feel that these welfare standards are comparable with comparative industries?

Secondly, having been through the impact assessment very carefully, I could not find notification of any animal welfare organisations, or indeed any veterinary organisations, that are in favour of these regulations. I understand that a majority of animal welfare groups—all of the major animal welfare groups—declined to participate in the consultation. While the BVA—the British Veterinary Association—did participate, it is opposed in principle to regulation. Are there any major welfare or veterinary organisations in this country that favour going down the route of regulation rather than moving straight to a ban? Given that 95% of the respondents to the consultation were in favour of the outright ban that the Minister recommitted the Government to move towards, were there any outstanding legal concerns where a ban based on ethical grounds could be challenged if it was undertaken under Section 12 of the 2006 Act, as ethical grounds may not be deemed sufficient for its purposes?

Lord Kirkhill: My Lady Chairman—is that the correct form of address?

The Deputy Chairman of Committees: In fact, I am the Lord Chairman, but we follow the normal custom of addressing Members of the Committee as "My Lords".

Lord Kirkhill: I fully accept that definitive assessment.

My view is that Defra has been playing around with this for many a long day without real purpose. It is clear that primary legislation is required to ban the use of wild animals in circuses. What we are told—and one has to accept it because it is obvious—is that primary legislation takes some time to create.

Nevertheless, while one can concede—and I do—that these regulations are an improvement on the existing situation, we have to remember that the whole concept of the circus is built on cruelty. It is built on prodding and whipping the animals. It is built on the fact that poor-quality staff are employed; and behind the scenes cruel practice exists in training. Although the committee of experts suggested that the animals were not at hazard, were well fed, watered and so on, nevertheless they are cribbed, cabined and confined. They have to travel around and they are much restricted. You only have to see behind the scenes, as I have done over the years, a trainer raising a whip and an animal immediately or very often subsiding. It is clear that much cruelty is involved.

Lord Gilbert: I apologise, but my name is up on the Annunciator and it is not me speaking. I would hate for my noble friend to be mistaken for me. That would be quite unfair.

Lord Kirkhill: My goodness me. Given my noble friend's advanced age, he gets up on his feet rather more quickly than I do. I must admit that the noble Lord, Lord Forsyth of Drumlean, stopped me in the Corridor the other day and said, "Lord Gilbert, that is a splendid contribution you have just made". After all, I am a good-looking chap and my noble friend is just Lord Gilbert. You have to take that into account.

At any rate, I do not wish to say more. I have expressed my views. These regulations are marginally better, but my true condemnation is of Defra. I honestly believe that it has dragged its feet on this issue for years.

Lord Colwyn: My Lords, I received an e-mail from the animal welfare groups, which raised a number of concerns. The RSPCA, the BVA, the Born Free Foundation and CAPS asked me to attend these discussions on the regulations because they said that they were unenforceable, unethical, ineffective and in conflict with the Government's promises.

I listened to my noble friend's introduction which I think made it quite clear that these concerns are significantly overplayed. The regulations will, for the first time, set in law tough but clear welfare standards for those few remaining travelling circuses in England that use wild animals. They will require these travelling circuses to be licensed, with regular inspections by Defra-appointed inspectors, as well as routine visits by vets, which will ensure that high welfare standards are maintained.

When I saw this statutory instrument down for discussion, I rang my good friends Toti and Nell Gifford. These two wonderful people own a travelling circus in the Gloucestershire area. They do not have any wild animals. In fact, last time I saw them, the wild animal act involved a goose and some ducks, and they are not at all described as domesticated. They have horses, bareback riders, clowns and acrobats. I was hoping for some help from Nell and Toti with my remarks, but they are obviously busy with the circus and have no time for paperwork. However, a short e-mail eventually arrived the day before yesterday. He told me that all he wants to happen,

"is that animals that are used in circuses should have the highest standards of husbandry and should be monitored frequently, preferably with input from professionals from outside the entertainment sector—eg wildlife conservationists. In the case of horses, it would be helpful to seek the co-operation of the BHS to create a trade standard or operational certificate".

The regulations achieve this.

The use and welfare of any animals, domesticated or wild, in circuses is understandably a matter of public concern. These regulations respond to the welfare concerns by ensuring that circus operators will now know what is expected of them, and the public will know that these standards are being enforced.

4 pm

Lord Redesdale: My Lords, I have not carried out the same amount of research as the noble Lord, Lord Colwyn, but I did watch "Madagascar 3" on the airplane coming back from Doha the other day. That is an interesting film as the prevailing mood is that wild animals should not be used in circuses but in that major blockbuster the zoo animals own a circus. I raise that point as it is interesting to see how trends change.

We are talking about a total of between 30 and 50 animals, with the consensus being around 39. These stopgap measures are useful as they will increase costs. Consequently, many circuses will consider whether it is economically viable to continue to keep wild animals given that the whole industry has an estimated turnover of a mere £2 million. When one considers the number of circuses in existence, that figure shows that it is not the most lucrative of professions.

My son requested me to ask the following question as we visit Zippos Circus, which comes to Hampstead Heath once a year. Last year I noticed protestors complaining about the use of horses. I was extremely impressed by the circus's standards of animal welfare for its domesticated animals such as horses and budgerigars. I asked the Minister earlier to ensure that budgerigars are not considered to be wild animals in this context. I very much hope that he will take into account the cost of veterinary intervention. Obviously, I am against the use of wild animals in circuses but I hope that the cost of veterinary intervention for domesticated animals—that does not seem to be a massive issue at present—has been taken into account.

Lord Knight of Weymouth: My Lords, I welcome some movement on this issue by Defra because, like others, including the noble Lord, Lord Kirkhill, I very much agree that the use of wild animals in circuses is not appropriate. However, I am not talking about domesticated animals. I also agree that wild animals are treated cruelly in circuses. I noted the Minister's comment right at the beginning of his speech that this measure is the first step towards introducing a ban on ethical grounds. I hope that when he winds up he will say whether the Government will stick to the commitment made by his predecessor to introduce an ethical ban in this Parliament. That would enforce the will of the other place which voted unanimously to introduce such a ban, using Section 12 of the Animal Welfare Act. The Minister's noble friend Lady Parminter asked about Defra's latest opinion regarding the legal position of such a ban. It would be interesting to hear the answer to that question as well.

I strongly support the principle of a ban. Some worry that bringing forward regulations that last for seven years, with a review after five years, might undermine the notion that there is any momentum behind that principle. However, I was pleased to hear the Minister say that this measure is the first step and if he can reassure us on the timeline, I would be most grateful. Clearly, we need to improve welfare standards. That is the reason why I oppose the use of wild animals in circuses. In so far as it goes there is some merit in these regulations in improving those standards. However, it is worth asking whether it would have been easier, cheaper and clearer to go for an outright ban. Those circuses that use wild animals would hear that message and a timeline set out by government and would phase them out over the intervening couple of years rather than getting used to a new set of regulations which are only temporary anyway, which may be phased out in favour of the ban on which there is all-party agreement.

Reference was made obliquely, which I wish to address head on, as to whether the enforcement mechanism in these regulations is flawed. Clearly, if we are bringing forward regulations that are not going to work and that are only temporary anyway, there is not very much point in proceeding.

I am most grateful to the RSPCA and the Born Free Foundation for forwarding me the joint briefing they have prepared and in which they go into some detail. I have copied relevant sections to the Minister so that he could have time properly to consider the argument they made. I shall summarise it. The main sanction in these regulations is to suspend the licence. If the licence is suspended, something has to happen to the animals that are then being held without a licence. Regulations state that a licence is required for any place where a wild animal associated with such a circus is kept. Therefore keeping them where the circus is is not an option unless, I guess, the circus holds an alternative licence for that location, which is extremely unlikely, given that we are talking about a travelling circus. Moving the animals is possible only if the site where the animals are held during the suspension also holds a licence. Any site that held the animals without a licence would find itself in contravention of the regulations. Given that suspensions come into effect immediately and initial granting of a licence requires prior inspection by a Defra inspector, plus the relevant fees to be paid et cetera, that clearly is not a practical solution either, unless the expectation is that the circus owner would hold an additional licence for their home site to cover this eventuality, if he is allowed to move them to that alternative site under this licensing regime, which seems a bit unlikely, given my reading of the regulations.

The only other possible option—unless the Minister tells me otherwise—is moving animals to another licensed circus during a suspension, again, if the circus is allowed to move them. However, given that we have heard from the Minister that the Secretary of State is required to have 14 days' notice if a wild animal is introduced to any circus—I guess to add it to the stock list that the Minister referred to in his opening comments—I cannot see how that will work either. There are real questions about whether these regulations are enforceable using the sanction set out. Even if the Minister is unable to do anything else, if he can answer that question I will go away happy that I have achieved something.

There are four other points that I would like to make briefly. The first is about whether the welfare standard is good enough. I have a fundamental problem, which is one I wrestled with in my brief tenure as a Defra Minister five years ago, and I never managed to resolve it. It is that the same animal could be held

[LORD KNIGHT OF WEYMOUTH]
under different licence regimes if it was unfortunate enough to be moved about into different settings, and each has a different standard of welfare and husbandry attached to it. Let us take the example of a small primate: a marmoset monkey would be a common one. On a Monday, the marmoset might be held in a pet shop under a pet shop licence under a particular standard of welfare and then be sold and held under a dangerous wild animal licence in someone's home, which is a different set of standards. Then perhaps that does not work out, as keeping primates as pets often does not work out, so on the Wednesday, the animal is sold to a circus. In the circus, it is held under another set of welfare and husbandry standards. Then perhaps the circus owner finds that this marmoset is not such an attraction and is not easily forced into doing the amusing things that punters want to pay for, so on the Thursday, the animal ends up in a zoo and is under another set of welfare standards, which are the highest welfare standards. There are those who oppose zoos altogether, and we debated that the other day. It does not seem logical or credible that, if we are starting with the principle of animal welfare in how these animals should be kept, there are four different licensing regimes, and that is before I get into the distraction of the Home Office licensing regime if they are to be used for experimentation, because that is a whole different debate that I do not think we want to get into. I would like to see the welfare standards in these regulations at the highest current licence standard, which is the standard that we have for zoos, animal parks and rescue centres. I do not think that they deliver that and there is a real question about whether the welfare standards are good enough.

My second point is around the quality of the licensing inspections and the expertise that will be deployed in Condition 6(2) of the regulations dealing with the inspectors that the circus owners themselves would use. It is notable, for example, that in a famous case in 1997 of Mary Chipperfield Promotions in Hampshire, the farm was an official MAFF quarantine facility. It carried a Dangerous Wild Animals Act licence, it was registered under the performing animals regulation and the co-owner, Roger Crawley, was at the time a government zoo inspector. It had all sorts of regulations, which should have reassured us that this was a quality establishment. Yet the evidence eventually gathered at Mary Chipperfield's facility, including that acquired by a friend of mine, Alison Cronin, who runs a Monkey World, led to the conviction on various charges of Mary Chipperfield, her elephant keeper and Roger Crawley for cruelty to a sick elephant.

That tells me that even at the highest standard of regulation we have had problems with animal welfare. We know of other examples of premises and circuses that had been inspected where the wool has been pulled over inspectors' eyes over the training of elephants. Local authorities have some competence in this licensing regime and I am concerned about whether they consistently have the expertise available to them to do any of the licensing.

I note what the Minister said about the regulations being enforced by Defra using vets from the existing list of veterinarians. Obviously, I have every respect for the Royal College, for its self-regulation and the standards of vets. But I would like the Minister's reassurance that vets with a vested interest in circuses are not engaged on that list. We have a fundamental problem around the level of expertise in the veterinary population in dealing with some of these species of wild animals. Not many vets are experienced in dealing with elephants, lions, some of the other wild cats and the primates that may be kept in circuses. If any of those few are making a living out of working for circuses, there is a conflict of interest and I want some reassurance that those conflicted vets would not be engaged on the list.

My penultimate point is about travel time. I note that in Condition 10 of the regulations no maximum travel time has been listed. I recall a debate we had towards the end of the summer before the Recess about the transportation of horses. There was widespread concern across your Lordships' House about travel time for horses. Noble Lords probably share the same concern about travel time for wild animals and yet no maximum limit has been set. Why not?

Finally, there is the issue of new species and the ability in these regulations for circus operators to submit new species to Defra for inclusion in the stock list. Given that these regulations are temporary, I find a facility to include new species odd because it undermines the notion that a ban is coming pretty soon in this Parliament—if the previous promises are to be kept. But if there are good reasons for including new species, we should shift the presumption from Defra having to produce individual standards for those new species to the circus operators themselves having to provide evidence that any animals that they are adding to the stock list will not suffer. That would be more manageable for Defra and we would then have the presumption the right way round.

I am sorry to have spoken a lot longer than anyone else although I guess that that is sometimes my role in this place. Beyond the principle, I am most concerned about the enforcement mechanism. But if the Minister could also give me some answers about the welfare standards, the quality of the inspection, travel time and the arrangements for new species, I would be most grateful.

4.15 pm

Lord De Mauley: My Lords, I am most grateful to all noble Lords for their comments and questions. I will do my best to address the points raised.

My noble friend Lady Parminter asked whether the regulations created a two-tier framework for animal welfare, particularly in comparison with zoos. If anything, the status quo signifies a two-tier system. While the Animal Welfare Act 2006 already applies, operators of travelling circuses that have wild animals are, in animal welfare terms, otherwise unregulated. The regulations will address that.

It is right that there are some differences in the detail of welfare standards because we are talking about very different operating environments and different sources of exercise and enrichment, but I do not accept that we are somehow making things worse through these regulations. It is right to introduce

targeted welfare standards, inspections and enforcement for travelling circuses, which are exempt from other regimes that would protect the animals.

My noble friend asked specifically about chaining. The new regulations should be thought of as an extension to the Animal Welfare Act and its existing provisions. It is already a criminal offence to cause a circus animal unnecessary suffering or to fail to provide for its welfare needs. If anybody—welfare groups or a member of the public—has evidence of this happening, they should contact the relevant enforcement authority. These regulations will require regular announced but, more importantly, unannounced inspections, as well as routine veterinary visits. They also limit unsupervised wild animal access to a named group of suitably trained or experienced staff and they require circuses to keep detailed records of all aspects of the animal's day-to-day life. If our inspectors discover any of these alleged cases of abuse or neglect, enforcement action should be taken.

My noble friend asked which welfare organisations were in favour of the regulations. The British Veterinary Zoological Society supports a regulatory approach. She also asked about the issue of the grounds for a ban. The 2007 Radford report on circus animals concluded that there was insufficient scientific evidence to demonstrate that travelling circuses are unable to meet the welfare needs of wild animals presently being used in the United Kingdom. The position of lack of scientific evidence has not changed. There is insufficient evidence that a ban is required for welfare reasons and any such ban would be vulnerable to challenge. That is what we must avoid.

Consequently, we are now looking carefully at the means by which a ban can be introduced on ethical grounds. There are a number of issues to consider in developing the ethical case and the exact nature of a ban. We must not rush primary legislation on such an emotive issue. We need to get it right. The detail must be correct to ensure that it will not fall at the first challenge. Nevertheless, we are determined to pursue this and we are confident that we will get there.

The noble Lord, Lord Kirkhill, suggested that Defra had been procrastinating. The situation has not changed since my noble friend Lord Taylor's Written Ministerial Statement on 12 July that we expect to be able to publish draft legislation for pre-legislative scrutiny this Session. We are working on a draft Bill. He specifically raised the issue of elephants suffering under licensing. There is a far greater chance of uncovering animal abuse with regular licensing inspections than without. It should be remembered that the trial of the elephant Annie's former keeper has not yet been resolved, so I cannot comment any further on that particular case and I am sure that noble Lords will understand that.

Generally, in answer to the noble Lord's point about cruelty, it need hardly be said that training should not involve animal suffering. These standards prescribe that animals must receive immediate and tangible rewards and positive reinforcement when they exhibit desired behaviour during training and performance. They also prohibit seeking a desired behaviour from any animal in any way that would cause pain, suffering, injury or disease.

I thank my noble friend Lord Colwyn for his supportive words. My noble friend Lord Redesdale made some interesting points, which I have taken on board. I can confirm that the definition of "wild animal" is consistent with the Zoo Licensing Act 1981—therefore, budgerigars are not considered to be wild animals. Nevertheless, the Animal Welfare Act 2006 still applies of course.

The noble Lord, Lord Knight, raised a number of issues, some of which I have already addressed in answering other points. Regarding whether the period of seven years would conflict with a ban coming into place sooner than that, the regulations include the standard sunset provision. There is no connection to or conflict with this and the timescale of a ban. Government policy is that all new domestic regulations expire seven years after they are made. That does not prevent the licensing regulations becoming redundant earlier where their provisions are superseded by the proposed ban.

The noble Lord, Lord Knight, kindly raised with me in advance the enforcement provisions and how they would work. If a circus operator chooses not to comply with the law, it will be at risk of a licence suspension and possible revocation. The simple remedy is to comply or to cease using wild animals. It is important to understand what will happen in practice and already happens for other regulations. Ongoing dialogue between inspectors and operators will mean that a suspension could not come as a surprise to the operator. Only if the operator refuses to take action to restore compliance with licensing conditions will the possibility of a suspension arise. If a suspension notice is issued, it will clarify precisely what must be done and by when. Continued failure to comply would lead to revocation of a licence and prosecution. It is not the case that an operator would be prosecuted for taking steps identified in a suspension notice.

Compliance with the licensing conditions could be restored by the removal of all the animals of the affected species from the stock list of the circus. They will then be covered by a combination of the Dangerous Wild Animals Act 1976, the Zoo Licensing Act 1981 and, of course, the Animal Welfare Act 2006. The circus licensing regulations would no longer apply to those animals, and they would have to be removed from the circus.

I should add that neither the Joint Committee on Statutory Instruments nor the Secondary Legislation Scrutiny Committee has had any adverse comments on the enforceability of the regulations.

Lord Knight of Weymouth: I hope that the Committee will indulge me in asking a question. If the operator disagrees with the suspension of a licence and wants to appeal under Regulation 14, what will that operator do with his or her animals while waiting for the outcome? Clearly, paragraph (4) would allow the court to permit the operator to continue operating a travelling circus, which is a way out, but if the court were not minded to, my worry is that the animals would then be kept illegally. That is what I do not understand.

Lord De Mauley: I am sure that I will be able to give the noble Lord an answer to that question in a moment.

[LORD DE MAULEY]

The noble Lord mentioned conflict of interest. Inspectors have been vetted for conflict of interest; the process already in use for zoos will be followed. He also raised a specific point about primates, which interested me. May I ask him to accept that today we are dealing with these regulations but I am quite happy to talk to him outside about the broader issue of the welfare of animals?

The noble Lord asked about new species. Any new animals introduced will be protected by the rigorous new standards required by the licensing scheme and will be inspected regularly, along with the species that are currently used. However, we cannot use regulations made under the Animal Welfare Act 2006 to prohibit the introduction of new animals outright. Any attempt to use these licensing regulations to prohibit the use of certain species would be highly vulnerable to legal challenge. Our position is that a ban via primary legislation on ethical grounds is the most secure way of achieving the successful ban we want. We cannot prevent the use of new animals until that primary legislation has been enacted.

The noble Lord asked about the period of time that animals may travel for. There must be a stationary period of at least 12 hours in any 24-hour period when the circus moves between venues or layover sites. During transport, animals should be offered water, feed and the opportunity to rest as appropriate to their species, age, health and physiological state. Licensed animals should not be taken from the transport vehicle during transport, except at pre-planned rest stops as defined in the journey plan or under emergency conditions. Every effort must be made to make a journey as comfortable as possible for the animals being transported, including adhering to all traffic laws.

On the noble Lord's earlier point about enforcement and his supplementary question, suspension can be delayed in taking effect. If the court refuses to suspend the suspension, a fine can result. Enforcement and prosecution will produce compliance. I am not entirely sure that that satisfies the noble Lord, and I will write to him on that specific point. I hope that I have answered the main points raised by noble Lords. If I have not, I will write to them following the debate.

Specific legislation setting down welfare standards for animals with such complex welfare needs, especially in such a constantly changing environment, is long overdue. Similar species in more static environments have been subject to their own specific licensing legislation for at least 30 years. By contrast, wild animals in circuses have not been the specific subject of any legislation since an Act in the 1920s.

The Government have promised to bring forward primary legislation to ban wild animals from travelling circuses. This ban will be on ethical grounds and will, understandably, I hope, take a little time. It would not be right to rush legislation through Parliament that sought to prohibit an activity that has long been legal and for which it has proved hard to find evidence that an animal's welfare is irredeemably compromised. However, the Government are satisfied that there is a risk that welfare issues need to be addressed. In the interim, the welfare of these animals is, of course, paramount. The Government believe that these regulations will safeguard the welfare of wild animals in travelling circuses while a ban is introduced.

Motion agreed.

Defence Capabilities: EUC Report

Motion to Take Note

4.28 pm

Moved by ***Lord Teverson***

That the Grand Committee takes note of the Report of the European Union Committee on European Defence Capabilities: lessons from the past, signposts for the future (31st Report, Session 2010–12, HL Paper 292).

Lord Teverson: My Lords, we move from the defence of circus animals to the defence of the half a billion people who reside within the European Union and perhaps those beyond as well. I shall give a brief background, although noble Lords will be aware of most it, to give a context and then go through some of our key recommendations and move forward from there to what I, as committee chair, see as the most important issues to be addressed in this area.

We should remember that the CSDP is very recent. It is just over 10 years old. In many ways, it arose out of the brave movement of the St Malo agreement, which took a lot of people by surprise at the time, and we could perhaps objectively and critically say that it did not fulfil its potential at the time.

In a way, there was an important area in which clarity of definition was made before that, in 1992 as part of the Western European Union, namely, the Petersberg tasks. It is important to remember what those are. They are all around humanitarian assistance, conflict prevention and peacekeeping, crisis management and peacemaking, and post-conflict stabilisation. To this day, I think that describes very well the role and the expanse of European Union defence capability and vision.

One thing that the European Union is certainly not about, nor does it intend at any time soon to be about, is territorial defence, the "homeland" of Europe from external threats. In fact, that is one of the problems in the defence world, because the majority of Europe's population—although not all of it—do not see any conventional, external territorial threat to member states of the European Union, the exception being still the nervousness of some central and eastern European states, which understandably are still very nervous about the instability—in a political sense, and certainly in a long-term sense—of the Russian Federation and perhaps its longer-term issues and challenges. However, there is no commonly agreed external territorial threat. That makes it very difficult during a time of budget cuts and restraints and all the difficulties where social programmes are being squeezed at the moment, where some European states, such as the Republic of Ireland within an EU context, are under huge pressures fiscally. Clearly defence has to take a hit out of that as well, so we have a difficult situation at the moment.

There are three current missions: Operation Althea in Bosnia, which has been there for some time now; Somali piracy, which we have discussed in Grand Committee a number of times; and the more recent Somali training operation, which takes place in Uganda. There is likely to be a future Mali mission very soon as well. In the past there have been a mission in Macedonia, two missions in the Democratic Republic of Congo and a mission in Chad. Some of those missions have not been very comfortable, if you like, not almost civilian, take-it-easy missions. They have a hard edge to them. Some of our witnesses made it very clear that if fighting had to take place it would have done. They are the same troops that are used in NATO operations in Afghanistan and operations in Iraq. They are the same people, the same military forces, and are capable of taking those sorts of actions.

Perhaps it is worth looking at some of the statistics, because we are not always aware of the importance of European defence. For instance, we were told by witnesses that one-third of global defence expenditure outside the United States is European. It has just been overtaken by China, but we are big spenders in terms of defence. In terms of military personnel, more than 1.5 million of our citizens are in uniform in the European Union, and that is greater than in the United States. On the other side of that, we are atrocious in terms of research and investment in weaponry. The rather fuzzy statistic that came out to us is that probably three-quarters of that 1.6 million personnel are non-deployable, and that is one of the themes that I want to come back to in my opening address on this area.

The other issue that noble Lords will be aware of is that that European defence expenditure is dominated by two member states, France and the United Kingdom. In reality only those two member states are willing and able within a reasonable timeframe to wage rather more aggressive campaigns where necessary outside our territory. There are very few others that are able to take that strain. Again, that theme might cause difficulty in the future.

The other part of the context is, "A changing world". I have already talked about the budgetary side, which affects not just Europe but the United States, although perhaps not so much some of the Pacific nations. However, what is clear apart from that is the change of stance of the United States in a way that has been utterly predictable since the fall of the Berlin Wall and the end of the Cold War in 1989. That is that future security priorities for the United States will be in the Pacific theatre. They will not be within Europe; and the United States—and I am sure that this will be the case whichever Administration take charge in Washington at the beginning of next year—will have to make major budgetary cuts, programmed at the moment at some $0.5 trillion over the present budget-programming period. So we have a very different scenario in that area.

There is a different philosophy, to a degree, within the United States which is the idea—denied by some of our American witnesses—of leading from behind. The US, in the Libyan operation, had to provide the resources that were necessary—there were European capability gaps—while saying, "Europe, this is on your doorstep. You have to take the operational strain of this, once we have started the operation". Surprise, surprise, the United Kingdom, France and some of our closer allies managed to deliver, at least on that ask.

I will consider some of the main recommendations, but before I do so, I should mention that one of our final sentences and one of the things that was clearest to us as a committee as we went through this, was the obvious and fundamental discovery that member states and nation states within Europe make decisions about defence, their budgets and how they co-ordinate their forces with other nation states. Because of that, anything that is good for Europe, in terms of better and more effective defence expenditure, is good for NATO—and that is equally good for the European Union and any other bilateral or multilateral organisation or alliance that takes place. These are not alternatives but win-win situations if we get them right. So the institutional arguments can be a destructive distraction from some of the key issues.

I shall quickly go through some of the main areas in the report. As regards NATO versus the European Union, one of the areas that the External Affairs Sub-committee has been concerned about on many occasions is the inability of the EU and NATO in terms of military forces to work together at operational level because of the difficulties over Turkey, Cyprus and so on. Certainly as regards Afghanistan, we found that that actually threatened the lives of European civilian operational staff in terms of carrying out their duties. That to us is fundamentally unacceptable. We of course say that a resolution to this has to be found. We obviously have the Berlin Plus agreement under which the EU can use NATO resources, when agreed by NATO. They are currently still used in Bosnia—that was agreed some time ago—but there is no prospect of similar co-operation in the future. We need to resolve it, and both sides of the argument know that.

Another area that came out as regards NATO was that Europe has to pull its weight and contribute to NATO, otherwise America will lose interest in it. Something I had not thought about before, not being a defence expert, was that NATO is a unique organisation. There is no other similar integrated organisation, certainly not since the dissolution of the Warsaw Pact, which enables the United States to operate so closely with allies. However, we should not take it for granted and feel relaxed as a consequence.

An area that the press took up when the report was released was the role of Germany. We were critical of Germany's 1.5% defence expenditure, but perhaps more so of its reserved position in the Security Council over Libya. We feel strongly that European defence cannot work properly without Germany playing a full part in it. However, some witnesses made it very clear that some nations within the European Union might be concerned if Germany increased defence expenditure to 2%, but we think that is well and truly a risk worth taking.

We welcome the UK-France model and the two defence treaties of 2010. We think this is a potential model for use in other areas. It shows that Europe is serious about defence and combining its defence capabilities. It is not the only example of that in

[Lord Teverson]
Europe but it is certainly the most important one. However, there is a risk that the rest of the European Union will say, "France and the United Kingdom get on with it. You do it very well. That is your role. We are not up to that. We will retreat back out of that". We believe that that could cause much concern in the future.

As regards the staffing of CSDP missions, we are very aware that resource targets for civilian missions are never met. This is degrading for the image of the European Union. European Union civilian or military missions are always exceedingly small compared with NATO operations and their modest resource needs must be met. It is outrageous that medical support was not obtained in the Uganda-Somali operation. That is unacceptable. In Operation Atalanta, there was very little air surveillance, but it was finally provided by Luxembourg. Large capability gaps were evident in the Libyan operation in surveillance, air-to-air refuelling, transport, medical support and smart munitions. Clearly, Europe needs to operate much better in that area. It is strange, or perhaps not, that battle groups have not been used. However, for them to have credibility they have to be audited, as they would be in NATO. When there is an opportunity to use them, as there has been, they should be used where that is appropriate.

The biggest message that came out of the report concerns deployment. The irony is that if Europe spent its financial resources and deployed people slightly more effectively, and deployed them in different places, and co-ordinated what each nation did, it could be amazingly effective even on reduced resources resulting from budget cuts. That must be the main message that comes out of this report.

Europe needs a defence capability. There are a number of models: the EU model; the NATO model; and multilateral and bilateral models. That is great; none of those opposes each other. What is good for the EU is good for NATO and is good for Europe. We must get that deployment right. Europe has to stand up for itself and be able to show that it is prepared to defend itself.

4.44 pm

Lord Robertson of Port Ellen: My Lords, this is a valuable report and I congratulate the members of the committee and its chairman on presenting it here today. It is timely, wise and important and it makes a lot of significant recommendations, which we should all listen to. I feel as though I am in an echo chamber. I seem to have been making that kind of speech now for about 16 years both in opposition, then in the Ministry of Defence and in NATO—exactly the same lessons. As one of the architects of the St Malo agreement, I watched with dismay. Although it revolutionised thinking—it certainly came as a surprise to many people at the time—it has not lived up to anything like the expectations that it should have because it was trailblazing and crucially important.

The report said many of the things that I used to repeat, and that members of NATO and others in this small community who are interested in European security have been making all the time. The sad thing, in a way, looking at this Room today and looking up at Moses with the tablets of stone, is that we are speaking again to the converted. We need to get that message further afield as well. What the report says is right: Europe is not doing enough in its own security interests. That is what is so aggravating. We are not advocating something that is academic. There is a security interest and there are threats out there. We are not doing enough to recognise that.

We spent a huge amount of money during the Cold War against what happened to be a threat that never appeared. As a consequence, we saw off the adversary of the time and we stopped the dominoes that Stalin had designed for the rest of Europe. There is complacency and a lack of political will across the European continent that could be very expensive in later days as well.

The report highlights the capability gap between Europe and the United States. The chairman made the point that they are 1.5 million troops in the NATO European countries but only 2% of them are deployable outside national boundaries. The point that has been made effectively in this report and with which he just concluded his peroration, is that we spend a huge amount of money on defence and waste most of it. If that amount of money was spent effectively, Europe would be a superpower in the world. As it is, it is an economic giant but a military pygmy and taxpayers are being short-changed as well.

Of course it has to be said that Libya was a success. Winning is everything. Winning ugly is still winning and we won that one but, boy, did it not illustrate our capability gaps? If it took so much effort and with so many difficulties to overcome the like of Colonel Gaddafi, what if we are up against a bigger adversary in the future? It beggars description.

The report says that what is good for the EU is good for NATO and I am glad that the government response endorses that point. Did I not have to make that point over and over again to people in this country as well as in the United States of America? It is right. If the capabilities are increased, they are available for national purposes, European purposes and for NATO as well.

The report goes into pooling and sharing and the need for more co-ordination in Europe, and that is critically essential. Some 30 years ago, the NATO AWACS fleet was created because countries except for America, Britain and France could not afford the cost of the AWACS. An AWACS fleet commonly owned, commonly operated and successfully operated was created as well. Since then, the only real pooling arrangement has been the C17s and the SALIS formation. That was a hard-won achievement as well.

The report points to the frustration of practically all Europe's ambitions by the conflict between Turkey and Cyprus. One can only hope—and there are greater experts than me around here—that we might see a way through that. But again, it is Europe acting against its own best interests. It was an aggravation to me when I was in NATO and it continues to be an aggravation to my successors.

In the headquarters in Brussels, I had on my desk a variety of encrypted phones and one of them was specifically dedicated. There was a button you pressed for the Turkish Ministry of Foreign Affairs and another for the Greek Department of Foreign Affairs. I had occasionally to use that as well.

One of the great graphs in the report points out the amount of money that Greece, already almost bankrupt, is spending on defence, with the vast bulk of it dedicated to defending itself against a NATO ally on its boundary. That is a scandal. One of our great misconceptions is that all we need to do is mobilise the United States to persuade Turkey to stop being obstructive in this. As Xenia Dormandy of Chatham House said to the committee, we have to forget the illusion that the Americans have muscle over Turkey. We all have an obligation in that situation.

I am glad that the report talks about the Berlin Plus arrangements. I thought that the noble Lord, Lord Roper, and I were the only ones who ever knew what those arrangements were. Getting them took up a vast amount of my time at NATO, and they were a huge bargain for the Europeans by basically allowing American assets to be available to the European Union. The documents that led us to arrive at those arrangements take up almost a whole shelf in my office, but the basic principle is simple and they need to be used.

The final thing that the report highlights, if it needed highlighting, is the role of the French. France coming back into the integrated military command from which it had excluded itself for so long was a major and significant step forward for NATO. It stopped a lot of the internal aggravation that was created during my time in office there. However, I always had to explain, especially in America, that despite France's rather peculiar and very French approach to NATO in the military context, France was there in every conflict. Every time that a military presence was required, France was there. In every decision that was taken, especially after 1996, France was deeply involved. There was the fiction that France was a country member of NATO, and now that that is resolved we have taken a major step forward.

I want finally to concentrate on a couple of areas—Afghanistan and NATO itself. As regards Afghanistan, I genuinely fear—and I say this with some passion—that we have lost the will to win. We have 9,000 troops in Afghanistan today, every day risking their lives. Some 400 UK troops and 2,000 American troops have died and countless thousands of the British, the Americans and the other NATO allies have been crippled and maimed for life. In a few weeks' time at the remembrance parades, we will remember them. A great deal of affection will come out and a great deal of sentiment will be aroused for those individuals. Yet we are paying little or no attention to the mission that they are on. What comfort can it be to the bereaved families to know that we care so little about the mission that the troops are involved in.

Here is one statistic that I use regularly and which shocks the people I tell, and should shock everyone in the country. The last speech made by the Prime Minister of the United Kingdom on the subject of Afghanistan in the House of Commons was delivered on 4 July last year. That was the last occasion when a speech was made on that subject by our Prime Minister in the Parliament of the United Kingdom. What does that tell the people who have been bereaved, the soldiers who have come back and those from the forces who have been maimed for life about the commitment of the British Parliament and the British Government to what is going on. Actually, the previous Administration was not much better in many ways in terms of that. We do not win wars by military means alone. We do it if the enemy believes it can and must be defeated. Psychology is as important as military tools. We found that out in the Second World War, in the Cold War and in Bosnia and Kosovo—and we do not seem to have learnt the lesson in Afghanistan.

Leon Trotsky once said something very wise. I do not often quote him, but he said of another war at a different time, "You may not be interested in this war, but this war is interested in you". That says it all about Afghanistan. As an American general recently said to me, "The closer you get to Afghanistan, the more you realise that we are winning". Some 80% of the violence in Afghanistan is taking place in territory where only 20% of the population lives. The violence in Kabul has reduced by 20% from last year alone. The general added, "The closer you get to Brussels, Washington and London, the more you realise that we are not succeeding". We should bear that in mind. We need to tell the enemy that we are not going to be defeated, that NATO does not do defeat; and we need to tell the people in this country that it is in their interests that troops are risking their lives and dying, because it matters to them as well.

My final point is about NATO itself. In the past couple of weeks I have been engaged in a debate in Scotland about NATO membership. It has engulfed the Scottish National Party in the debate about separation at the present moment, and I—sad person that I am—watched the whole of the SNP's debate on NATO last Friday. I did so because I care about the subject, I care about my country and I care about what people think. It was a passionate debate that divided the SNP. It lost two members of the Scottish Parliament from its ranks yesterday as a consequence of what was ultimately a totally dishonest decision. It simply said that it would join NATO, but on its terms—terms that would be unacceptable to the alliance.

What was amazing about that debate and the wider debate around it was people's colossal ignorance about what NATO does and its importance. If it had not been for NATO, we could not have won the Cold War. If it had not been for NATO, the transition of the Warsaw Pact countries towards civilian control of the military and to normality simply would not have happened. If it had not been for NATO, Milosevic would have won the civil war in Bosnia and would have exterminated all of the Kosovar Albanians from Kosovo. If it had not been for NATO, we would have had another civil war in Macedonia. If it had not been for NATO, the mission in Afghanistan would have collapsed immediately after the coalitions of the willing had run out of steam. Yet people do not seem to

[LORD ROBERTSON OF PORT ELLEN]
realise the unique nature, as the noble Lord said, of an organisation that brings the Americans around the table every single week of the year to discuss security issues with European allies. The Government recognise that and state in their reply to the report:

"NATO remains the cornerstone of European security and thus the principal vehicle for collective defence, although the EU and UN can play a role to compliment NATO".

So I ask the Minister, and the country in general, why do we spend no money at all on educating the public about NATO? Why is there no information campaign to tell the country how important, how valuable and how necessary NATO is? I asked some Parliamentary Questions before the summer. Nothing is being spent. If you search the website of the Foreign Office or the Ministry of Defence for any real information about NATO it is hardly there at all. It is the cornerstone of our defence and we all agree that, but we do not bother to tell anything about that. That is, I think, a recipe for disaster. It is also a recipe for enfeebling the organisation that is so important to all of us.

This is a wise, masterful and educational report of some importance and significance. I believe that it requires further dissemination and discussion, and I hope that this is not going to be the only debate about what this report says. It goes to the very heart of this nation's and Europe's safety and security. Much of what it says needs to be said but, much more importantly, it needs to be heard as well.

4.58 pm

Lord Palmer of Childs Hill: My Lords, I welcome this debate and congratulate my noble friend on bringing it here. I also feel rather small because many members of the EU Committee and sub-committee are here—some are down to speak and some are not—who have spent a lot of time preparing what is a very worthy document, as the noble Lord, Lord Robertson, said, and I am not anywhere near being an architect of the St Malo agreement.

The thing that worried me yesterday was a Question in the Chamber on the European Defence Agency in which I asked a supplementary question. Noble Lords know that at Question Time one looks around to see who you should give way to. One of the people I looked to give way to was a noble and gallant Peer. No noble and gallant Peer got up to speak. I said to one such person, who shall be nameless, that I was surprised that no noble and gallant Peer got up to speak because I was ready to give way. He did not see the purpose of European defence. It was not his priority. I can only say what I was told. No noble and gallant Peer got up to speak on the European Defence Agency. That is very worrying.

How effective is European defence capability? Two earlier speakers have dealt with this in great detail. The other main question is how many service personnel in uniform in Europe can be deployed? The largest concentration of service people in uniform that citizens of the UK have seen was probably at the Olympic Games because very often service personnel are in Germany or in Afghanistan. How many of them are there and how many can be deployed?

How to build on the UK/French defence treaties has been mentioned. They show how sovereignty can be managed, which is a point made in this report. When I read that, I thought of the "Yes Minister" series, which was always frighteningly correct. You can always imagine that it happened at one stage or another. One thing has changed for the better. When Jim Hacker was asked who was the enemy, he replied "Germany" and Sir Humphrey said, "No, it is the French". As the noble Lord, Lord Robertson, said, things have changed to a degree and our main partner is the French.

The task for other EU or NATO states is to contribute to European defence. The cost of the work to maintain and enhance the range of capability needs to be shared. How far can it go and how far should it go? What would the budget of this European capability be, what equipment should it use, where should that be manufactured and what holistic approach can we have to equipment in use by European forces? The noble Lord, Lord Robertson, mentioned Afghanistan. One of the problems of equipment in Afghanistan is: how do you get it back? In fact, much of it will be destroyed. The cost of getting it back from Afghanistan is more than the cost of the equipment.

The report talks about the scale of the European defence capability. It quite rightly calls for Germany, with all its power and ability, to become a more active participant. My noble friend Lord Teverson referred to this. The report also raises the thorny issue of adequately resourcing military missions. This policy must be able to deliver when it is needed on an appropriate scale. Is this feasible or is it just an aspiration? This report raises a lot of unknowns about whether it is adequate, has the ability to do what it is asked to do and whether the countries of Europe want to do it. The report refers to battle groups, and in this context we need to look at and assess some of the initiatives of the European Defence Agency. Helicopters were deployed, and it took three weeks, 49 missions and 487 flying hours with 550 participants from four countries. When one goes forward, I wonder how one can replicate this excellent example of working and training together.

Is there doubt that Europe needs to get its act together on defence, as the USA is demanding, and as mentioned in this report? The EU must be the configuration of choice for this, and the challenge is for European forces to be capable of deployment and to close capability gaps, as was shown in the Libyan operation.

The report quite rightly asks whether some of Europe's security issues should be handled operationally by the EU rather than NATO. It is a question that has been asked for a variety of reasons. For example, should the following be handled not by NATO but the EU; humanitarian missions, mixed civilian and military operations, operations where the geographical area is not appropriate to the USA or NATO and peacekeeping forces?

The noble Lord, Lord Robertson, mentioned Afghanistan and the fact that it has fade into the background in terms of debate. There is a big argument as to whether we should ever have gone there. A lot of efforts have been made. Afghanistan swallowed up the

Russian forces when they were there. We will come out of Afghanistan and will wonder a year or so after leaving what we have achieved. We have deployed a lot of our service personnel in that area.

I mention Libya again because the operation in Libya showed deficiencies in joint operation, and in some ways a lack of a holistic approach that needs to be a priority.

There is a Question on the Order Paper for next week about the use of civilian contractors—Brits abroad who are contractors. It is an important issue. These people are seen as being UK operatives but are not actually part of our Armed Forces. I will be interested to see the questions that will be raised and the Minister's reply to those questions next week.

I want to say a few words about cybersecurity because that has not yet been mentioned. It can clearly be broken into two parts. I went to a meeting with a contractor dealing with these matters. Contractors are always talking about how they have defence against cyberattacks, but I am sure pretty sure that the same companies are also dealing with cyberattacks themselves, and that is a matter for the EU.

I believe that the European Defence Agency is one of the vehicles that should be emphasised, not put aside and regarded as not important. The air-to-air refuelling, which was also done under the EDA is another excellent example. One of the ways of getting a holistic and collaborative approach is by enhancing the European Defence Agency, which was mentioned yesterday in the House.

5.07 pm

Lord Hannay of Chiswick: My Lords, I begin by congratulating the noble Lord, Lord Teverson, and his sub-committee on this excellent and extraordinarily timely report. Let us face it: as others have said before me, the report paints a pretty gloomy picture. The financial crisis that we have been living through since 2008 and which has, alas, a long way to run, is wreaking havoc with the defence budgets of all our member states. Many of the early hopes of European defence co-operation have tended to wither on the vine.

The divisions over Libya are fresh in the mind, although I tend to feel that they are exaggerated. The German vote in the Security Council was a gross error: that is clear. Had the Germans merely voted with those authorising the operation but made it clear that they would not participate themselves, we would now be talking about a great European success in Libya. Perhaps we should not dwell on that too much.

You can add to that rather gloomy picture the point that the noble Lord, Lord Teverson, made—and I entirely agree with him—that whoever wins the American election, the Americans will not be back in Europe in force in the way that they were. The pivot towards Asia is there to stay. Romney or Obama will expect the Europeans to do more for themselves in their immediate region. We will see the Americans involved heavily in Asia and in the Middle East, although probably against their will, and involved heavily in the area around Pakistan. However, we will not see them coming and picking up the chestnuts for us in Europe if something goes wrong in our periphery.

Is Europe facing fewer security challenges? I do not really think so. If anything, there are a few more. It is always a bit difficult to read the mind of whoever is in the Kremlin—whether before the end of the Cold War or after it—but I do not believe that President Putin wishes us very well. I am quite sure that he will continue to probe the Europeans for weakness; that he will divide and rule between the Europeans if he can.

We know that the Middle East is going to present us with some pretty horrendous challenges. Syria is in a terrible mess and our performance is not brilliant, frankly—although I am not a supporter of military intervention there—and it is going to carry on giving a lot of problems, but other countries in the Middle East may well join it. We cannot be sure. We are probably living through a period of 20 years at least of great instability in the Middle East. In Mali, we are already seeing a kind of spillover from the totally desirable overthrow of Colonel Gaddafi, which led to a lot of weapons getting out into the Sahara area and a lot of bad things happening there now.

Of course, the Balkans are still not absolutely stabilised. A lot will depend on the way the European Union handles the requests for accession of all the Balkan countries and its own role in stabilising that area.

Confronted with this rather gloomy picture, there are two broad alternative policies. One is to turn in on ourselves—to accept, in a plaintive way, that the budget cuts are there, they are irreversible and we just have to do less. If we do that, and if other Europeans do that, we will become increasingly marginalised and discounted when the major security challenges are thrown up around the world; that will be to our detriment and Britain and other countries in Europe will be the losers.

The alternative is to draw some really quite difficult conclusions, one of which is that increased co-operation between the Europeans—and I do not want to get into the EU versus NATO versus whoever it may be—is no longer, in present and probable circumstances, a luxury; it is a necessity. I agree with the previous speaker that we ought to breathe life again into the European Defence Agency. We should be thinking about how we can broaden our co-operation with the French and perhaps see it as a way of including other European countries. That, undoubtedly, would be very welcome to the present French Government, who want to give a wider European cover to the whole thing, but I fear we will be held back by some kibitzing by people at the other end of the Corridor who probably do not know much of what they are talking about.

It is all the more important that we should take this second option—the constructive, positive option—because, I am afraid to say, our position in Europe is slipping, much though the Government deny this. The whole series of events surrounding the fiscal and banking union make this inevitable. It is going to be a hard struggle to achieve the safeguards we need for the single market. I am not suggesting that we should become a party to all these arrangements, but if we are to avoid the worst of all outcomes—which in my view would be the fossilisation of a two-tier Europe, with us on the lower tier, and not having much say in the

[LORD HANNAY OF CHISWICK]
shaping of policies—we must pursue the alternative, which is how to update and make more effective a variable-speed, variable-geometry Europe.

However, we cannot always be on the outside of every inner circle. That is where defence comes in as more European defence co-operation can be achieved only with this country being part of it; otherwise, it has no credibility whatever. Would it be good news for us if we were part of that? I believe it would be very good news because it would show that we were not permanently in a second tier and that there were some things such as defence and foreign policy where we were very much in the first tier. There are other things where we are in a second tier. That is inevitable and cannot be helped. I may bewail it but it cannot be helped. However, if we do not do this and we are always in the second tier, it will not be good. If we are always just reacting defensively, that will not be good either.

Therefore, I suggest that for defence policy and procurement considerations and for wider European considerations, we should have a more proactive, positive policy. However, following the exchange in the House yesterday, if we withdraw from the European Defence Agency, we can forget about that.

5.15 pm

Lord Liddle: My Lords, this is an excellent report, and it was well introduced by the noble Lord, Lord Teverson. I do not think that I will speak for long because the noble Lord, Lord Hannay, has said what I intended to say.

I believe that, in terms of the general context of our deteriorating relationship with the European Union, we should seize with both hands the opportunity to lead in Europe on questions of European defence capabilities. The Foreign Secretary made his first speech about Britain and Europe yesterday. I think it is the first major speech he has made on the subject since he became Foreign Secretary. From my perspective as a committed pro-European, it was not as bad as I might have feared. He is right, of course, that we are moving to a variable geometry Europe. There is no prospect in the near future of Britain becoming part of the euro inner core, but there is a real opportunity here for Britain, and it is disappointing that the Foreign Secretary did not take it and emphasise it. There is a real opportunity for Britain to take a much stronger lead on European defence. I would like to hear from the Minister how he sees this key strategic question for Britain.

One of the key points that the report emphasises, which I think a lot of people in the Conservative Party get rather mixed up, is that NATO and the EU are not a choice. Seeing NATO and the EU as some kind of choice is the problem as regards a lot of people who are reluctant to go down the EU defence road. I just do not see that. What I see as a problem is that we are no longer engaged in an existential fight for freedom as we were for much of the post-war era and America's priorities are changing. We see a shift from its willingness ultimately to rescue us in the former Yugoslavia, in both Bosnia and Kosovo, to the attitude it took towards Libya and now Syria. There is a shift in the US outlook, and Europe simply has to get its act together if it wants to be in a position to defend its values and interests. We, more than the United States, are on the front line of terrorism in Europe, and we face a more immediate threat from failing states in Africa. We stand to lose more from the Middle East conflict. Our neighbourhood is a very unstable place. We have to find a way of seizing the opportunities of the Arab spring. Europe has to get its act together. One of the strengths of the European Union is that it has potentially a lot of soft power; for example, in its trade relations, in the aid that it can give and in the cultural and diplomatic relations that it can offer. Nevertheless, it also needs that hard, military capability to intervene if necessary, which is so badly lacking, as was shown in the recent Libya campaign.

I do not think that the challenges of austerity for defence budgets are going to go away in the present decade. We have to face the fact that the pressure on defence budgets is going to get worse. I do not think that we have seen the worst of what is likely to happen to the UK defence budget. I would not say that we have reached, as it were, the bottom baseline. For Britain, it poses some very big choices. We have already, without actually saying so, abandoned the idea that we have the full range of capabilities that the US has, except on the smallest scale. Nevertheless, we face the challenge of making procurement cheaper, and common procurement through the European Union is one of the ways of doing that. In addition, we have to think about how we share roles and how we specialise in roles with our European partners. This is a very touchy subject because it goes to the heart of national sovereignty, but we have to face up to it if we are going to be honest about what we are going to be able to do efficiently within our limited budgets.

I am not saying that we have to go for the full community method on defence procurement or anything like that. I think that we need more practical co-ordination, but we should not be ruling out using EU methods where they might work and where they might lead to better value for money and enable the defence budget to be more effective. There is a real challenge for us because of the budgetary position, but also a real opportunity to lead in Europe, and I hope that the Government will take it.

5.22 pm

Baroness Miller of Chilthorne Domer: My Lords, I found this report extremely interesting, and I congratulate my noble friend and his committee on it. Given that defence expenditure in the UK, as the report graphically shows, is 2.56% of GDP, this report should concern us all as parliamentarians. The fact that that percentage actually grew between 2010 and 2011, when expenditure on pretty much everything else went down due to the austerity Budget, is an enormous incentive for us to look to our friends and neighbours for areas where we can share capabilities and save an awful lot of money.

However, I was surprised to find almost no mention of the nuclear capability and no discussion of it. There are some tangential references at the beginning explaining how threats have changed from the old Cold War

scenario to threats involving food security, water issues and terrorism. Noble Lords have spoken of a two-tier Europe, and almost nothing is more two-tier than the two countries that belong to the P5—the UK and France—and the rest. So I do not think that it is just about the money, although phasing out the Trident system would save something like £83 billion, according to the Trident Commission which is co-chaired by Sir Malcolm Rifkind, the noble Lord, Lord Browne, and Sir Menzies Campbell; and the French would surely make similar savings. So that is economically interesting. However, I am puzzled as to why the report does not discuss whether two of the biggest European spenders on nuclear issues—France and the UK—would have a very different commitment to the EDA if, for example, they did not have that level of spend on things nuclear. It is the psychology of having two nuclear states and then the rest.

I accept that a lot of expertise is gathered around the table and that noble Lords may well put me right on this issue and say that it is not a question. However, I believe the public will continue to question it and the debate about whether we should continue with our so-called independent nuclear deterrent is already alive here politically.

In France, the force de frappe is perhaps less discussed at the moment, although Michel Rocard, the former Prime Minister, suggested that France should abandon its independent deterrent, saying that the money spent on maintaining it serves absolutely no purpose. The traditional French view was probably more fairly put recently by Josselin de Rohan, chair of the Senate foreign affairs, defence and armed forces committee, when he laid out all the reasons why France would continue to maintain a nuclear capability: essentially the nuclearisation of the Middle East and the nuclear capability in Pakistan, India and China, so I accept that scrapping the French force de frappe is not an immediate prospect. However, we need to consider where this fits in to a commitment to a different sort of European defence force. While we are thinking about things nuclear, there is the question of whether an independent deterrent can be independent when it depends not on the European Galileo system but on the American satellite system.

Finally, there is another gap in this otherwise constructive and useful report. It is European deployment of tactical nuclear weapons. In several European countries, this deployment is seen as very undesirable. As long ago as 2004, the Science and Technology Commission of the NATO Parliamentary Assembly advised NATO to come up,

"with a proposal on a phased and verifiable withdrawal of tactical nuclear weapons from Europe",

as they,

"do not substantially add to the security of Europe".

States hosting such weapons need to keep their fleets of fighter bombers up to date, which is another cost that is unlikely to be borne in the present times of austerity and which the public may not see as justifiable. Indeed in a Dutch March 2011 survey, 14 NATO states supported the withdrawal of tactical nuclear weapons, 10 would accept withdrawal and only three opposed it. These issues about the future of the nuclear weapons in Europe are perhaps ones that the EU committee intends to address in a separate paper, complementary to this one. I certainly hope so.

5.27 pm

Lord Jay of Ewelme: My Lords, I, too, welcome this debate for a number of reasons, not least for the chance it has given us to listen to the excellent speech by the noble Lord, Lord Robertson. It is not all that long ago that it used to be argued that to develop European defence was dangerous because it would duplicate NATO and cause the Americans to weaken their commitment to Europe. That is very clearly yesterday's argument. NATO has changed greatly and so has America's perception of its self-interest, which is focusing increasingly on the Asia-Pacific region and, as the noble Lord, Lord Teverson, said, it sometimes prefers to follow not lead where its own interests are not perceived to be directly engaged, as we saw in Libya.

The EU has changed too. It is larger, more diverse and more variegated, due in good part to the policies of successive British Governments over the past 20 years or so. There is now an acceptance that inner groups sometimes need to act together, even if not all the others join in. We see that in the common foreign and security policy and most notably in Iran where Britain, France, Germany and the EU High Representative in effect represent the EU in the negotiations. We saw it in Libya, where the UK, France, Italy and, importantly, some smaller EU states, although not Germany, worked with the US and under a UN Security Council resolution to prevent a pretty devastating civil war.

So the question is not whether there should be more effective European defence arrangements but how they should best be organised. Importantly, they must be consistent with NATO but recognise that there are tensions and conflicts in the world that will not attract US or NATO intervention. As the noble Lord, Lord Liddle, said, they must also recognise that the EU's ability to combine diplomacy, economic aid and different degrees of military involvement—from training, as in Somalia; to intervention, as in Libya; or in combating piracy, as in the Indian Ocean—gives the EU a role distinct from that of NATO. There is no question of the one diminishing or replacing the other. The question is how they can reinforce each other to the advantage of both, and very much to the advantage of Britain's interest.

I do not want to cover all the ground in the report this afternoon. I support the concept of pooling and sharing. I hope that we do not let the issue of an operational headquarters distract us from the real need for effective defence co-operation. The arrangements to support the Atalanta operation in Somalia are a good model that could be built on.

However, I want to mention two issues. The first, which some others have mentioned already, is Franco-British co-operation, which must be at the heart of any effective European defence co-operation. France and Britain share a tradition of global reach. We are both permanent members of the UN Security Council. We both face acute budgetary pressures, and France is

[Lord Jay of Ewelme]
of course back in the integrated military structure. So the logic of working more closely together seems to be unanswerable, with the aim, as the report says, of improving interoperability between Europe's two most capable military nations.

I hope that the noble Baroness, Lady Miller, will forgive me if I do not follow her down the nuclear road, except to agree entirely with her that the chances of France giving up its nuclear deterrent are zero at best. None the less, there will be a French tendency to work more closely with Germany. If one effect of that is to prevent another division, as there was over Libya, so much the better. However, I do not see that closer Franco-German defence co-operation should in any way affect the case for strong, continuing and developing Franco-British co-operation.

At the risk of repeating what I have said in other debates in your Lordships' House, one of the clearest examples of the need for strong Franco-British co-operation is over Mali. There may be a tendency—I have heard it said from time to time—to ask what our interest is in a part of Africa which the French know a great deal better than we do. However, the establishment in northern Mali of an al-Qaeda/Boko Haram/radical Tuareg state can have or will have a direct and destabilising effect on our interests in the region, in north Africa and, through support for terrorism, much closer to home. Perhaps the Minister can assure us that we indeed see this as a potential threat to our interests and will work with the French to try to resolve it and participate actively in an EU mission, if there is to be one.

I should say a word about defence procurement and industrial collaboration. I have to say that I regret the breakdown of negotiations between EADS and BAE Systems on a merger. This seems to be a case where the commercial logic for a merger was compelling, but the political difficulty is great and the issue, I fear, became public—for whatever reason—before the political issues had been sorted out. I do not at present clearly see BAE's alternative strategy. I hope that the Minister was right in saying yesterday that it would continue to thrive on its own. Does he think that that is really the only option now before British Aerospace?

Finally, on defence procurement, I believe, as others have said, that the European Defence Agency has a role to play, as the report argues, in greater co-ordination and the development of capability, particularly at a time of budgetary constraint. I know that the Government are considering their position in the EDA, and I noted carefully what the Minister said yesterday. Still, towards the end of a—how shall I put it?—characteristically thoughtful speech on the European Union yesterday, the Foreign Secretary said that the British felt that,

"in too many ways the EU is something that is done to them, not something over which they have a say".

However, it is very difficult to have a say and to make your voice heard if you are not in the room. That is an important point to bear in mind when reflecting on our role in the EDA and indeed on broader European Union issues.

5.36 pm

Lord Gilbert: My Lords, I am afraid that I am going to be in a very small minority today, probably not for the first time, which gives me no tremors whatever, as I am unable to add to the fulsome welcome that this report has received.

Before I turn to the substance of the report, I wish to draw the Committee's attention to some of the stylistic matters that caught my eye. I do not normally care to read reports, but I intended to read this one from cover to cover. However, I gave up on page 10, actually only the fifth printed page of the report, where there is a misplaced apostrophe. Noble Lords will ask, "Why am I wasting the Committee's time on a misplaced apostrophe?". On the previous page, page 9, there is one of many subordinate clauses without any commas at either end, so you have to read the sentence over and over again to find out what it actually means. On page 8, going backwards, there is an egregious spelling mistake that any child of 15 would be punished for making. On page 7 we have a sentence starting with a conjunction.

The real blow, though, comes on the very first page. I am now going to read out to the Committee a direct quote from the middle paragraph of the summary:

"By better coordination of forces and most of all by ensuring that forces are capable of, and willing to, deploy Europe can achieve this now".

I will happily buy lunch for any member of this Committee if he can show me how to parse that into an English sentence; it is not capable of being made into a sentence. It really is disgraceful.

This accumulation of grammatical solecisms, misspellings and punctuation errors says to me one of three things: that the members of the committee read the report and did not notice these things, which I find unbelievable, seeing how talented they are; that they read the report and did not give a damn about them, which I do not think would be the case; or, much more likely, they never read the report. That is the most charitable explanation. The noble Lord, Lord Roper, may frown, but his name is on this report. He is chairman of the committee and is responsible for putting the report in front of us with the House of Lords imprimatur on it.

Lord Radice: I am loath to intervene on my noble friend's speech because I am sure that it is going to be extremely good, but I suggest that the noble Lord reads the sentence before the one that he has criticised. He might then find that it was more intelligible. It is a good thing to read a couple of sentences rather than just taking one on its own.

Lord Gilbert: Of course, I read the whole page. The noble Lord is right, but that sentence is rubbish. It is not even a sentence and it should not be in a House of Lords report. I ask the noble Lord, Lord Roper, to ensure that in future any reports from any sub-committee of his committee are written in decent English. I have got that off my chest, but I stand by what I said. It seems to be perfect evidence that the people who wrote the report did not read it before it was printed.

Now we come to the substance of the report. Of course, the noble Lord, Lord Teverson, has been overwhelmed with congratulations at how wise and timely it is, but I am afraid that I am rather bored with this report. Why am I bored with it? Because it does not say anything new. Why does it not say anything new? Because I have heard the noble Lord, Lord Robertson, say it 16 times before. He told us himself that he had, over and over again. What is in this report? It is in the speeches of the noble Lord, Lord Robertson.

I hesitate to point this out to my noble friend, who was my boss at one time, but I think Albert Einstein pointed out that to say the same thing over and over again and expect a different result is a higher form of lunacy. Why has the noble Lord, Lord Robertson, had to make the same speech over and over again? For the very simple reason that everybody ignores him. They all say, "What a wonderful speech", but the continentals do not do anything and are never going to. That is the point. All the Eurofanatics sitting on this side of the Room are in denial. They think by saying that Europe has to do this or that, Europe might do it. However, Europe has never done it. It is not going to do it and has no interest in doing it—and we all know it.

It is high time that the House comes to recognise what I have said many times: this country's friends are not the other side of the North Sea or the English Channel but in the English-speaking world. We have talked about taking the lead in cyberdefence, but we are doing that with the Americans and the Australians. As you would expect, that is where our friends are—in the English-speaking world. I am afraid I have no great enthusiasm for this report.

Coming to a subject close to my heart, I draw your Lordships' attention to paragraph 93, on page 42—

Lord Radice: The noble Lord said he did not get beyond page 10.

Lord Gilbert: I dipped into it. Of course I did not read through it. The noble Lord, Lord Radice, is very active on this. I am very interested. They found some idiot called Pierre Vimont—what a lunatic. This is what he is summarised as saying:

"Despite the limited success of the A400M".

I would like to hear anybody else in your Lordships' committee talk to me about the "limited success" of the A400M—it is a disaster, but there is not a word in this report saying why it is a "limited success". The paragraph goes on:

"We also heard evidence that money could be saved by collaboration".

That is a deep insight. Before that, the report notes that Pierre Vimont also suggested that,

"it was important to continue with such projects"

as the A400M.

For the benefit of noble Lords who do not keep up to speed on logistic arrangements, the Americans have found the combination of the C130 and the C17 quite capable of satisfying all their airborne logistical requirements, as have the Canadians, the Australians and the Indians—and so, up to now, have we. When we finally procure this A400M, we will be abandoning the C130 and so will lose interoperability with the Indians, the Canadians, the Americans, the Australians and, by that time, quite a lot more people.

I have been told by a former Conservative Defence Secretary that the Americans were going to close down the C130 production line. That is rubbish, and simply not true. If you read the most recent edition of *Defense News*, you will see that they are going to go on with more and more sophisticated C130s. The C17 has also proved itself capable of undertaking tactical missions. The A440M is a complete, absolute wanking disaster, and we should be ashamed of ourselves. I have never seen such a waste of public funds in the defence field since I have been involved in it these past 40 years.

I am sure that the noble Lord, Lord Teverson, takes this all in the spirit in which it is offered. It is not a personal criticism of him, but this report is nothing new. My noble friend Lord Robertson has said this many times before, and nothing is going to happen from it.

5.44 pm

Lord Roper: My Lords, I find myself rather more in agreement with the majority of the members of the committee than I do with the noble Lord, Lord Gilbert. I congratulate my noble friend and his sub-committee on the report and on securing this debate. The noble Lord, Lord Gilbert, is of course right in one matter. Although the report is the result of the work of the sub-committee, it is the last report which, as chairman of the European Union Committee, I agreed before ceasing to be chairman of that committee, and therefore he quite rightly says that my name appears on it. I am sorry I missed the errors to which he has drawn attention. I read it at the time and I thought that it was a very good report.

Like many reports from the European Union Committee, this one will be extremely valuable for the wider discussion of ESDP issues not only in this House, but outside. Although, as the noble Lord, Lord Gilbert, has said, a number of things in it have been said before, they are put together in a context and with a relevance that, given the current situation, I believe to be particularly useful. Perhaps I may also say a word about the ministerial response from Sir Gerald Howarth as he now is, but who at the time was the Minister for International Security Strategy. It was a helpful and positive response, perhaps more positive than some would have expected him to make. But, again, it shows the value of the committee in holding the Government to account on areas of their activity. Given that ESDP and CFSP are intergovernmental matters, it is of particular importance that national Parliaments should be monitoring them and paying them proper attention. That is because these are not areas in which the European Parliament has co-decision, they are matters for which national Parliaments have primary responsibility in terms of watching the activities of their own national Governments.

Rather like the noble Lord, Lord Hannay, I have to say that the progress which has been made on defence has in many ways been disappointing. Progress since Lisbon is not as significant as one might have been

[Lord Roper]
expected, and the report sets out some of the reasons why that has been the case. One should perhaps look at those. It is clear that falling defence expenditure has made life more difficult. Also, as a number of noble Lords have said, there are difficulties in generating forces because of the vast numbers of non-deployable forces, and the fact that in our defence expenditure, we are not using the money. We are big spenders, but we are bad spenders, a point made particularly by the noble Lords, Lord Teverson and Lord Robertson of Port Ellen. Over the period there has been a certain UK reticence about European defence because of the historic misgivings that more European defence means in some way less NATO. That I believe has changed with the French return to the integrated military command of NATO and indeed has been reinforced in some ways by the UK/French treaties.

One of the other ways we have seen declining capabilities is that in spite of a good deal of discussion about pooling and sharing, and now in NATO of smart procurement, relatively little progress has been made. The noble Lord, Lord Robertson of Port Ellen, mentioned the AWACS and, since then, there has been the collective purchase of air transport aircraft by a number of countries. We talk about duplication, and one of the areas in which there is great duplication is in the 27 ministries of defence and structures of Armed Forces that do the same thing in many different places. We cannot get rid of them quickly, but there ought to be economies in co-ordination. However, any rationalisation of this sort would mean a loss of jobs in some parts of those ministries of defence and, indeed in the command structures of the Armed Forces. This has certainly led to considerable institutional resistance to pooling and sharing. Over here as elsewhere, turkeys do not usually vote for an early Christmas. We have to see that as one of the resistances to change in a number of areas of co-operation.

The discussion that we had on the Floor of the House yesterday following the Question of the noble Lord, Lord Anderson, on the European Defence Agency showed the continuing value of the agency, and it is important that the sub-committee has also been examining that in recent months. But, again, one can regret, as is discussed in the report, that it has not fulfilled its potential; it should have been able to do more and one should not be too complacent about it. We await the imminent decision of the Government, which we now expect in the late autumn—I am not quite sure when the autumn gets to be late. The review of the European Defence Agency being carried out by the Government may explain the extraordinary omission of defence from the list of topics in the review of the balance of competences announced by my right honourable friend the Foreign Secretary yesterday. In the Written Statement in *Hansard,* there is a list of all the departments that are going to be considered in the balance of competences, but, for some reason, defence is omitted. Perhaps the Minister will be able to explain the omission in his reply.

Relations between NATO and the European Union are obviously of great importance and our noble friend the High Representative has followed the example of her predecessors. One can have good relations personally between the secretaries-general of the two institutions, but while we still have the problems of Cypriot attitudes within the European Union and of Turkish attitudes within NATO, the chances of our being able to use the facilities and the Berlin Plus machinery, apart from Althea, are held back. That is another barrier to effectiveness in co-operation and it has certainly handicapped our development.

There is one point to which consideration might be given again—again, it depends on what future role the British Government play in the European Defence Agency. The Turks had certain access to one of the predecessors of the European Defence Agency, of much smaller capacity, which existed under the WEU—as did the Norwegians, even though they were not members of each. The Norwegians have been allowed to have access to and membership of the European Defence Agency. That is the sort of thing that might—I repeat, might—help a little in facilitating relations with Turkey, if that issue could be re-examined. I do not know whether it is practical, but at least it might be of some advantage.

Having said that things have gone wrong, I very much agree with the noble Lord, Lord Jay, that, on the positive side, there have been successes. There have been missions, of which I shall give three examples, where the European capacity has provided added value, which is what we are looking for. The first of those was the deployment of EUFOR in Chad in 2008-09. It was certainly very helpful in preventing the difficult situation in Chad being affected by the disruption in Darfur. It would not have been something that NATO would have undertaken and is therefore a particularly good example—Mali may well be of a similar kind.

Similarly, although at first sight the fact that we have parallel anti-piracy operations of EU NAVFOR Atalanta and of NATO might seem a bad example of duplication, they have in fact provided extra flexibilities, with countries which might not wish to be associated with an operation which was exclusively NATO having been able to come in and involve themselves because of the European Union parallel activity. The existence of the EU NAVFOR operation has provided added value there.

Finally, after a period in which NATO ceased to have an active presence in Bosnia and Herzegovina, the European Union military and police missions in that very difficult part of the west Balkans have certainly played an important, indeed critical, role in assisting the maintenance of stability. The EU was able to bring a range of competences to play.

In conclusion, I once again congratulate my noble friend and the sub-committee on producing an extremely valuable and comprehensive report. I ask my noble friend the Minister to reassure us that the omission of defence from the review of European Union competences does not mean that the Government have taken the view that the European Union has no competence in this field.

5.55 pm

Lord Radice: I cannot claim to be a defence expert, but I am perhaps one of the few Members on my side of the House who was actually in the Armed Forces.

I was a national service subaltern in Her Majesty's Coldstream Guards, but I cannot be said to be an expert.

I just wanted make a couple of remarks. First, our report is useful not only for the conclusion that it reaches but for the information and the facts that it actually contains. It is well worth reading beyond page 10 rather carefully because it is a document that will be very useful to noble Lords.

I want to say a word or two about the NATO common security and defence policy split. NATO, to which 21 out of the 28 EU members belong, must come first. As all our witnesses made clear, it is the organisation of choice in large-scale military operations. Even if the US did not wish to lead or be involved and European nations took the lead, as happened over Libya, it would still be a NATO operation because it is large scale.

Where the common security and defence policy should come into play is for smaller complex interventions where there is a mix of political weight, economic know-how and development, and sometimes military capacity might be needed. That is where you need the CSDP. My belief is that the two organisations, in most cases fit very neatly together. There should not be an ideological argument—although there sometimes has been—about their respective roles. As our witnesses made absolutely clear, they are basically complementary. Those who have worried about this in the past should not have any worry at all.

To finish, as far as NATO is concerned, the two key issues here are first to ensure that the US continues to participate, despite its increasing focus on the Pacific. Of course what that means is, secondly, that Europe takes greater responsibility for its own security and defence, as we were told in the wake-up call from Secretary Robert Gates in his retirement speech—a very good speech it was too. That is clear for NATO.

As far as the CSDP is concerned, it must not just be a talking shop. It must be able to deliver. That means first that military missions should be properly financed. Secondly, battle groups must be able to be deployed and not just a fancy set of figures and drawings on a piece of paper. Thirdly, operations must be planned efficiently and pragmatically using both national and EU resources.

We should move beyond the rather sterile argument that we have had about what kind of operational headquarters one ought to have. We can arrive at a perfectly sensible arrangement to ensure that some of these really rather effective operations are properly planned and properly deployed. That is all I have to say in the rather short time that I had to make a speech.

6 pm

Lord Rosser: My Lords, I listened to my noble friend Lord Gilbert with interest since his contributions are always enjoyable. I have been called a fanatic before, but not, I think, a Eurofanatic. That is the first time.

Lord Gilbert: I assure my noble friend that I was not referring to him.

Lord Rosser: I think the noble Lord's reference was to the Eurofanatics on this side, so I took it as including me. At the risk of reinforcing my noble friend in his view, I would like to express appreciation to the noble Lord, Lord Teverson, and the European Union Committee for this comprehensive and measured report. As the summary states, the shift in the economic and political balance away from the United States and western Europe towards Asia, the revision in US defence thinking and the economic crisis have created a new situation to which the European Union and its member states need to respond.

It is through our global alliances that we can remain a powerful and significant force in the world. We have a unique diplomatic reach through our membership of the European Union, the North Atlantic Treaty Organisation, the United Nations and, indeed, the Commonwealth. Maximising our role within these institutions through greater co-operation and collaboration will surely be the principal means by which we can remain a lead influence on international trends and world events. Our international partnerships are the principal source of strength in our defence posture.

The threats that we face today, from terrorism to climate change, nuclear proliferation to cyberattack, are shared, and shared operations to combat them are increasingly commonplace. European nations have worked together in the Balkans, Chad, Afghanistan and around the world in European Union, United Nations and NATO missions. We share objectives and standards, priorities and interests. We involve ourselves in joint missions and operations overseas based on mutual support and shared interests in order to protect each of our domestic borders. Our futures are linked, so the action we take to enhance and shape them should be collective.

To say that we need to deepen European defence co-operation is not a change in philosophy, but rather a logical step to ensure that European nations can each maintain a strong defence policy which allows intervention to protect and promote our interests and values. In the same way, during conflict, we must better co-operate in preparation for and prevention of such conflicts, based on a pragmatic approach which reflects the world we live in.

Greater European co-operation in defence procurement is crucial, enabling us to maximise our ability to project force and to do so cost-effectively, supporting both the front line and the bottom line. It is vital that a more efficient defence industry and better value defence products are promoted, distortions in the market are regulated out and defence companies and their supply chains are supported. That means limiting the fragmentation which arises from differing national procurement regulations, reducing the number of national equipment programmes and ironing out the delays which arise from individual export authorisations. There has been progress on this in recent years. The European Defence Agency code of conduct on procurement competition, the directive on defence procurement limiting individual export licences and the EDA's limits placed on offsets all work in favour of a strong European industrial base.

[LORD ROSSER]

The merger between BAE Systems and EADS has been prominent recently. We supported the proposal in principle, but we accept from a UK point of view why it could not go ahead,; however, BAE Systems needs to get into new and different markets as the UK and USA markets contract. It would be helpful if the Minister could say what the Government are doing to help BAE Systems retain a sustainable base in the UK in the light of recent developments. Yesterday, the Minister said that Ministers in the Ministry of Defence were doing their best to help BAE Systems sell its products. Is that some new initiative, or simply a continuation of what was happening prior to the possible merger between BAE Systems and EADS falling through?

Co-operation over procurement is the only way Europe can compete in a very expensive and technologically driven activity and it must learn to do this better together or have no other option than continually buy from the United States. We should look first at where we can co-operate further with those with whom we have existing successful partnerships, including, of course, France.

The economic crisis has ushered in competing sentiments. On the one hand, countries need to shrink budgets and are actively seeking savings, which can come from economies of scale but, on the other hand, their protective and protectionist instincts are stronger. We must surely fight the latter and address practices that hinder legitimate access to markets. We must protect national discretion, but strong national export markets will be bolstered, not limited, by European co-operation, and that is surely the shared challenge.

As well as co-operation on procurement, there is a need to better integrate force structures. This takes place but perhaps not to the extent that the real potential for front-line benefits is maximised. Arrangements to pool maintenance, training, education infrastructure and skills on a bilateral or multilateral basis should be explored. Research and development facilities and work streams could be pooled to develop specialisations together. The resultant economies of scale should be used to directly fund training and equipment programmes and to contribute to balancing domestic defence budgets.

The UK-France defence treaty is a very welcome development. It commits to limited interoperability, joint purchasing and sharing of expertise and facilities. It has the potential to build the trust essential for successful partnerships to work and lays the basis for further collaboration between ourselves and France in future. It is characterised by perhaps the most important trait: namely, seriousness of intent. This should not be an isolated achievement. I hope that similar agreements will emerge. Procurement, research and technology spending, maritime surveillance, energy security and combating piracy are all areas that should be looked at in this regard.

The UK-France treaty is surely a model that can lay the foundations for a landscape of European co-operation based on distinct, sometimes regional co-operations. Where countries can do so and where it is in their mutual interests, they should work together. That is certainly not about creating the basis for a "Euro army", but pursuing gains where they can be found on a case-by-case basis, and making the pursuit of those gains the rule rather than the exception. The steps taken by Nordic countries and the Czech Republic and Slovakia in this direction are to be welcomed. This approach must be balanced, however, with protecting national operational independence and the right for countries to retain the ability to defend themselves without NATO or the European Union.

The success of greater co-operation depends on Europe's ability and willingness to contribute to tackling international security threats. Europe must decide if it is serious. All European member-state Governments have to be open with each other and about their capacity within NATO. In aggregate, the EU member states, many of which are also members of NATO, have half a million more men and women in uniform than the Americans. However, as the noble Lord, Lord Teverson, said, they can deploy only a fraction of the capabilities of the United States. Among all the talk of coalitions of the willing, the act of creating a coalition of the capable may in the future be a bigger challenge. The present situation hardly appears to be sustainable if Europe wants to prevent the power shift eastwards, to which a number of your Lordships have already referred, from leaving it behind.

The former US Secretary for Defence, Robert Gates, was surely right when he said that Europe cannot rely on others to share the burden of our own security. We must reform or see our own influence wane. As and when the economic situation improves, other nations across Europe should at the very least meet their NATO requirements, which the majority fail to do.

The issue that is well covered in the EU Committee report is about attitude and collective resolve within Europe to retain influence. It is fine that the nations of NATO and the EU share values and goals, but to be truly meaningful, these need to be acted on when threatened. Although the benefits of our alliance are shared by all, too often the contribution to military operations when tested is, as we saw in Libya, unbalanced, as the report points out. In spending and resolve, there must be more equal contributions from within Europe. In Europe, our mutual dependence is a fact, but in too many cases, the embrace of it across Europe is yet to be. Strengthening mutual positions demands greater collaboration and co-operation financially, systematically in procurement, and militarily to boost combat capability. When Europe's values and interests face a serious test, European countries need to ensure that they can and do act collectively to the very best of their respective abilities. Frankly, one could not say that that is always the case at present.

6.10 pm

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): My Lords, I start by congratulating the noble Lord, Lord Teverson, on securing this debate to discuss the important topic of European defence capabilities. I would like to say how very pleased I am that the European Union Sub-Committee is taking such a close interest in defence capabilities. I very much welcome the analysis and recommendations provided in your report.

We have had a very well informed discussion, as one would expect from looking at the speakers' list. I will start by saying a few words about the Government's position on CSDP and defence capabilities before moving on to address some of the issues raised during the debate.

The need for European nations to work together to improve our defence capabilities has seldom been greater. If we are collectively to have the ability to shoulder our defence responsibilities, Europe must commit to developing, maintaining and making available those capabilities. That point has been well made by several speakers. The Government want to encourage European defence to make Europe a more effective provider of international security. The UK-France defence treaties are an instance of how we are doing our part. I am very glad that the committee approves of that, as my noble friend Lord Teverson points out. We hope that our example will encourage other partners to seek better value for money and improved capability through closer co-operation with each other. We must work together to enable Europeans to develop and maintain the range of capabilities that will allow sustained and successful operations overseas.

Let me be clear, NATO will continue to be the foundation of the UK's defence policy, as it is for many of our European partners. As a defensive alliance, it guarantees our safety. As a political alliance, it offers a unique forum to discuss security threats with north American and European allies. As a military alliance, it enables us to fuse our defence capabilities together quickly in a crisis, as demonstrated in Libya last year.

Although NATO remains our multilateral alliance of choice for the UK, the EU's common security and defence policy can play an important complementary role, focusing on preventing conflict, building stability and tackling crises. The EU is well placed to conduct this range of activity, through its assortment of capabilities. It has access to a wide range of tools: diplomatic, civilian, military and developmental. It can use its capabilities in places where NATO may not be able to act or chooses not to act. It can provide specialised intervention in complex environments where a more comprehensive civilian-military approach is required.

Although there are clearly improvements that can be made to CSDP effectiveness—I will touch on those in a moment—CSDP operations are delivering. For example, in the Balkans, the EU military operation in Bosnia and the civilian rule-of-law mission in Kosovo are supporting continued stability and, in so doing, ensuring that the significant progress made in recent years does not slip back to instability right on Europe's doorstep. In the Horn of Africa, the EU is leading the efforts to tackle international piracy and training Somali national security forces to counter the al-Shabaab terrorism threats.

The real value lies not just in the individual missions but in the collective expertise and focus that the EU can place in the regions, including its EU Special Representative and development programmes, among others—the comprehensive approach. However, for CSDP tools to be truly effective, they need to be supported by real military capability and greater political will. Europe as a whole is not currently meeting its obligations to ensure self-sufficient, deployable capability.

Improving European defence capability is not just about the amount that individual countries spend. Indeed, with across-the-board cuts to defence budgets throughout Europe, it no longer can be. Our key challenge is not to spend more but spend more intelligently. The UK-France defence treaties of 2010 are a prime example of effective co-operation and collaboration. These treaties are not about weakening one country's capability at the expense of another but about two of Europe's most capable military forces working together to improve interoperability, allowing them to deploy together more effectively and at a lower cost. There are other good examples too, such as Nordic defence co-operation. I was very happy to go to Norway a couple of weeks ago, where I saw examples of this. These should be used by other European nations as a clear examples of how nations can work together to improve capability that should and must be replicated by other member states in order to avoid overreliance on the United States.

Turning to other European nations, Germany in particular has the clear potential to be a major player in European defence. We have been working increasingly closely with it on bilateral defence issues. Our key message is that Germany must focus more on generating the political will and public support within to deploy military resources more widely. However, this need to become a more active participant in European defence is one that applies to much of Europe. There is plenty of scope for getting more with less; the combined defence budgets of EU nations total nearly €200 billion. We can look at building on the relationships formed during the Afghanistan campaign—for example working closely with countries such as Denmark and Estonia. We wish to co-operate more closely with Italy. It is only through teamwork that we can fill the European defence investment gap.

As a case study of a UK priority, I would like to return in more detail to battlegroups, which I know were a key part of the committee's report. The battlegroup concept was a UK-France-led concept intended to provide the hard edge of the EU's CSDP. Yet, despite a number of opportunities, such as in Chad and Haiti, they have never been deployed. Battle groups, as per the intention in the original concept, have the potential to be extremely useful in conjunction with other EU crisis-management tools, but this means member states need to be prepared to equip and deploy them. We are working closely with other nations to find ways to improve the utility, flexibility and cost-effectiveness of the EU battlegroup, including looking at potentially deploying its support capabilities in their own right, in support of other EU activity.

In the current financial crisis, we cannot simply spend more to improve European capability. We must spend better by finding improved ways of working together to get greater capacity from the resources that we have. Part of this means that member states should not unilaterally cut capability without considering the potential impact on European defence. Countries that spend less than 2% on defence need to review their levels of spending and work together more effectively and efficiently. Organisations such as the EDA may have a role to play in facilitating this, but the responsibility lies with individual nations.

[Lord Astor of Hever]

European defence does not exist in a vacuum. Indeed, 21 nations are members of both the EU and NATO; if those nations improve their military capability, both organisations will benefit. It is vital that efforts are co-ordinated, complementary and not duplicative. I believe that the NATO and EU initiatives, smart defence and pooling and sharing are the key to establishing capability shortfalls and identifying ways ahead. This requires a strong defence industry within both the UK and Europe to respond to shifting demands and requirements as threats continue to evolve.

Operation Unified Protector in Libya demonstrated that there are capabilities that NATO can provide only through the United States. Difficulties generated by the Turkey-Cyprus dispute for EU-NATO must be resolved as they not only make collaboration difficult but may cause operational difficulty. It is vital that European nations work together to fill these capability gaps and overcome obstacles that prevent further collaboration.

I will do my best to address the various issues and questions raised. If I do not cover them all, I undertake to write to noble Lords. My noble friend Lord Teverson pointed out the problem that the EU and NATO cannot always work together constructively. There are some well known institutional blockages between the two organisations, but that should not stop us from looking for practical workarounds while these persist. Co-operation must be driven from the top down and the noble Baroness, Lady Ashton, and Secretary General Rasmussen have both made good inroads to promote greater transparency and co-operation.

The noble Lord, Lord Robertson, pointed out the European capability gaps and the noble Lord, Lord Liddle, said that Europe needed to get its act together. The key reasons for the lack of deployability appear to be member states resources and a lack of political will to invest in making assets fit for deployment, a lack of investment in deployment capabilities such as strategic lift, a lack of responsiveness in keeping troops at too low a state of readiness, a lack of understanding of expeditionary military doctrine and concerns about putting troops in harms way, of which we are all aware. To resolve the problem, member states need to take more advantage of the opportunities and initiatives such as pooling and sharing can provide to better support more cost-effective force generation, which is a point that the review makes very well. They need to make use of initiatives such as the temporary arrangements of funding for strategic lift from common funding. We are expecting that as a result of the recent agreement on temporary expansion of strategic lift for battlegroups we can start to see more member states committing to the battle group roster.

Encouraging member states to use participation with other member states in the battle group roster is a way to share relevant knowledge and expertise. For example, as a result of Sweden's participation in EU battle groups, its armed forces are more interoperable and in a better configuration both militarily and politically to contribute to a coalition of the willing. Outside of battle groups, pooling and sharing more generally should be used as an opportunity to share knowledge through joint training.

The noble Lord, Lord Robertson, mentioned that the Prime Minister's last speech on Afghanistan was on 4 July last year. The Defence Secretary and the Foreign Secretary make quarterly Statements on Afghanistan in the other place, which are repeated in this House. I have repeated a number of those Statements. I was comforted to hear the noble Lord's comment that an American general had told him that the closer he gets to Afghanistan the more he feels that we are being successful. That was very comforting.

My noble friend Lord Palmer asked what we have achieved in Afghanistan. Although significant challenges remain, including making sure that the Afghan Government and the Afghan security forces can deliver what is required after we leave, progress continues to be made. NATO and Afghan forces continue to squeeze the remains of the insurgency, and the majority of the population lives in areas that are progressing well through the process of transition to full Afghan control. My noble friend Lord Wallace and I went to Afghanistan in February. It was the fourth time I have been to Afghanistan, and it was completely different and so much better than it was on previous occasions.

My noble friend also asked about cyber. My department is not the government lead for this topic, but we have a considerable stake in this arena. As well as working with our key partners, the US and Australia, the MoD is working increasingly closely with key NATO allies and EU partners to address cyberthreats. This has included a recent letter of intent signed between the UK and France. The United Kingdom is fully committed to cyberexercises that involve NATO and EU partners.

My noble friend and other noble Lords mentioned our membership of the EDA, an issue that came up yesterday when I did my best to point out some of the achievements of the EDA. The noble Lord, Lord Roper, pointed out that the EDA has not yet fulfilled its full potential. The future of the EDA is being considered by my department at the moment, and I am confident that we will come up with an answer very soon—yesterday I said in the late autumn—that noble Lords will be happy with. My noble friend Lady Garden and I will take back to the department the positive comments that were made today about the EDA, and I am sure it will have noted the conclusions that the committee has come to concerning the EDA.

The noble Lord, Lord Hannay, pointed out that whoever is elected in America will expect us to take on more responsibility in Europe. This point was also very well made by the noble Lord, Lord Radice. I listened very carefully to what the noble Lord, Lord Hannay, said about President Putin's ambitions, which are a matter of some concern.

The noble Lord, Lord Liddle, pointed out that we should be taking much more of a lead on European defence. While NATO remains a central pillar of our collective security, we welcome the clear value the EU brings through its wide range of tools. The UK plays a central role in ensuring that the CSDP delivers where it matters most in successful operations and missions and through setting an example on capability development. In CSDP operations, we are, for example, particularly

strong leaders in counterpiracy through our command of Operation Atalanta, and in the field of capability development, we are supportive of the EDA-facilitated air-to-air refuelling initiative.

My noble friend Lady Miller mentioned the Trident replacement. My right honourable friend Danny Alexander is chairing the review into alternative options.

The noble Lord, Lord Jay, as one would expect from a former distinguished ambassador to Paris, mentioned the British-French initiative. The UK and France must work together to lead on defence in Europe as we are the only two nations that have the willingness and capability to engage on the world stage. Others who wish to be involved in the bilateral engagement must add value and must not be allowed to reduce the speed and effectiveness of our engagement, but we would welcome their positive input.

The noble Lord also asked about Mali. The UK supports the proposals for EU engagement in Mali. A well designed CSDP mission could strengthen the democratic institutions and help rebuild the capacity of the Malian armed forces to restore security to their country. The UK is conscious that any plan to launch a separate mission in Mali should be properly co-ordinated with the EUCAP Niger mission to ensure that there is a coherent and complementary strategy for the Sahel. The UK has appointed a Sahel special representative who took up the post on 15 October.

The noble Lord asked about BAE Systems and I rather rashly answered the question. I got a bit of a googly yesterday about BAE Systems, which does not have an awful lot to do with the EDA. I hope that the failure of merger talks will not be viewed as a lost opportunity for the European defence and aerospace industry. Balancing national interest between the three nations and the commercial interests between the two companies was always going to be difficult. The French and UK positions converged during the talks, and the Secretary of State and his French equivalent certainly were in regular contact. The noble Lord, Lord Rosser, asked about ministerial support for BAE Systems. That is just continuing what I have always done. As Defence Ministers, we will do our very best to support the British defence industry, which employs tens of thousands of people. I am sure we are continuing what the noble Lord's Government did.

The noble Lord, Lord Gilbert, had reservations about the European appetite to get stuck in. While there are examples of this, we must give praise where praise is due and, among others, I draw attention to the incredible support that the Danes and the Estonians give our troops in Afghanistan. My noble friend saw a lot of examples of that. Our troops think the world of the Danes and the Estonians, and they have saved a lot of our lives.

I am conscious that I am running out of time but, finally, the noble Lord, Lord Roper, asked about the balance of competences review. Although the Ministry of Defence is not leading on any of the balance of competences reports, my officials are working closely with the Foreign and Commonwealth Office and other departments, such as the Cabinet Office, BIS and the Department of Health to ensure that defence interests are represented fully. We expect to feed heavily into the foreign policy report, especially with regard to the CSDP and the internal market report in the first semester.

Again, I thank the committee for the report and today's debate. We have seen areas where European defence has been successful, and areas where we still have progress to make. There is an increasing urgency for Europeans to step up and deliver defence capabilities. The UK-French model will, I hope, encourage this. No one expects all nation states to contribute equally, but they must contribute fairly. The burden of additional investment and capability can be shared effectively and easily. Just as Europe cannot afford a fiscal deficit, neither can it afford a security deficit.

6.33 pm

Lord Teverson: My Lords, first, I want to thank my noble friend for a positive and considered reply to this report, which I strongly welcome. I will be very brief. We have heard some excellent speeches and some memorable ones. It is the first time I have heard the "w" word used in a Lords debate but, as the report said, we live in changing times. So there we are.

I particularly thank the noble Lord, Lord Robertson, for participating in the debate because he provided an anchor of real experience in this whole area. I take the criticism from the noble Lord, Lord Gilbert, because some of it is correct. What we tried to achieve, and one of the things that came out in this report, was clarity. What it showed to us as a sub-committee was that where there was difficulty in understanding the whole picture, when you put all those pieces of the jigsaw together, it not only made a picture but made sense as well. Many of those arguments are repeated, but they are important. Many noble Lords mentioned the comment that taxpayers are being short-changed, and that was the strongest message that came out of today. That Britain should and can lead in this area in the European Union is for sure.

On the nuclear side, I apologise to my noble friend Lady Miller that we did not mention nuclear. Perhaps that should have been there. It is not, as such, an EU competence in terms of strike forces, but one of the UK-French defence treaties is specifically around the nuclear side, and we should deal with that.

The point on A400M was a quote from our evidence. I think everyone recognised the severe problems with A400M and all the lessons that needed to be learnt. The committee has responsibilities with the French Parliament in looking at the UK-French defence treaties. One of the core things that we are concerned about there, as the Minister said, is that we should not go from two, where we collaborate, to a point where that complexity becomes great again so that we cannot deliver programmes of the right sort on time and on budget.

Lastly, I say to the noble Lord, Lord Palmer, that he gave me great insight into Question Time in this House by saying that one should hang back to see who else speaks. Today I started to speak over my noble

[LORD TEVERSON]
friend Lady Trumpington, and that was one of the biggest mistakes that I have ever made in my career in this House. I withdrew very quickly.

I thank noble Lords very much indeed for an excellent debate. I thank the clerk, Kathryn Colvin, and her small team for all the work that they did in bringing this report together. I commend the report to the Grand Committee.

Motion agreed.

Committee adjourned at 6.36 pm.

Written Statements

Wednesday 24 October 2012

EU: Justice and Home Affairs Council

Statement

The Minister of State, Ministry of Justice (Lord McNally): The Justice and Home Affairs (JHA) Council is due to be held on 25 and 26 October in Luxembourg. My right honourable friend the Secretary of State for Justice (Chris Grayling) and my right honourable friend the Home Secretary (Theresa May) will attend on behalf of the United Kingdom. As the provisional agenda stands, the following items will be discussed.

The council will begin in mixed committee with Norway, Iceland, Liechtenstein and Switzerland (non-EU Schengen states) where there will be an update on the second generation Schengen Information System (SIS II). The UK will continue to reiterate its support for the continuation of the current SIS II project. The Commission has committed to deliver the central element of SIS II in early 2013.

Next the council will note a short update from the presidency on Bulgarian and Romanian accession to the Schengen acquis.

Greece, the Commission, Frontex and the European Asylum Support Office will provide an update on progress in implementing Greece's national action plan on asylum reform and migration management. The council will be asked to note that the action plan will be revised ahead of December's JHA Council and, following the recommendation of various member states including the UK, we anticipate it will incorporate benchmarks to enable sustainable progress towards Greece establishing a functional asylum and migration system. The UK welcomes this development and the recent momentum in tackling migratory pressures in Greece, but hopes that the operational expertise of member states will be fully utilised in the setting of benchmarks, and in implementing the revised action plan.

The Commission and Frontex will provide presentations on latest illegal immigration trends. This will provide an opportunity for member states to highlight current priorities on tackling illegal immigration as set out in the roadmap on EU action on migratory pressures. Like other member states, the UK considers it important that illegal immigration remains a council priority, and believes the roadmap must continue to be a tool that drives action rather than a bureaucratic process. The UK is one of the co-drivers of action on abuse of free movement by third country nationals, as set out in the roadmap, and we continue to work with other member states, the Commission and EU partners seeking further practical progress in this area.

There will be an exchange of views around the third report on the post-visa liberalisation monitoring for the western Balkan countries in accordance with the Commission statement of 8 November 2010. This concerns the decision to grant visa free travel to citizens of the western Balkan countries. The purpose of the third report is to present the actions undertaken under the post-visa liberalisation monitoring mechanism following the first and second Commission staff working papers in May and December 2011; to assess the progress made in the relevant western Balkan countries after the last assessment (December 2011); and to identify the next steps and the concrete actions to be taken. Although the UK will not implement any of the changes following visa liberalisation, we can support the Commission's approach in seeking to use visa liberalisation agreements as a way of encouraging the adoption of measures laid out in the visa dialogue roadmaps. The UK also supports the measures being introduced to combat abuse following the introduction of visa liberalisation agreements.

Over lunch there will be a discussion on intra-EU relocation of beneficiaries of international protection. The UK will emphasise the importance of practical co-operation as the expression of solidarity rather than relocation, and the need to ensure any proposal for action in this area does not go ahead until it can be demonstrated that the lessons of the previous project (in Malta) have been learnt.

The main council will start with a state of play discussion on the civil protection mechanism. The UK would want to restrict the role of the Commission and encourage a risk-based approach to disaster risk management while retaining primary responsibility with member states. The UK also supports the concept of a voluntary pool of assets whilst ensuring that any common funding is limited to areas where there is demonstrable added value.

There will be a state of play discussion on the Common European Asylum System (CEAS). The presidency is keen to make as much progress as possible on the CEAS by the end of the year. The UK has opted in to the Dublin (III) regulation and the new EURODAC proposal. The UK has not opted in to the three other directives.

There will also be a state of play discussion on the establishment of a regional protection programme in response to the Syrian crisis. The presidency remains highly concerned about the situation in Syria and is keen to ensure that the EU helps neighbouring countries build their capacity to host any resulting refugees. They will be seeking council agreement for the establishment of a regional protection programme for Syria. The UK is supportive of this in principle, whilst cautious about the detail of such a proposal, particularly if a significant resettlement element is envisaged.

The presidency will be seeking to adopt the council conclusions on the protection of soft targets from terrorist activities. Whilst the conclusions do not identify any new areas of work which are not already underway under CONTEST (the UK's strategy for countering terrorism), international collaboration is essential and we support the presidency's initiative, particularly in relation to the sharing of experience and best practice in protecting soft targets.

An implementation report is also being presented to the council for adoption on enhancing the links between internal and external aspects of counter-terrorism. This capitalises on the opportunity to bring together the aims and activities of the internal and external

aspects of counter-terrorism in the EU. The UK endorses the draft implementation plan and is pleased to note that our comments have been incorporated into the revised document. In both of these initiatives the UK has stressed that national security is a member state competence.

Under any other business there will be a presentation by the Commission on the illicit trafficking of firearms. The council will also be updated on the EUROSUR regulation, Schengen governance proposals and the EU Visa Regulation (539).

The justice day will begin with a state of play update and an orientation debate on the proposed draft directive creating minimum standards on the freezing and confiscation of proceeds of crime. The aim of the directive is to establish minimum standards in the freezing and confiscation of the proceeds and instrumentalities of crime in the EU. The proposed directive was last discussed at council level at the informal meeting in July. The UK has not opted in to the proposed directive but will look to engage in the negotiations with a view to considering opting in at the post-adoption stage. The Cypriot presidency is committed to making substantial progress on the directive during its presidency.

The presidency will provide a state of play update which will be followed by an orientation debate on the proposal on criminal sanctions for insider dealing and market manipulation. The aims of the proposal are to establish minimum EU rules concerning the definition of criminal offences of market abuse—namely, insider dealing and market manipulation. The directive also seeks to complement the broader framework for tackling market abuse, which is provided for in the larger accompanying market abuse regulation. A partial general approach was agreed at the April JHA Council earlier this year. The UK has not opted in to this directive.

The Commission will be making a presentation on its proposed directive on the protection of the financial interests of the EU by criminal law (the PFI Directive) which it published in 23 July this year. The draft directive would repeal and replace the existing EU Convention and Protocols on Protection of Financial Interests (PFI). It proposes measures that aim to improve the equivalence and effectiveness of protection of the EU's financial interests by criminal law sanctions.

A state-of-play report will also be given on the proposed regulation on the protection of individuals with regard to the processing of personal data and on the free flow of such data. The Commission published new legislative proposals for data protection in January which consist of a regulation and a directive. The proposed regulation will set out a general EU framework for data protection which would replace the existing Data Protection Directive (95/46/EC). This was last discussed at this level at the July informal council.

Under non-legislative items the presidency will also be discussing the recommendations on the 5th report on mutual evaluations on financial crime and financial investigations. The report forms the latest of a series of mutual evaluations of how member states have carried out their obligations in the fight against organised crime.

Also under non-legislative items there will be a presentation on the state of the drug problem in Europe by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA).

EU: Schengen Information Systems I and II

Statement

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): My honourable friend the Parliamentary Under-Secretary of State for Security (James Brokenshire) has today made the following Written Ministerial Statement.

The Government have decided not to exercise their right, under Protocol 19 to the Treaty on the Functioning of the European Union (the Schengen Protocol) and the Treaty on European Union, to opt out of the regulation on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II).

The Government have taken this decision in accordance with the commitment in the coalition agreement, which states that we will approach legislation in the area of security and criminal justice on a case-by-case basis, with a view to maximising our country's security, protecting Britain's civil liberties and preserving the integrity of our criminal justice system.

EU: Turkey

Statement

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): My honourable friend the Minister of State for Immigration (Mark Harper) has today made the following Written Ministerial Statement.

The Government have decided to opt in to the draft council decision concerning the conclusion of the agreement between the European Union and Turkey on the readmission of persons residing without authorisation (European Union Document No. 11743/12, COM(12) 239).

The readmission agreement will formalise reciprocal arrangements to document and remove illegal entrants from the EU and Turkey. After three years it will also apply to third country nationals who have passed through the territory of individual member states and Turkey, where efforts have first been made to return the migrant directly to his or her country of origin.

The Government welcome the readmission agreement, which we believe will be valuable in easing the pressures on our border and form an important part of broader co-operation with Turkey on a wide range of Justice and Home Affairs matters.

The agreement will help tackle the flow of illegal migration to the UK by making sure that every country in the EU has good arrangements for returns, so that would-be illegal entrants are removed before they reach our border. Participating in the agreement also makes clear the Government's intention to stay active in addressing a range of strategic interests that the EU

and Turkey share. They include not just migration, but tackling terrorism and transnational organised crime, and promoting judicial co-operation in civil and criminal matters.

Northern Ireland: Security
Statement

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): My right honourable friend the Secretary of State for the Home Department (Theresa May) has today made the following Written Ministerial Statement.

Today the Security Service reduced the threat level to Great Britain from Northern Ireland-related terrorism from substantial to moderate. This means that a terrorist attack is possible, but not likely.

The threat level to the UK from international terrorism remains at substantial, which means that an attack is a strong possibility. The threat level to Northern Ireland from Northern Ireland-related terrorism remains at severe, meaning that an attack is highly likely. Neither of these two levels has changed.

Despite the change which has been made today, there remains a real and serious threat against the United Kingdom from terrorism and I would ask the public to remain vigilant and to report any suspicious activity to the police.

The decision to change this threat level is taken by the Security Service independently of Ministers and is based on the very latest intelligence, considering factors such as capability, intent and timescale. Threat levels are kept under constant review.

Police: College of Policing
Statement

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): My right honourable friend the Secretary of State for the Home Department (Theresa May) has today made the following Written Ministerial Statement.

In July I set out further information about the establishment of a professional body for policing, the College of Policing.

I can now update the House with progress on its establishment.

I am very pleased to announce my intention to appoint Alex Marshall as chief executive officer of the college. As chief constable of Hampshire and the Isle of Wight, Alex has overseen four consecutive years of crime reduction, rolled out mobile data terminals to frontline officers and delivered around £40 million in savings. He has also maintained the numbers of police officers and police staff in visible local policing roles across Hampshire. Alex has also played a pivotal role in the formation of the National Police Air Service which became operational earlier this month.

My department has now legally incorporated a company limited by guarantee under the name College of Policing Limited. The college will become operational in December 2012. The college will be established on a statutory basis as soon as parliamentary time allows.

Creation of the College of Policing represents the final stage of the commitment to close the National Policing Improvement Agency by the end of 2012.

Police: Remuneration
Statement

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): My right honourable friend the Secretary of State for the Home Department (Theresa May) has today made the following Written Ministerial Statement.

On 27 March 2012 I issued a Written Statement to the House on the Government's response to Tom Winsor's final report of his review of remuneration and conditions of service for police officers and staff in England and Wales.

In that Statement I committed to consult with partners on proposals for implementing changes to the police officer pay machinery, including establishing a pay review body for officers.

I can confirm that the consultation on the implementation of this important reform will launch today on 24 October and close on 21 December. The consultation document and online questionnaire will be available on the Home Office website. My department will ensure that all interested parties are aware of the launch of this consultation, including the Association of Chief Police Officers, the Police Federation and the Police Superintendents' Association, to ensure that the views of police officers are heard. My department will also work with the Association of Police Authorities, soon to be the Association of Police and Crime Commissioners, to ensure that PCCs have the opportunity to respond to the consultation when they take office. I would also welcome responses from other interested organisations and individuals.

The changes to the way in which police pay and conditions are determined, including establishing a pay review body, are part of a wider police reform agenda including the introduction of police and crime commissioners, the reduction in bureaucracy, developing professionalism in the service and the creation of the police professional body, and improving service to the public through collaboration between police forces. Police officers deserve to have pay and workforce arrangements that recognise the vital role they play in fighting crime and keeping the public safe, and enable them to deliver effectively for the public.

A copy of the consultation document is also available in the House Library and I will report to the House on the results of the consultation exercises early next year.

Terrorism: Finance
Statement

The Commercial Secretary to the Treasury (Lord Sassoon): My honourable friend the Financial Secretary to the Treasury (Greg Clark) has today made the following Written Ministerial Statement.

Under the Terrorist Asset-Freezing etc. Act 2010 (TAFA 2010), the Treasury is required to report quarterly to Parliament on its operation of the UK's asset-freezing regime mandated by UN Security Council Resolution (UNSCR) 1373.

This is the seventh report under TAFA 2010 and it covers the period from 1 July 2012 to 30 September 2012. This report also covers the UK implementation of the UN Al-Qaida asset-freezing regime and the operation of the EU asset-freezing regime in the UK under EU Regulation (EC) 2580/2001 which implements UNSCR 1373 against external terrorist threats to the EU. Under the UN Al-Qaida asset-freezing regime, the UN has responsibility for designations and the Treasury has responsibility for licensing and compliance with the regime in the UK under the Al-Qaida (Asset-freezing) Regulations 2011. Under EU Regulation 2580/2001, the EU has responsibility for designations and the Treasury has responsibility for licensing and compliance with the regime in the UK under Part 1 of TAFA 2010.

Annexes 1 and 2 to this Statement provide a breakdown by name of all those designated by the UK and the EU in pursuance of UN Security Council Resolution 1373.

The following table sets out the key asset-freezing activity in the UK during the quarter ended 30 September 2012:

	TAFA 2010	*EU Reg(EC) 2580/2001*	*Al-Qaida regime UNSCR 1989*
Assets frozen (as at 30.09.2012)	£29,000	£11,000	£65,000[1]
Number of accounts frozen in UK (at 30.09.12)	68	10	24
New accounts frozen	0	0	0
Accounts unfrozen	0	0	9
Number of designations (at 30/09/12)	40	37	306
(i) new designations (during Q2 2012)	0	0	0
(ii) delistings	0	0	18
(iii) individuals in custody in UK	14	0	3
(iv) individuals in UK, not in detention	5	0	3
(v) individuals overseas	13	12	232
(vi) groups	8 (0 in UK)	25 (1 in UK)	68(1 in UK)
Individuals by nationality			
(i) UK Nationals[2]	15	n/a	n/a
(ii) Non UK Nationals	17	n/a	n/a
Renewal of designation	0	n/a	n/a
General Licences			
(i) Issued in Q2		(i) 0	
(ii) Amended		(ii) 0	
(iii) Revoked		(iii) 0	
Specific Licences:			
(i) Issued in Q2	(i) 3	(i) 0	(i) 0
(ii) Revoked	(ii) 0	(i1) 0	(ii) 0

There are no significant areas of activity to report on this quarter.

Legal Proceedings

Appeals against designations made under the Terrorism (United Nations Measures) Order 2009 and TAFA 2010 were ongoing in the quarter covered by this report, brought by Zana Abdul Rahim and Gulam Mastafa. Mastafa's case has been listed for a preliminary hearing on 28 November 2012. A claim for damages arising from the designation of another individual, known as "M" for the purpose of these proceedings, issued against the Treasury is also on-going.

In the quarter to 30 September 2012, no criminal proceedings were initiated in respect of breaches of asset freezes made under the Act or under the Al-Qaida (Asset-Freezing) Regulations 2011.

[1] This figure reflects the most up-to-date account balances available and includes approximately $64,000 of suspected terrorist funds frozen in the UK. This has been converted using exchange rates as of 02.10.12.

[2] Based on information held by the Treasury, some of these individuals hold dual nationality

Annex 1—Designated persons under TAFA 2010 by name[3]

Individuals

1.	Hamed ABDOLLAHI
2.	Bilal Talal ABDULLAH
3.	Imad Khalil AL-ALAMI
4.	Abdula Ahmed ALI
5.	Abdelkarim Hussein AL-NASSER
6.	Ibrahim Salih AL-YACOUB
7.	Manssor ARBABSIAR
8.	Usama HAMDAN
9.	Nabeel HUSSAIN
10.	Tanvir HUSSAIN
11.	Zahoor IQBAL
12.	Umar ISLAM
13.	Hasan IZZ-AL-DIN
14.	Parviz KHAN
15.	Waheed Arafat KHAN

Annex 1—Designated persons under TAFA 2010 by name[3]

16. Osman Adam KHATIB
17. Musa Abu MARZOUK
18. Gulam MASTAFA
19. Khalid MISHAAL
20. Khalid Shaikh MOHAMMED
21. Ramzi MOHAMMED
22. Sultan MUHAMMAD
23. Yassin OMAR
24. Hussein OSMAN
25. Zana Abdul RAHIM
26. Muktar Mohammed SAID
27. Assad SARWAR
28. Ibrahim SAVANT
29. Abdul Reza SHAHLAI
30. Ali Gholam SHAKURI
31. Qasem SOLEIMANI
32. Waheed ZAMAN

Entities

1. BASQUE FATHERLAND AND LIBERTY (ETA)
2. EJERCITO DE LIBERACION NACIONAL (ELN).
3. FUERZAS ARMADAS REVOLUCIONARIAS DE COLOMBIA (FARC)
4. HIZBALLAH MILITARY WING, INCLUDING EXTERNAL SECURITY ORGANISATION
5. HOLY LAND FOUNDATION FOR RELIEF AND DEVELOPMENT
6. POPULAR FRONT FOR THE LIBERATION OF PALESTINE – GENERAL COMMAND (PFLP-GC)
7. POPULAR FRONT FOR THE LIBERATION OF PALESTINE (PFLP)
8. SENDERO LUMINOSO (SL)

[3] For full listing details please refer to http://www.hm-treasury.gov.uk/d/terrorism.htm

Annex 2—Persons designated by the EU under Council Regulation (EC)2580/2001[4]

Persons

1. Hamed ABDOLLAHI*
2. Abdelkarim Hussein AL-NASSER*
3. Ibrahim Salih AL YACOUB*
4. Manssor ARBABSIAR*
5. Mohammed BOUYERI
6. Sofiane Yacine FAHAS
7. Hasan IZZ-AL-DIN*
8. Khalid Shaikh MOHAMMED*
9. Abdul Reza SHAHLAI*
10. Ali Gholam SHAKURI*
11. Qasem SOLEIMANI*
12. Jason Theodore WALTERS

GROUPS AND ENTITIES

1. Abu Nidal Organisation (ANO)

Annex 2—Persons designated by the EU under Council Regulation (EC)2580/2001[4]

2. Al-Aqsa Martyrs' Brigade
3. Al-Aqsa e.V.
4. Al-Takfir and Al-Hijra
5. Babbar Khalsa
6. Communist Party of the Philippines, including New People's Army (NPA), Philippines
7. Gama'a al-Islamiyya (a.k.a. Al-Gama'a al-Islamiyya) (Islamic Group — IG)
8. Islami Büyük Dogu Akincilar Cephesi (IBDA-C) (Great Islamic Eastern Warriors Front)
9. Hamas, including Hamas-Izz al-Din al-Qassem
10. Hizbul Mujahideen (HM)
11. Hofstadgroep
12. Holy Land Foundation for Relief and Development*
13. International Sikh Youth Federation (ISYF)
14. Khalistan Zindabad Force (KZF)
15. Kurdistan Workers Party (PKK) (a.k.a. KONGRA-GEL)
16. Liberation Tigers of Tamil Eelam (LTTE)
17. Ejército de Liberación Nacional (National Liberation Army)*
18. Palestinian Islamic Jihad (PIJ)
19. Popular Front for the Liberation of Palestine (PFLP)*
20. Popular Front for the Liberation of Palestine — General Command (PFLP-GC)*
21. Fuerzas armadas revolucionarias de Colombia (FARC)*
22. Devrimci Halk Kurtulu Partisi-Cephesi — DHKP/C (Revolutionary People's Liberation Army/Front/Party)
23. Sendero Luminoso (SL) (Shining Path)*
24. Stichting Al Aqsa
25. Teyrbazen Azadiya Kurdistan (TAK)

[4] For full listing details please refer to http://www.hm-treasury.gov.uk/d/terrorism.htm

* EU listing rests on UK designation under TAFA 2010

Wales: Funding Reform

Statement

The Commercial Secretary to the Treasury (Lord Sassoon): My right honourable friend the Chief Secretary to the Treasury (Danny Alexander) has made the following Written Ministerial Statement.

The Secretary of State for Wales and I are pleased to publish the Statement on funding reform that has been agreed jointly with the Welsh Government, copies of which have been deposited in the Libraries of the House. The Statement follows a year long process of talks between the two Governments and addresses Welsh devolved funding, the case for capital borrowing powers and wider fiscal reform.

Written Answers

Wednesday 24 October 2012

Arts: Regional Theatre

Question

Asked by ***Baroness Quin***

To ask Her Majesty's Government whether they have plans to ensure the future of regional theatres. [HL2400]

Viscount Younger of Leckie: Government invest money in the arts, and in regional theatre, via Arts Council England. In the financial year 2012-13, the Arts Council will provide over £50 million of grant-in-aid support to regional theatres. Money has also been designated for greater touring opportunities and the refurbishment of some major theatrical buildings. For example, funding has been awarded to Theatre Hullabaloo's the North East Children's Theatre Consortium, to improve the quality, quantity and profile of theatre for young audiences across the North East. A grant has also been committed to Chichester Festival Theatre for its restoration and upgrade. Arts Council England's Catalyst Arts scheme will also provide funding to arts organisations, including regional theatres, to help them diversify their income streams and access more funding from private sources.

Bank of England

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government whether the Bank of England is free to purchase equity securities under quantitative easing, and whether it has done so; and whether they will accept equity investments as collateral for liquidity purposes. [HL2484]

The Commercial Secretary to the Treasury (Lord Sassoon): Quantitative easing is implemented through the asset purchase facility (APF) which was established as a subsidiary of the Bank of England on 30 January 2009. In the then Chancellor's letters to the Governor, of 29 January and 3 March 2009, the following sterling assets were authorised as eligible for purchase by the APF: gilts, paper issued under the credit guarantee scheme, corporate bonds, commercial paper, syndicated loans and asset backed securities created in viable securitisation structures. The current ceiling on the purchase of eligible private sector assets is £10 billion as set out in the Chancellor's letter to the Governor of 29 November 2011.

The collateral accepted in the Bank of England's liquidity operations can be found on the Bank of England's website at: http://www.bankofeng.co.uk/markets/Pages/money/eligiblecollateral.aspx).

Banking

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government what are the policies used by the Financial Services Authority and HM Treasury to determine whether any changes in setting capital and liquidity policy for regulated banks should be formally announced to investment markets as opposed to unofficially communicated. [HL2483]

The Commercial Secretary to the Treasury (Lord Sassoon): The Financial Services Authority and HM Treasury determine on a case by case basis whether any changes in setting capital and liquidity policy for regulated banks are formally announced.

Banks: Lending

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government why loans granted by United Kingdom banks under the Funding for Lending scheme require less risk capital backing than identical loans made outside the scheme. [HL2487]

The Commercial Secretary to the Treasury (Lord Sassoon): In June, HM Treasury and the Bank of England announced a series of measures to provide additional liquidity and support lending. These measures included the Funding for Lending Scheme (FLS) which was launched to incentivise banks and building societies to expand their lending to households and non-financial companies.

At the same time, the interim Financial Policy Committee noted, in the June Financial Stability Report, that the Financial Services Authority (FSA) should work with banks to improve the resilience of their balance sheets, without exacerbating market fragility or reducing lending to the real economy.

In order to ensure that the microprudential framework does not counteract the actions taken to encourage lending, the FSA has made adjustments to the liquidity and capital regimes for UK banks and building societies. The press statement announcing these adjustments can be found on the FSA's website at: http://www.fsa.gov.uk/library/communication/statements/2012/fpc.shtml.

Part of this announcement included a commitment that where firms increase lending, as measured by the metric of the FLS, but irrespective of whether the firm is participating in the scheme or not, the FSA will not require them to hold additional capital.

Broadband: 4G Mobile

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government what actions they are taking to facilitate the availability of 4G mobile telephone services in the United Kingdom. [HL2313]

Viscount Younger of Leckie: Following a meeting between the mobile operators, the Minister for Culture, Communications and Creative Industries, Ed Vaizey MP, and the Secretary of State, the right honourable Maria Miller MP on 2 October, plans to bring more next generation mobile services (4G) to consumers next spring have been agreed. Delivering 4G services is a key part of the Government's commitment to providing the UK with the digital infrastructure businesses need to succeed and grow.

Later this year, Ofcom will begin auctioning the spectrum at 800 MHz and 2600 MHz for 4G services. Over the last month, instigated by the Government, Ofcom, mobile network operators, Digital UK, TV broadcasters, and others have been working to speed up the process of making the spectrum at 800 MHz available.

This work has enabled the possibility that mobile operators will be able to roll-out 4G services in the 800 MHz band earlier than previously estimated. This will follow EE's launch of a 4G service in their existing spectrum at 1800 MHz following Ofcom's decision to allow the liberalisation of their licence in that band.

Burma

Question

Asked by ***Baroness Kinnock of Holyhead***

To ask Her Majesty's Government whether, in the last year, issues related to investment in Burma were raised in meetings they have had with representatives of British companies. [HL2669]

The Minister of State, Department for Business, Innovation and Skills & Foreign and Commonwealth Office (Lord Green of Hurstpierpoint): There has been significant interest in Burma from UK businesses following the suspension in April of EU sanctions, apart from the arms embargo, when the UK also lifted its policy of actively discouraging trade with Burma. We have sought to encourage responsible investment in Burma as we believe such investment can support Burma's economic and social development and aid its democratic transition.

Lord Marland led a trade mission to Rangoon and Naypyitaw in July of this year including businesses from a range of sectors interested in trade and investment opportunities in the market.

UKTI now has a presence in the market and is able to provide services to UK businesses, including tailored market research to help them plan how to sustainably invest in the market. UK Government officials have spoken at a number of events related to investing in Burma since April.

Civil Service: Secondments

Question

Asked by ***Lord Adonis***

To ask Her Majesty's Government how many senior civil servants at the Department for Education are on secondment to schools in England; and what are the names of those schools. [HL2418]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): The Department for Education currently has one member of the senior civil service on secondment to a school in England. This school is the Haberdashers' Aske Federation of Academies.

Crime: Racist Fatalities

Question

Asked by ***Lord Ouseley***

To ask Her Majesty's Government how many fatal racist attacks during the past 10 years remain unsolved. [HL2590]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): Data on the number of fatal racist attacks that remain unsolved are not collected centrally by the Government.

Department for Communities and Local Government: Research

Question

Asked by ***Baroness Nicholson of Winterbourne***

To ask Her Majesty's Government, further to the Written Statement by Baroness Hanham on 24 September (*WS 127–30*), how many groups of reports from research projects commissioned by previous Administrations will be published; and at what total cost. [HL2457]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): We have published 14 groups of reports from research projects commissioned by previous Administrations. There is one group pending publication. These reports were all typeset in-house and are web-only publications. The cost of publishing these documents is negligible.

Notwithstanding, the last Administration spent £25.6 million on research projects that were commissioned but not published before May 2010, and many of those projects did not represent value for money for taxpayers.

As outlined in my Written Statement, this Government have put in place greater scrutiny and challenge of newly commissioned research programmes to deliver better value for money and ensure that sums expended are reasonable in relation to the public policy benefits obtained.

Drugs: Prescribed Drug Addiction

Questions

Asked by ***The Earl of Sandwich***

To ask Her Majesty's Government how they intend to assist those addicted to, or withdrawing from, benzodiazepines, selective serotonin reuptake inhibitors and other drugs currently prescribed by doctors or sold over the counter. [HL2556]

To ask Her Majesty's Government how the existing methadone substitution programme devised by the National Treatment Centre for Substance Misuse for heroin addicts can assist patients suffering from prescribed drug addiction and withdrawal. [HL2557]

To ask Her Majesty's Government how they have informed, or propose to inform, general practitioners, clinical commissioning groups and the general public of any new NHS policy or programme to assist directly those suffering from prescribed drug addiction and withdrawal. [HL2558]

To ask Her Majesty's Government whether they will draw on voluntary sector practice and expertise in preparing any new programme to combat prescribed drug addiction and to treat the effects of withdrawal. [HL2559]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Health and Social Care Act 2012 requires local authorities and clinical commissioning groups in each area to jointly lead health and wellbeing boards where they will assess local health ands social care needs through joint strategic needs assessments (JSNA), and develop joint health and wellbeing strategies to meet those needs. Taken together the assessments and strategies will inform local planning, commissioning and delivery of services by local authorities and the National Health Service. The action plan for 2012-13 for the National Treatment Agency for Substance Misuse (NTA) requires it to continue to support the development and delivery of effective local recovery-orientated systems. The information which the NTA supplies to health and wellbeing boards to assist JSNA includes information about addiction to medicines.

Services to help people withdraw from prescribed and over-the-counter medicines, which could include provision by the voluntary sector, are commissioned at a local level. It is for local systems to design appropriate referral routes into services and ensure awareness of the help that is available locally.

The *2007 UK Guidelines on Clinical Management of Drug Misuse and Dependence* contain separate sections on withdrawal from benzodiazepines and the use of methadone and other preparations for opioid substitution treatment. They highlight the risks of using benzodiazepines and opioids at the same time.

Economy: Quantitative Easing

Question

Asked by ***Lord Barnett***

To ask Her Majesty's Government whether current monetary policy, including quantitative easing, is achieving it's objectives; and on what evidence they base their assessment. [HL2511]

The Commercial Secretary to the Treasury (Lord Sassoon): The Monetary Policy Committee's (MPC) policy tools, including bank rate and quantitative easing (QE) via the asset purchase facility (APF), are designed to affect the economy as a whole, in order to meet the 2% inflation target over the medium term.

At its meeting held on 4 and 5 July, the MPC voted to extend QE by another £50 billion, bringing the total to £375 billion. This was based on its judgment that,

"against the background of continuing tight credit conditions and fiscal consolidation, the increased drag from the heightened tensions within the euro area meant that, without additional monetary stimulus, it was more likely than not that inflation would undershoot the target in the medium term".

The Bank of England estimated in its September 2011 Quarterly Bulletin that QE, during March 2009 and January 2010, raised spending and activity in the UK economy. It estimated that QE had raised UK inflation by between three quarters of a per cent and 1½%; and increased real GDP by around 1½% to 2%.

In its Article IV statement[1], published in May, the IMF has noted that QE remains stimulative.

[1] http://www.imf.org/external/np/ms/2012/052212.htm

Energy: Gas Prices

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government whether they plan to ask Ofgem to secure a reduction in recent proposed domestic gas supply prices. [HL2656]

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Baroness Verma): Gas prices for households consumers are a commercial matter for the companies concerned. As recently announced by my right honourable friend the Prime Minister, DECC will bring forward legislation to help consumers get the lowest tariff for them.

First World War: Commemoration

Questions

Asked by ***Lord Ashcroft***

To ask Her Majesty's Government what preparations are being made to commemorate in 2014 the 100th anniversary of the start of the First World War. [HL2454]

Viscount Younger of Leckie: On 11 October 2012 the Prime Minister announced a series of measures to commemorate the centenary of the First World War. Working with key partners including the Heritage Lottery Fund, the Imperial War Museum and the Commonwealth War Graves Commission, the Government's preparations will include national commemorations for key events such as the outbreak of the war on 4 August 2014, the first day of the battle of the Somme on 1 July 2016 and Armistice Day 11 November 2018. The centenary will also provide the foundations upon which to build an enduring cultural and educational legacy. A new centenary education programme, with more than £5 million of new government funding, will include the opportunity for pupils and teachers from every state secondary school to research the people who served in the Great War. Also, the Centenary Partnership Programme will promote a series of community-based initiatives, and a further£5 million will be made available to support the Transforming Imperial War Museum London project.

Asked by ***Lord Hodgson of Astley Abbotts***

To ask Her Majesty's Government what financial support they will give to the plans to commemorate the 100th anniversary of the outbreak of the First World War in 2014. [HL2532]

Viscount Younger of Leckie: On 11 October the Prime Minister announced a package of support for commemorations of the First World War. This package includes £5 million from the Treasury in support of the Transforming Imperial War Museum project and £5.3 million jointly funded by the Department for Education and the Department for Communities and Local Government, which will allow pupils and teachers from every maintained secondary school in England the chance to go on a tour of the great battlefields, and take part in remembrance ceremonies on the Western Front. In addition, at least £10 million from the Heritage Lottery Fund will enable young people working in their communities to conserve, explore and share local heritage of the First World War. Also, a grant of up to £1 million from the National Heritage Memorial Fund will support HMS "Caroline". She will now have a secure future in Belfast, where thousands of people will be able to visit her and learn about her unique role in the First World War.

Government: Air Travel

Questions

Asked by ***Lord Ashcroft***

To ask Her Majesty's Government, further to the Written Answers by Lord Strathclyde on 5 July (*WA 192*) and 17 July (*WA 32–3*), what was the cost charged to the news organisations and the Conservative Party in respect of journalists and members of political offices who travelled with the Prime Minister on a chartered flight to the United States on 13 March. [HL1840]

To ask Her Majesty's Government, further to the Written Answer by Lord Strathclyde on 17 July (*WA 32–3*), why, in the light of previous Written Answers detailing those who travelled with the Prime Minister, they will not give the names of those who travelled with the Prime Minister on a chartered flight to the United States on 13 March. [HL1841]

To ask Her Majesty's Government on what date they received the funds due from the Conservative Party for members of the Prime Minister's political office who travelled with him to the United States on 13 March. [HL1842]

To ask Her Majesty's Government how many journalists and how many members of his political office travelled with the Prime Minister to the United States on 13 March. [HL1843]

The Chancellor of the Duchy of Lancaster (Lord Strathclyde): Journalists and members of the political office that travel with the Prime Minister are charged the equivalent cost of a seat on a commercial flight on the same route.

Three members of the political office accompanied the Prime Minister, the number of journalists for each part of the trip is set out below. Names of individuals are not normally disclosed.

London to Washington—24;

Washington to New York—32; and

New York to London—26.

Health: Tuberculosis

Question

Asked by ***Lord Boateng***

To ask Her Majesty's Government what action they have taken following the coroner's report on the death of Alina Sarag. [HL2519]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Cluster Director of Public Health for Birmingham and Solihull has responded to the coroner's letter of 6 August, stating that the recommendations have been implemented, that they are monitored through their contracting arrangements with National Health Service providers and reported to the Cluster Clinical Quality Group; and that she is assured that the recommendations are on track. There is a strong focus in the report on enhanced general practitioner (GP) knowledge and awareness, with provision for training and awareness sessions.

The Health Protection Agency has also responded to the coroner's letter of 6 August, highlighting a number of strategic initiatives, which include TB cohort review meetings and action to raise the knowledge and awareness of GPs, other health care workers and people in the most affected communities.

The department recognises the public health importance of tuberculosis (TB) and is currently funding TB Alert, to raise awareness of TB amongst general practitioners and other primary care professionals. TB Alert is developing an online learning module in collaboration with the Royal College of General Practitioners and a training pack for TB nurses to use in running training sessions with primary care professionals.

The department intends to respond to the coroner's letter shortly.

House of Lords: Reform

Question

Asked by ***Lord Grocott***

To ask Her Majesty's Government what has been the total cost, including staff time, of their plans to reform the House of Lords since the last general election. [HL2506]

Lord Wallace of Saltaire: As with the development of any Government policy, a variety of officials dealt with House of Lords reform as part of their duties. Between five and 12 civil servants worked full-time on House of Lords reform at any one time between May 2010 and 31 August 2012. The estimated cost of these

salaries for this period is £620,000. Other civil servants provided support. It is not possible to distinguish between the time they spent on House of Lords reform and other issues. Other costs were principally for the publication of documents and totalled £11,000.

Legislation

Question

Asked by ***Baroness Finlay of Llandaff***

To ask Her Majesty's Government what delegated legislation remains to be published in order to implement the Health and Social Care Act 2012. [HL2655]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): We plan to publish by the end of this year statutory instruments (SIs) dealing with commissioning requirements for the NHS Commissioning Board and clinical commissioning groups (CCGs), Standing Rules for the Board and CCGs, local authority public health functions, local Healthwatch, and care trusts and partnership working.

In 2013 we plan to publish further SIs. These will include regulations on the National Health Service constitution, primary care, the National Institute for Health and Clinical Excellence and the NHS Information Centre for Health and Social Care, health and wellbeing boards, licensing, pricing, continuity of service and procurement, choice and competition, and orders to commence provisions in the Health and Social Care Act 2012 (the Act) and to amend existing legislation as a consequence of the Act. There may also be some directions in writing.

Some of the powers in the Act to make delegated legislation are included on a contingency basis and will not necessarily be used (for example, powers to intervene in the event of failure). The abolition of NHS trusts, and the related secondary legislation will be made at a later stage.

Equally, all future legislation produced by the department will now need to reflect the new structures created by the Act.

Localism Act 2011

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government whether they have conducted any post-legislative assessment of the impact of the Localism Act 2011; and, if so, whether they will place the information in the Library of the House. [HL2603]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): No assessment has been made at this time. The department is keen to see how the rights and freedoms provided by the Act are used and will conduct post-legislative scrutiny in line with the Government's broader approach. Further information on this is at: http://www.cabinetoffice.gov.uk/sites/default/files/resources/Guide-to-Making-Legislation_0.pdf.

NHS: Social Work Bursaries

Question

Asked by ***Baroness Sharp of Guildford***

To ask Her Majesty's Government whether the proposed changes to the NHS Bursary for Social Work for 2013–14 have yet been announced; and, if not, when they are expected to be announced. [HL2606]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): We expect to announce the outcome of the consultation on reforming the social work bursary shortly.

North Korea

Questions

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

To ask Her Majesty's Government whether they have discussed with the Government of North Korea the alignment of that country's constitution with international human rights instruments; and whether they have offered assistance in improving respect for and protection and promotion of human rights in that country. [HL2497]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): We have regularly raised the importance of North Korea aligning itself with international human rights instruments in our bilateral contacts with the Government of North Korea. This has included calling on North Korea to ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic and Social Rights—in both cases North Korea has signed but not ratified both covenants. We have also recently encouraged the Government of North Korea to meet its obligations to the Committee on the Elimination of Discrimination against Women, and encouraged North Korea to provide a thorough report to the UN Human Rights Council in advance of their next universal periodic review (UPR) in 2013.

To assist with the UPR process, our embassy in Pyongyang has offered to work with the North Korean Ministry of Foreign Affairs on sharing lessons from our own recent appearance before the Human Rights Council. Our embassy in Pyongyang has also recently been focusing on improving respect for, and promotion of, disabled rights. This has included funding a series of projects benefiting the families of deaf children in North Korea, as well as providing financial assistance to Rim Ju Song, North Korea's first Paralympic athlete.

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

To ask Her Majesty's Government what information they have received about allegations of the shooting of escapees trying to leave North Korea across the River Tumen or River Yalu; and what discussions they have had with the government of China

concerning the principle of non-refoulement of refugees and asylum seekers, particularly in regard to North Korea. [HL2499]

Baroness Warsi: The UN Special Rapporteur on Human Rights in North Korea highlighted in his report to the UN Human Rights Council in March 2012 that there were reports of North Korea implementing a shoot to kill policy for people trying to leave North Korea across the River Rumen or River Yalu. We are concerned about these reports.

The UK raised our concerns with the Chinese Government about reports of the refoulement of North Korean refugees and the treatment of refugees returned to North Korea in the 19th Round of the UK-China Human Rights Dialogue in January 2011. It was also raised more recently during the EU-China Human Rights Dialogue in May 2012. We have also called on China to allow access to the border areas by the UN High Commissioner for Refugees.

The UK participated in discussions of the report by the UN special rapporteur at the UN Human Rights Council on 12 March 2012. At this meeting, we agreed with the special rapporteur that all states should adhere to their obligations to protect asylum seekers..

Sport: Playing Fields

Question

Asked by ***Lord Ouseley***

To ask Her Majesty's Government what representations they have received from the national governing bodies for sport in the United Kingdom about the sale of playing fields; how many playing fields have been sold in the past two years; whether they will take action to secure no further net loss; and what assessment they have made of the impact of sales on the goals of securing increased participation in sport and the Olympic and Paralympic 2012 legacy. [HL2452]

Viscount Younger of Leckie: The Department for Culture, Media and Sport (DCMS) has received no recent representations from national governing bodies for sport about the sale of playing fields, and DCMS does not hold records of the number of playing fields that have been sold in the past two years. As a statutory consultee on planning applications affecting playing fields, Sport England records the number of applications for new playing fields received and approved by local planning authorities. However, they do not hold records of overall sales. Data relevant to school playing fields are recorded by the Department for Education.

Sport England works with government to ensure that robust policy is in place to protect playing fields. As a statutory consultee on planning applications affecting playing fields, Sport England is consulted on applications affecting any land that has been used as a playing field in the past five years and any replacement of a grass pitch with a synthetic surface. Whilst this does not mean that playing fields cannot be sold, there is an expectation that none will be disposed of if a needs assessment demonstrates a continuing community demand. In addition, as part of Places, People, Play, the £10 million Protecting Playing Fields fund has been created to improve pitches and bring disused playing fields back into use, creating a legacy of high quality pitches where people can play competitive sport. Clubs, community and voluntary sector groups, local authorities, town and parish councils and schools are eligible to apply for the fund.

No specific assessment has been made of the impact sales of playing fields has on participation levels. Participation levels in sport are recorded by DCMS via the Taking Part survey and by Sport England via the Active People Survey. The most recent versions of which can be found at the following links: http://www.culture.gov.uk/what_we_do/research_and_statistics/4828.aspx and http://www.sportengland.org/research/active_people_survey.aspx.

Wednesday 24 October 2012

ALPHABETICAL INDEX TO WRITTEN STATEMENTS

Col. No.

EU: Justice and Home Affairs Council 13

EU: Schengen Information Systems I and II 16

EU: Turkey 16

Northern Ireland: Security 17

Police: College of Policing 17

Police: Remuneration 18

Terrorism: Finance 18

Wales: Funding Reform 22

Wednesday 24 October 2012

ALPHABETICAL INDEX TO WRITTEN ANSWERS

Col. No.

Arts: Regional Theatre 61

Bank of England 61

Banking 62

Banks: Lending 62

Broadband: 4G Mobile 62

Burma 63

Civil Service: Secondments 63

Crime: Racist Fatalities 64

Department for Communities and Local Government: Research 64

Drugs: Prescribed Drug Addiction 64

Economy: Quantitative Easing 65

Energy: Gas Prices 66

First World War: Commemoration 66

Government: Air Travel 67

Health: Tuberculosis 68

House of Lords: Reform 68

Legislation 69

Localism Act 2011 69

NHS: Social Work Bursaries 70

North Korea 70

Sport: Playing Fields 71

NUMERICAL INDEX TO WRITTEN ANSWERS

Col. No.

[HL1840] 67

[HL1841] 67

[HL1842] 67

[HL1843] 67

[HL2313] 62

[HL2400] 61

[HL2418] 63

[HL2452] 71

[HL2454] 66

[HL2457] 64

[HL2483] 62

[HL2484] 61

[HL2487] 62

[HL2497] 70

[HL2499] 71

[HL2506] 68

[HL2511] 65

[HL2519] 68

[HL2532] 67

[HL2556] 64

[HL2557] 65

[HL2558] 65

Col. No.
[HL2559] 65
[HL2590] 64
[HL2603] 69

Col. No.
[HL2606] 70
[HL2655] 69
[HL2656] 66
[HL2669] 63

Volume 740
No. 54

Wednesday
24 October 2012

CONTENTS

Wednesday 24 October 2012

Questions
Isles of Scilly: Helicopter Services **201**
EU: UK Net Contributions **203**
Schools: Pupil Premium **205**
Unemployment: Young People **208**

Civil Aviation Bill
Order of Consideration Motion **210**

Financial Services Bill
Committee (9th Day) **210**

Piracy
Question for Short Debate **274**

Grand Committee

Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012
Considered in Grand Committee .... **GC 39**

Defence Capabilities: EUC Report
Motion to Take Note .... **GC 50**

Written Statements .... ***WS 13***

Written Answers .... ***WA 61***