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House of Lords

Monday, 19 November 2012.

2.30 pm

Prayers—read by the Lord Bishop of Bath and Wells.

Lord Brown of Eaton-under-Heywood took the oath.

Death of a Member: Lord McCarthy

Announcement

2.36 pm

The Lord Speaker (Baroness D'Souza): My Lords, I regret to inform the House of the death of the noble Lord, Lord McCarthy, on 18 November. On behalf of the House, I express our condolences to the noble Lord's family and friends.

Schools: Arts

Question

2.37 pm

Asked By ***The Earl of Clancarty***

To ask Her Majesty's Government, in the light of their proposals to change the school qualifications system, what plans they have in relation to the teaching of the arts in secondary schools, including visual arts, drama, music and dance.

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): My Lords, creative subjects such as art, drama and music should be part of pupils' educational and cultural experience. We are considering how to ensure that high-quality qualifications are available in these subjects and will make an announcement in due course. We recognise the importance of the arts through our national plan for music education and our support for the music and dance scheme. This year we are spending around £110 million on music, dance and other creative arts in schools.

The Earl of Clancarty: My Lords, the Minister will be aware of the huge concern expressed by many in the arts about arts and design being omitted from the EBacc—a concern, will the Minister take note, shared by the CBI? Does the Minister accept that if cultural skills and learning do not take an absolutely central role in the school curriculum, we will lose out in the development of the creative industries, which are going to play, without a doubt, a significant part in the regeneration of this country?

Lord Hill of Oareford: My Lords, I agree very much with the noble Earl about the importance of the creative industries and about the importance of those subjects—it is important that they should be taught in schools. I am aware of his concern about the EBacc and the anxiety that it might lead to a narrowing of what is offered in schools. We think that the EBacc, for those schools that want to follow it, would still allow between 20% and 30% of the timetable to be used for the teaching of other subjects, including important ones such as music, art and design, and drama.

Lord Lloyd-Webber: My Lords, the Chinese seem to be taking a different attitude to all areas of the arts. They realise how important the creative industries potentially are to their economy. In everything from applied arts to music to drama, they are actively seeking our teachers as well as sending students to us here to learn. It is vital that the Government take on board that the creative industries are important to our economy and that we must recognise that within education.

Lord Hill of Oareford: I very much agree with my noble friend about how important the creative industries are from an economic point of view. He makes his point with a great deal of experience and force. However, the case for the arts in our curriculum should not rest solely on the economic benefit that they bring—although that is considerable—but on the fact that they have merit and value in themselves, and young people should have the chance to learn about them because that is part of a rich and broad education.

The Countess of Mar: My Lords, does the Minister appreciate that young people with learning difficulties benefit enormously from this particular list of subjects, which help them not only to learn something new but to integrate with their fellows, and perhaps to join society later on in life?

Lord Hill of Oareford: I agree with the noble Countess. These subjects have a range of benefits for all kinds of children.

Baroness Wall of New Barnet: My Lords, is the Minister aware that what ought to be included in the discussion around the arts, drama and dance is how these subjects will lead to employment in the way in which the qualifications are designed and delivered? The creative and cultural sector skills councils are all one now and it would be advisable to talk to Creative Skillset about what skill sets employers are looking for.

Lord Hill of Oareford: I agree with the noble Baroness that it is important to talk to employers and a range of interested parties that can help contribute to our thinking. It is worth making the point that the original thinking behind the EBacc was driven by the relatively small number of children who had that mix of EBacc subjects, which experience seems to suggest are most likely to lead to those children being able to go to our top universities. When only 4% of children on free school meals were doing the EBacc subjects, it was pretty clear that the number of those children who were going to be able to go to our top universities would be constrained. The idea behind the EBacc is not to set about a narrowing of education but to try to tilt the balance back towards some more rigorous subjects. About 15 years ago, half of all children did the equivalent of the EBacc subjects; today it is about 22%. If we can tilt it back a bit more that way, I think that would be good.

Baroness Bonham-Carter of Yarnbury: My Lords, last February, in response to Darren Henley's admirable review of cultural education, the Government committed to immediately drawing up a national plan for cultural education. It is now November and as "immediately" has still not occurred, can my noble friend tell me when we are going to see this plan?

Lord Hill of Oareford: We have already announced and taken steps on some of the elements of Mr Henley's excellent plan. The formal response is not as immediate as he, others and my noble friend would have liked, but we are expecting it early in the new year.

Baroness Jones of Whitchurch: My Lords, does the Minister not acknowledge that the maths on this simply do not add up? There are only so many teaching hours in a day and given that it has been estimated that the EBacc will take about 80% of the curriculum time, is it any wonder that the latest figures from the Joint Council for Qualifications are showing that entries for GCSE in design and technology, art and design, music and drama are already beginning to fall? The Government's policies are already having an impact on the take-up of these important subjects.

Lord Hill of Oareford: I make the important point that EBacc subjects are not compulsory. It is for schools to decide what is the best thing to offer; if schools think that the EBacc is not right for all their pupils, they should act accordingly. However, as I said, if between 20% and 30% of time is available for other subjects, it is perfectly reasonable to expect that those important subjects we have discussed will continue to be offered. In terms of what has happened so far to the number of pupils taking GCSEs, obviously any results we have had so far in 2012 cannot have been affected by the EBacc since the time lag means that none of that would have worked through.

Baroness Afshar: My Lords, I declare an interest as the mother of a music teacher who insisted that I stand up and talk about her experience, because she finds that children who are not necessarily academic become valorised by being taught music, which enables them to do other academic subjects. She wanted me to read the following quote from a very well known music director.

Noble Lords: Question!

Baroness Afshar: My question is: are we going to stifle future music directors whose talent would bud if only they had the confidence that they gain by doing a subject such as music? If that subject is not valorised, they are not recognised.

Lord Hill of Oareford: I hope that I have made it clear, my Lords, that it is hugely important that that desire should not be stifled. Children should be able to study music through the money that we are putting in through the national music education plan, through the new music hubs that we have established and through the support that we are giving to schemes which will make available instruments to children learning for the first time. All those things will help make sure that music is valued, as it should be.

Employment: Rights

Question

2.46 pm

Asked By ***Lord Monks***

To ask Her Majesty's Government what are their plans for employment rights to be exchangeable for shares.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Marland): My Lords, in October, the Chancellor announced that he intended to create a new employment status called employee owner. This new employment status has different employment rights from employees. Employee owners could own shares worth between £2,000 and £50,000 in companies they work for and will not be subject to capital gains tax.

Lord Monks: I thank the Minister for that reply, but can anyone here imagine a decent employer trying to bribe workers to give up their employment rights in return for shares of questionable value? After all, some 50% of small firms fold within five years. Will not decent employers agree with Justin King, the boss of Sainsbury's, who said that this is not what we should be doing? Will the Government stop once and for all encouraging employers to show a degree of contempt for workers' rights and ditch this tawdry proposal?

Lord Marland: My Lords, I have obviously read the TUC's views on this, and I am not surprised that the noble Lord should wish to propound them, but we must understand that this is a voluntary, not a compulsory, scheme between employees and employers. Surely that is the best way forward for employee relations, as the noble Lord must concede.

Lord Razzall: My Lords, does the Minister agree that, if the Government are determined to proceed with this proposal, it is absolutely essential that, when legislation is brought forward, safeguards are built in to ensure that there is no compulsion from the employer on the employee and that a mechanism is put in place whereby appropriate legal advice can be obtained by any employee before he takes up this offer?

Lord Marland: I could not agree more with my noble friend. We should obviously look at this proposal. It will go through this House as it is going through the other place at the moment and we will have the opportunity to scrutinise what is currently a concept and put some straight edges on it, which this House always does so well. I could not agree more that it needs looking at very carefully. However, this is a voluntary scheme, as I have said, and it is surely in the best interests of corporate endeavour to have employees and employers working together as a scheme.

Lord Hunt of Kings Heath: My Lords, is it not a fact that one person's volunteerism is another person's bullying? Does the Minister agree that these plans are on a par with efforts now being made to disestablish the NHS Agenda for Change national pay scheme?

Will he agree to look into the activities being undertaken by those who want to dismantle Agenda for Change and intervene to stop them?

Lord Marland: We have to be very careful about bandying around harsh words such as "bullying". That is not reasonable. We have a voluntary agreement. Companies in my experience—I have a reasonable amount of experience—do best where both employees and employers co-operate. I was proud to be a founder shareholder of a business where well over 80% of the employees were shareholders. It meant that there was a community of interest and spirit of endeavour. We want to encourage that. It is incumbent on this Government to find ways of generating enterprise and a spirit of going forward together. This scheme does that admirably.

Lord Hamilton of Epsom: My Lords, I am very concerned to hear that Mr Justin King does not approve of this scheme. Is he saying that Sainsbury's shares are therefore not worth holding?

Lord Marland: I am afraid that I am not much for making a commentary on share prices; my record is not outstanding in that regard. I wonder whether Mr King's competition is with Waitrose, where of course there is broad employee ownership and, I understand, a very good spirit of co-operation.

Lord Hughes of Woodside: Does the Minister not agree that there is nothing incompatible in a good company recognising workers' rights? Why is he suggesting that it would be better to have shares and not to have employment rights?

Lord Marland: No one is suggesting for one moment that we do not recognise employee rights. It would be outrageous not to do that. We have no intention of doing that. We are putting forward a very sensible and well thought-out scheme, which recognises employee rights but also recognises that if you want to be a shareholder in endeavour or to create value for yourself in a small, emerging company then you have to take the same road as the people who are employing you. This is a fantastic opportunity for employees to share in this enterprise and it is a terrific scheme.

Baroness Brinton: Does the noble Lord accept that there is a world of difference between a mutual association such as Waitrose, where the entire staff own the organisation, and the proposed scheme where employees may have a small share? I wonder whether he might consider that the comment coming from Sainsbury's is more about motivating employees.

Lord Marland: My noble friend makes a good point. It is a factor of balance and I merely used the Waitrose example as a contrary to the Sainsbury's example. The range here is from £2,000 to £50,000. It is a significant shareholding to have £50,000 in a company, if you so wish it, so I think that this is set fair for a good future.

Lord Whitty: My Lords, does the Minister not accept that there is a difference between past employee shareholdings and a trade-off, which is what is proposed for employment rights? I suspect that our late colleague, Lord Bill McCarthy, would have asked a forensic question at this point. How does the Minister expect this scheme to run? Is it to be a one-off trading of all your employment rights or is there to be a sort of tariff, where you trade in flexible working for so many shares, maternity rights for so many more, the right to join a trade union for a few more and health and safety legislation for a few more than that? How is this actually going to work and what are employees being asked to sell?

Lord Marland: As the noble Lord, Lord Whitty, knows, I normally have a high regard for his interventions but not in this case. The Benches opposite have to be so careful about bandying words such as "bullying" and talking about giving away employees' rights. Noble Lords need to read the text to understand that we are not giving away all employees' rights.

Noble Lords: No.

Lord Marland: Noble Lords should read the text properly so that they understand that it is a limited forgoing of some rights in favour of having a tax-free shareholding in the company. That is gain and loss, up to a point, but it is only marginal.

Polio Eradication

Question

2.53 pm

Asked By ***Baroness Jenkin of Kennington***

To ask Her Majesty's Government what plans they have to extend the programme to eradicate polio to ensure an expanded contribution from non-governmental donors.

Baroness Northover: My Lords, since 1988 the number of polio cases has fallen by over 99%. Polio is now endemic in just three countries: Nigeria, Pakistan and Afghanistan. We remain strongly committed to polio eradication and are exploring with the Global Polio Eradication Initiative how to increase impact and sustainability and how to broaden the funding base, including from non-government donors.

Baroness Jenkin of Kennington: I thank my noble friend. As she points out, polio eradication is an outstandingly successful development programme. During just one day in India, for example, Rotary International is able to vaccinate 172 children. In the UK, the Government's match-funding initiative has been able to leverage £123 million from non-government sources from a £40 billion investment. Given the success of this programme, will the Government commit to looking at renewing and extending it with a higher cap in future?

Baroness Northover: I start by paying tribute to my noble friend for her own commitment in this area. We can indeed eliminate polio, providing everyone contributes in the way she has indicated. My noble friend is right; the Rotarians were instrumental in securing strong,

[Baroness Northover]
local ownership in northern India to ensure that all children were vaccinated. It is very much a success story and Rotary International is involved in similar initiatives, I am pleased to say, in Nigeria and Pakistan. We are looking at financing options from 2013, recognising the benefits of match and challenge funding.

Baroness Kinnock of Holyhead: My Lords, the Minister will know, as she has clearly just said, that there are lessons to be learnt from the example of India, where for 18 months now not a single case of polio has been reported. Could we have a more explicit description of what has been learnt? What efforts have been made to improve the take-up of the vaccine in Pakistan and Nigeria, where fear and suspicion are being peddled by some religious leaders and others to persuade parents to refuse to allow their children to be immunised?

Baroness Northover: Yes, the lessons from India are being carried over, and it is excellent to see that India is offering technical support in Nigeria and Pakistan. That is also where NGOs can play a part in reducing levels of suspicion about vaccination. There are a number of challenges, not least from the fact that there is a lot of conflict in the areas where there is not yet adequate take-up. However, that has been eradicated in the DRC and Somalia, so this can be done. It is a matter of making sure that we drive through and finish this particular programme.

Lord Chidgey: Does my noble friend recognise that the Global Polio Eradication Initiative currently faces a funding shortfall of up to $700 million, which is jeopardising its potential for completely eradicating polio? With vital programmes facing delay or cancellation and countries that were previously polio-free now facing the risk of re-infection, what targets are the Government setting for restoring the public/private sector global donor fund, which has now dropped to 20 members from 50?

Baroness Northover: My noble friend is right that we are concerned at the lack of engagement by some countries. This is a window of opportunity. There is a programme to try to eradicate polio by 2018. We will all be aware of what an incredible achievement that would be. We are so close. The United Kingdom has been a major donor in this area. In 2011, 9.04% of the contribution to the eradication of polio came from the UK. Gates is a very powerful player here. We are very pleased to see the Secretary-General of the United Nations convening countries to try to ensure that they are engaged, and the key ones to engage here are Nigeria, Pakistan and Afghanistan.

Lord Campbell of Alloway: My Lords, how do the Government intend to implement this proposal? As yet, that is not clear.

Baroness Northover: There is a very clear programme, which the Global Polio Eradication Initiative is taking forward. There is an independent monitoring board, the chair of which is Sir Liam Donaldson, of whom noble Lords will obviously be well aware. There is an effective strategy to deliver this by 2018 but it needs funding. Gates has been extremely effective in leveraging match funding. The United Kingdom, as my noble friend said, looks at match funding. It is important that we engage others in taking this forward, but I assure my noble friend that the programme is there.

Baroness Royall of Blaisdon: My Lords, the Minister rightly spoke of the need to ensure that there is matched funding. What are the Government doing to find and stimulate new sources of innovative finance so that state finance can be used to trigger investment from other sources?

Baroness Northover: The Rotarians might be the kind of example that the noble Baroness is thinking of. There have been a number of match-funded programmes, and we are continuing to look at developing this further. It is extremely important that it is not only the donor nations that carry this forward; there must be engagement in the countries in question. It is encouraging, for example, to see the effort that was put in in India and the current efforts in Nigeria. It is by those countries tackling this, taking ownership of it and ensuring that their communities are responding that we will eradicate this disease.

Lord Skelmersdale: For how many years does vaccination have to continue before polio can be eradicated?

Baroness Northover: One strain of polio has already been eradicated. In India, for example, the last case of polio was a number of months ago, and it will be given a clean bill of health by 2014. Vaccination has to continue for some time afterwards, as the noble Lord will appreciate, to make sure that there are no as-yet-undetected cases. That is built in to the way the programme is being taken forward to 2018.

Property: Commonhold

Question

3.01 pm

Asked By ***Baroness Gardner of Parkes***

To ask Her Majesty's Government whether they will support the development of commonhold properties by means of the guarantees to be given under the Infrastructure (Financial Assistance) Bill.

Lord Newby: My Lords, under the Infrastructure (Financial Assistance) Act, the Government intend to issue up to £10 billion of debt guarantees to support the building of both private-rented and affordable-rented homes across the UK. As commonholds typically consist of privately owned properties and given that, in any event, commonholds are relatively rare, it is unlikely that any commonhold scheme will come forward under the guarantees programme.

Baroness Gardner of Parkes: I am disappointed to hear that commonhold is unlikely to benefit. Does the Minister agree that many young people, particularly first-time buyers, would like to be empowered owners of their own homes and that commonhold is the fairest way of doing that in blocks of flats? Does he

also appreciate that this is the first time that I have had any sort of reasonable answer on housing from a different department? No matter how I table my Questions, I always get an Answer from what is now called communities—but the name changes so it is hard to keep up—no matter what the Question is. When I write to the Minister for Housing, he refers the letter to the Treasury, and the Treasury sends back a hopeless reply saying, "It's nothing to do with us". Does the Minister not think that this is a moment in history to have more joined-up government and better liaison and understanding between departments?

Lord Newby: I absolutely agree with the need for joined-up government. As noble Lords would expect me to say, on a whole raft of housing initiatives, not least in relation to the Infrastructure (Financial Assistance) Act, the Treasury and the Department for Communities and Local Government are working extremely closely together.

I understand why the noble Baroness is such a keen proponent of commonholds, but between 2002 and the present day, there have been only 15 commonhold developments in England and Wales comprising a mere 161 units.

Lord Adonis: Has the Minister seen today's *Financial Times*, which reports:

"While the government had hoped that pension funds would invest … £2 billion",

in infrastructure,

"by early next year, a year of talks has so far raised just £700 million".

When does the Minister expect to raise the missing £1.3 billion?

Lord Newby: My Lords, the initial commitment of £700 million consists of a commitment by a significant number of pension funds to put in £100 million each as a starter. We are working very hard with them to scale up the programme, but it is a new programme. Pension funds have never done this kind of thing before and, not surprisingly, they want to dip their toe in the water before they immerse themselves more fully. I am very confident that they will see this initial £700 million as an effective investment, and then they will rapidly scale it up in the way that the noble Lord wishes.

Baroness Kramer: My Lords, I declare an interest in that I am a tenant in a flat in a mansion arrangement such as that described. Surely, moving into mansion flats is very attractive for couples or individuals when they are downsizing, which therefore frees up the whole of the housing chain. Will the Minister encourage the relevant department to look at strategies for encouraging commonhold so that this move is not discouraged by the endless confusion over freehold and leasehold? Perhaps there could be talks with Core Cities to encourage developers to follow these kinds of policies as a way to make more housing available all through the spectrum.

Lord Newby: The Government and I will be very happy to make that commitment. The problem with commonhold is that virtually no one knows what the word means. Since being asked this Question, over the past week I have asked a number of housebuilders and senior chartered surveyors whether they thought that it was a good idea. More than half of them said that they did not know what it was. There is a big education job to be done.

Very often the management of mansion blocks is by a management company in which each leaseholder has a share. At their best, they can work very effectively and are almost identical to commonhold, but clearly there are ways in which we can improve how those blocks are managed.

Lord Barnett: My Lords, does not the noble Lord appreciate that there is a major need for large infrastructure plans to be implemented now? Industry has made quite clear that guarantees are not sufficient. They want some Treasury cash. Why is the Treasury not willing to introduce just a little cash to implement these plans?

Lord Newby: Our experience is that everyone wants some Treasury cash but, sadly, they cannot all have it. It may be of some comfort to the noble Lord to know that in the past quarter, housing starts were up 18% over the previous quarter. In terms of social housing, housing association starts were up almost one-quarter.

Lord Myners: My Lords, will the Minister explain the circumstances in which it would be cheaper for the taxpayer for infrastructure to be financed with the use of a Treasury guarantee than for that same expenditure to be funded directly by the Treasury?

Lord Newby: My Lords, the noble Lord is making a classic error to assume that there is an endless pot of Treasury money for use in infrastructure expenditure. As he knows only too well, guarantees do not feature as public expenditure unless they are called in. Our expectation is that the 70 expressions of interest we have had so far under the Infrastructure (Financial Assistance) Act are all extremely viable schemes and that the guarantees will not be needed.

Electoral Registration Data Schemes (No. 2) Order 2012

Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012

Charitable Incorporated Organisations (Consequential Amendments) Order 2012

Motions to Refer to Grand Committee

3.08 pm

Moved By ***Lord Wallace of Saltaire***

That the draft orders and regulations be referred to a Grand Committee.

Baroness Royall of Blaisdon: My Lords, I rise on an allied matter to the Electoral Registration Data Schemes (No. 2) Order 2012. Perhaps I may ask the Minister to update the House on when it will be able to consider the second day in Committee of the Electoral Registration and Administration Bill.

The Chancellor of the Duchy of Lancaster (Lord Strathclyde): My Lords, the Bill is not on the Order Paper or in *Forthcoming Business*. Therefore, I have nothing more to add to announcements that I have made in the past.

Baroness Boothroyd: My Lords, I was not able to be in the House when this matter was raised recently but, of course, I have read the exchanges and the related documents. I hope that the House will allow me to put a few comments on the record.

During my time as Speaker, I worked with three Clerks of the Commons. I believe that I had their great respect and support. They certainly had mine. If there was any success in that Speakership, much of it was due to their support and advice. Much of the time, the Clerk and I were as one with the way in which we should proceed. But, if I recall correctly, there were a couple of occasions when I overruled that advice. The decision was a very difficult one, taken against considerable professionalism and precedence. But I took it in what I believed to be in the best interests of the democratic process, and to provide debate on a contentious issue of public interest and concern—and the roof did not fall in.

For us, of course, there is no Speaker here to make that ultimate decision. We all know what the *Companion* tells us; it has been repeated many times recently in this House. But by its very nature, it is advice that is offered to us and it is only advice; it is only expected to be taken. It is not a command, nor is it written on tablets of stone. I put it to the Leader of the House that, as there is no individual in this House to make the ultimate decision, is it not for your Lordships' House to make that final decision? Certainly, such a decision and the order of the business of this House should not rest with the Leader nor with the Opposition, nor should it rest with any other individual who does not carry the authority to do so.

We are an integral part of the democratic system. The way in which your Lordships conduct their business is a matter for the House itself. I concern myself at this stage not with the substance of the amendment itself, or its merits or demerits, but with the question of admissibility. That is the principle question. Should this House not initially deal with the question of admissibility? I accept that it would be difficult to do so without discussing the substance, but it would not be impossible. Of course, following a decision on the principle, the substantive amendment would then either fall or be dealt with in the usual matter. That is surely the common-sense way of approach.

We are constantly being reminded that we are a self-regulating House. Let that be demonstrated, and let us carry out that self-regulation and operate the democratic process that we are here to perpetuate, for goodness' sake.

Baroness Royall of Blaisdon: My Lords, I am sure that the whole House will be interested in the comments made by the noble Baroness, Lady Boothroyd, and I look forward to the Leader's response to what she has said. I thank him for his earlier reply.

It is now a full fortnight since the Government told your Lordships' House that they had not concluded their considerations on the issues in relation to the amendment tabled by the noble Lords, Lord Hart of Chilton, Lord Kerr of Kinlochard, Lord Rennard and Lord Wigley, to the Electoral Registration and Administration Bill. On that occasion, the noble Lord, Lord Howell of Guildford, asked the proposers of the amendment to see whether they could try to find an amendment which would be considered to be admissible. I was grateful to the noble Lord for his suggestion. It is my understanding that those who propose the amendment stand by the merits of their amendment and its admissibility. But in order to go the extra mile, and to respond to a reasonable request from the noble Lord, Lord Howell of Guilford, they have indeed given consideration to the suggestion. I understand that they have been in further detailed discussions with the clerks, and have sought further legal advice from Queen's Counsel to see if there is an alternative way forward. I understand that their efforts to do so are continuing. These actions show that they have shown, and are showing, their readiness to be reasonable, and to leave no stone unturned on this issue, as I believe the House would want them to do. That is the right attitude and the right approach.

The Government should conclude their considerations and bring this Bill back to this House. As the noble Baroness suggested, they should let this House—this self-regulating House—decide what it wishes to do in relation to this amendment and get on with its job, its constitutional role, of scrutinising legislation, however uncomfortable that might be for the Government.

3.15 pm

Lord Strathclyde: I assure the noble Baroness that the Bill will not progress without the full scrutiny of this House. As I said earlier, the Government have not reached final conclusions on their deliberations but I am glad that there has been this short pause. As the noble Baroness has just informed the House, the pause has given an opportunity to those most eminent Members of this House to explore with the clerks whether the amendment can be made admissible. That is entirely the right approach. It would be strange and unfortunate if we were to break the precedence of many years and for this House to accept an amendment decreed as inadmissible by the clerks.

Perhaps I may be the first to welcome back the noble Baroness, Lady Boothroyd. It is a pleasure to see her in her place and to hear her speak with such eloquence once more. It is one of the great advantages of this House that those with pretty much an entitlement to sit in this House are former Speakers of the House of Commons. With the noble Baroness and the noble Lord, Lord Martin of Springburn, we have the best examples of those who have sat in that illustrious Chair in another place, both giving their views on the advice they received and what they did with it when they were Speakers of that House.

There is also another wonderful thing, which is that the House of Commons is the House of Commons, the House of Lords is the House of Lords, and this House has developed different processes and procedures. While we are a self-regulating House, it is not a self-regulation of anarchy; it is self-regulating within the rules. Perhaps I may conclude by repeating once again what the noble Baroness, Lady Jay of Paddington,

said on a very similar occasion a few years ago, when she was Leader of this House. She said:

"It is a consequence of our procedures that the House has collective responsibility for observing these procedures and that all Members of your Lordships' House therefore need to co-operate to see that procedures are observed".—[*Official Report*, 20/4/99; col. 1112.]

She was quite right.

Lord Grocott: My Lords, I have been listening carefully to the Leader of the House and he has not clearly informed the House of the position in relation to this Bill. It is not unheard of for Bills to be abandoned during the course of a normal parliamentary Session; indeed, I am delighted that the Government decided to abandon the House of Lords Reform Bill. When they abandon a Bill, they normally make a clear statement to the House on their intentions. However, at the moment, we are getting very mixed messages from the Government. Whenever his counterpart, the Leader of the House of Commons is asked about the position in relation to this Bill, he states clearly—and procedurally he is right—that it is now a matter for the House of Lords. Thereby, the Bill is within our ownership and the Commons can do nothing about it until we have considered it and taken it through its proper stages. The noble Lord said during his reply that there was to be a "short pause". The House is entitled to have at least some indication from the Leader of what he means by that.

Lord Strathclyde: First of all, to avoid any doubt because it is important to be clear, I can confirm that the Bill has not been abandoned; it has been postponed. When the Government have come to a conclusion that it should continue, the House will be informed in the normal way, either on the Order Paper or in an edition of *Forthcoming Business*. However, I can lend some comfort to the noble Lord, Lord Grocott. Although the current edition does not propose a date for the Bill, it includes plenty of other government business that we can get on with.

Baroness Royall of Blaisdon: My Lords, I do not wish to prolong this, but I wish to say—because the Leader keeps quoting my noble friend Lady Jay in our exchanges, and I fully respect what my noble friend said when she was a very fine Leader of this House—that it is ultimately for this House to decide on the admissibility of an amendment, because this House, ultimately, is self-regulating.

Motions agreed.

Green Deal Framework (Disclosure, Acknowledgment, Redress etc.) (Amendment) Regulations 2012

Electricity and Gas (Energy Companies Obligation) Order 2012

Motions to Refer to Grand Committee

3.19 pm

Tabled by ***Baroness Verma***

That the draft order and regulations be referred to a Grand Committee.

Lord Gardiner of Kimble: My Lords, with the leave of the House, I beg to move the two Motions standing in the name of my noble friend on the Order Paper en bloc.

Motions agreed.

Justice and Security Bill [HL]

Report (1st Day)

3.20 pm

Clause 1 : The Intelligence and Security Committee

Amendment 1

Moved by ***Lord Campbell-Savours***

1: Clause 1, page 1, line 5, leave out "body" and insert "Select Committee of Parliament to be"

Lord Campbell-Savours: My Lords, I hope that Members, wherever they are in the Palace of Westminster, will make a point of listening to this debate as it is a very important one and raises an issue which has been under continuing discussion, certainly in the House of Commons but outside it as well, over the past 14 years. The issue is very simple: the Intelligence and Security Committee—the ISC—which comprises Members of the Commons and of the Lords and which monitors the agencies responsible for national security, is to be reorganised. The Government propose that it should comprise a committee of parliamentarians constitutionally detached from Parliament: that is, an arm's-length committee.

My Amendment 1 proposes full Select Committee status for the ISC, thus enabling it to enjoy the absolute protection of privilege conveyed under Article 9 of the Bill of Rights 1689. Amendments 2 and 4 in the next group in the name of the noble Lord, Lord Butler, seek to graft on to the Government's arm's-length committee proposal all the rights and privileges of a full Select Committee. The Government claim that they can do this under some highly controversial statutory provision which lawyers believe could be overturned in the courts.

The issue for the House today is simple: why is there all this ducking and weaving by the Government to avoid giving the ISC full Select Committee status, which is what my amendment seeks to do? The noble Lord, Lord Henley, who was the Minister when these matters were considered in Committee, argued that the Government's proposal for the arm's-length committee was to ensure that safeguards are in place to protect against the disclosure of sensitive information, retain a statutory ability to prevent publication of sensitive material, ensure that the most sensitive material can be withheld from the committee and to ensure that safeguards exist so there is adequate provision for those exceptional circumstances where the disclosure of information even to the chairman would be damaging to national security. I find that quite remarkable. The Government also seek to ensure that, as regards appointments to that committee, there is little risk of unauthorised disclosure. I argue that all these safeguards

[LORD CAMPBELL-SAVOURS]
are fully and equally available under Select Committee status without any potential challenge on parliamentary privilege.

There are three issues to be considered: the confidence of the public in the new arrangements; the practicality in terms of protecting national security; and, finally, privilege itself. On the confidence of the public I can do no more than quote the very wise words of the noble Lord, Lord Deben, in Committee. He said:

"The issue is the confidence of the public in this committee".

He added:

"The advantage of a Select Committee is primarily that it is something that people know and it has, over the years, established a position, as a concept, of independence".

He asked:

"Is it not better to use the strength of the Select Committee process and procedure and, above all, of public understanding rather than to try to create something special?—[*Official Report,* 9/7/12; cols. 925-6.]

I could not put it better myself.

On practicality, my amendments provide a choice. We could put this whole arrangement into statute with the consequential deletions of Clauses 1 to 4, or we could proceed by way of a series of parliamentary resolutions, which is my preferred option. Let me explain.

I believe that Parliament could carry resolutions that would make the committee as hermetically sealed as the structure that currently exists. We are told that such a committee could not be prevented from taking evidence in public session. In response, I argue that a resolution of both Houses could introduce a general prohibition on the Select Committee taking evidence in public. It could further place a requirement on the committee to seek the permission of the appropriate agencies and the Prime Minister in conditions of dispute. As prime ministerial appointees, members are currently responsible for reporting collectively to the Prime Minister. It is argued that such limited powers to report would not be possible if the committee were appointed by the legislature. There is no reason why the resolutions of both Houses should not stipulate the procedure to be used in the publication of reports. They could require the committee to publish its report subject to sidelining by the Prime Minister, as happens today, for reasons of national security. A resolution of both Houses could require that the committee sought the approval of the appropriate agency before reporting to the House. The resolutions could further provide that, in the event of a dispute arising between the agency and the committee over reports to the House, the matter could be referred again to the Prime Minister and the committee could be required to comply with his or her decision.

It is argued that although a Select Committee is neither more nor less likely than the ISC to leak, as a Select Committee it would have the right to publish reports in a way that could prove prejudicial to the interests of national security. A resolution of the House could introduce in response to that problem: a general prohibition on the Select Committee publishing reports without approval. It could further place a requirement on the committee to seek the permission of the appropriate agency and the Prime Minister in conditions of dispute. Safeguards would be available for every eventuality in the event that it were to be created a full Select Committee of Parliament. If, in unforeseen circumstances, the committee, or any member of it, threatened to breach the committee's rules and procedure, as agreed by the House in resolutions, it would always be open to the Leader of the House, on the instructions of the Prime Minister, to dissolve the committee or remove any member of it on a resolution, if managed with caution.

It is also argued that a move to a parliamentary arrangement could lead to greater pressure on Ministers to be accountable as witnesses with less emphasis on agency heads giving evidence. The argument is not supported by an examination of practices in some of the other committees of the House. All that is possible by way of resolutions in the House of Lords and House of Commons. I also argue that the committee needs increased powers to call persons and papers and to communicate with other committees. There are times when the information that comes before the committee should, in certain circumstances, be referred to other Select Committees, but, of course, with the permission of the agencies.

The ISC also needs the power to take evidence under oath. Select Committees have that power. It would not take all evidence under oath but it should at least have the power to do so. As I say, Select Committees have that power but the ISC does not. Without going into any details, there are times when the committee, if assurances were given under oath, might have the confidence, with the approval of the Prime Minister, to make statements that would be extremely helpful during the course of public debate and in the exercise of reassuring public opinion, which in my view is a very important consideration. Again, all is possible by way of parliamentary resolution or statute, if that be the will of Parliament.

To nail my case to the mast, I call in aid the wise words of that old parliamentary sage, the former clerk of the House of Commons, Mr W R McKay, who, in a letter to me of 21 July 1998—14 years ago—told me:

"You asked for my comments on the attached paper about a possible Select Committee on Security and Intelligence. The general premise in the paper, that select committees are creatures of the House is correct, and the House may, either in the committee's order of reference or by instruction, require a committee to sit in private or to take evidence or report in a particular manner. Thus the House could, if it so decided, require a committee to obtain the consent of an external body (you suggest the Prime Minister, or a relevant agency) before publishing particular evidence or, conceivably, before publishing a report … the interpretation of the order of reference of a select committee is a matter for the committee itself to decide".

He quotes page 633 of *Erskine May*, the 2012 edition of which is updated on page 635—I checked this morning. He then sets the precedents for such a committee, going back to 1837: to name but a few, the Joint-stock Banks Select Committee of 1837, the National Expenditure Select Committee of 1939-40, and the Special Commission on Oil Sanctions of 1978-79. This is a former clerk to the House of Commons indicating to me that this is possible

3.30 pm

The remaining and perhaps most important issue is privilege, which I have been discussing with the Minister outside the Chamber and in it. My proposals under Amendment 1 automatically carry with them the defence of privilege. The Government's alternative approach—supported by the noble Lord, Lord Butler—for an arm's-length committee established under statute does not enjoy any form of parliamentary privilege. The noble Lord, Lord Butler, argues that by adding the words "of Parliament", the committee can be seen as a servant of Parliament. He then quotes three examples: the Ecclesiastical Committee of Parliament, the Public Accounts Commission, and the Speaker's Committee on the Electoral Commission. I can now add two more to his list: the Speaker's Committee on the Independent Parliamentary Standards Authority—IPSA—and the House of Commons Commission itself. All are creatures of statute. None attracts any measure of protection under Article 9. These are not my words, but the words of the current clerk of the House of Commons in a letter to me last week, which he gave me permission to quote in this Chamber.

The Government are effectively seeking to cross that line. Article 9 is absolutely clear:

> "The freedoms of speech and debate of proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament".

The proceedings of these arm's-length committees which I have quoted and those of the committee proposed by the Government are not proceedings in Parliament. It would be misconceived, an abuse, and wrong for them to acquire Article 9 protection. Statutory committees are a breed apart: they are outside bodies and one cannot just hand out the protection of privilege—an historic parliamentary right—as if it were confetti. The proposition that parliamentary privilege be applied by statute to the Intelligence and Security Committee is something which I personally view with deep concern if it is to be done under the arrangements being proposed by some both inside and outside this Chamber.

I do not doubt the ability of Parliament to legislate to apply parliamentary privilege. However, I believe that this would be misconceived. Privilege is not a kind of stardust which can be sprinkled on outside bodies; it attaches naturally to Parliament and the committees which it appoints directly. Furthermore, a new statutory provision might well encourage the courts to intervene in the application of parliamentary privilege: for example, to define what is and is not a parliamentary proceeding. This would have implications for the whole committee system in both Houses. While a court might have no difficulty in deciding that evidence formally given or a report made by a committee was covered by privilege, what about briefing material prepared by the staff for an evidence hearing, or visits or letters from the chair to members of the committee? We have no guarantee of the protection of privilege in these circumstances.

It might be said that over the years there has been little opportunity for the courts to decide on such matters, but in practice that is wrong. The House of Commons authorities intervene in a significant number of cases where the parties propose to rely on what we judge to be parliamentary materials. If the ISC were to be statutorily privileged, it, too, would need to intervene—or intervention would need to be made on its behalf—to avoid the point at issue being dealt with by default. Of course, the Commons' intervention would not be to assert Article 9 but to assert a new, highly controversial statute and privilege that the Government might be considering.

It is only too easy to challenge these matters in the courts—as we have experienced over the years. We all agree that the ISC needs the protection of privilege. The issue is how we do it. I appeal to the House that if we are to do it, we should do it properly. I fear that there will be a last-minute attempt, on a whipped vote in the Commons, perhaps on a Thursday afternoon when they have all gone home, to graft on to the Bill some statutory provisions covering privilege, or some means of protecting the ISC. All that will do is lead to future problems in the courts. Let us sort this out here today. I beg to move.

Lord Butler of Brockwell: My Lords, the Intelligence and Security Committee has considered very carefully the amendments tabled by the noble Lord, Lord Campbell-Savours, to which the Opposition have given their support. As he said, they have some advantages. The committee is as enthusiastic as anybody about displaying the fact that it is a servant of Parliament and not just of the Executive. As the noble Lord said, if the committee were to become a Select Committee, that would automatically confer the protections that it needs to protect its proceedings in the interests of national security. However, I regret that, for reasons that I will explain, we cannot recommend that the House goes down the avenue that the noble Lord has recommended. We believe that the objectives can be achieved in other ways.

There is no difference in the House about the requirements that we need. We want to demonstrate that the Intelligence and Security Committee is a servant of Parliament. We all agree that on most occasions its evidence will need to be taken in private. We all agree that there will have to be safeguards in relation to appointments to the committee, and that both the evidence and the witnesses need protection from judicial intrusion or from the Freedom of Information Act 2000. There must also be safeguards against the committee inadvertently compromising national security in its published reports. There is no difference between us on any of these matters. The only question is how they should be achieved.

The noble Lord, Lord Campbell-Savours, would like the committee to become a Select Committee of Parliament, which would automatically confer privilege. He also wants the safeguards that I mentioned to be protected and conferred by parliamentary resolution. Safeguards secured by such resolution would confer privilege but would not automatically protect the proceedings of the committee from the Freedom of Information Act. As I understand it, if such protection from a Freedom of Information Act request is to be given, it has to be considered by, and depends on a certificate from, the Speaker. I see that the noble Lord is nodding his head at that.

[LORD BUTLER OF BROCKWELL]

That illustrates the difficulty. The noble Lord is recommending that the safeguards for national security in the proceedings of the Intelligence and Security Committee would no longer be a matter for the Executive but would be protected by a resolution of Parliament. In other words, responsibility for protecting national security would be transferred to Parliament, but I submit to the House that that is objectionable in principle. The Executive cannot surrender their responsibility for protecting the work of the intelligence agencies and national security. That, in the last resort, must be a matter for the Government. That is the fundamental objection to the noble Lord's proposal.

There is another objection. There can be circumstances in which the Government ask the Intelligence and Security Committee to inquire into a very secret matter in order to satisfy the Government that the intelligence agencies have not been behaving wrongly. That is not something that a Select Committee could be used for. That sort of secret request, where something needs to be looked at in confidence, is not something that the Executive could require a Select Committee to do on their behalf. The Intelligence and Security Committee simply would not be able to fulfil the functions that it needed to fulfil if it became a Select Committee of Parliament. I say that with regret, because there are many advantages to that route.

The noble Lord made a big point of saying that to proceed by way of giving the Intelligence and Security Committee—a committee created by statute—parliamentary privilege has disadvantages. I acknowledge that. When it comes to my amendment, which seeks to confer the advantages of privilege on the Intelligence and Security Committee, I acknowledge that point and I will not be pressing that way of doing things. But of course it is perfectly possible, and indeed more desirable, to put those protections in the Bill without any reference to parliamentary privilege at all. That would overcome the objections that the noble Lord has legitimately raised. I suggest to the House that that is the better route.

For those reasons, I regret that I and my noble friend Lord Lothian, who regrets that he cannot be here today, and the Intelligence and Security Committee cannot advise the House to take the route that the noble Lord has proposed.

3.45 pm

Baroness Taylor of Bolton: My Lords, I rise to speak with some hesitation because I have not been able to take part in these debates previously. However, I feel as a former chair of the Intelligence and Security Committee that I should echo some of the concerns that the noble Lord, Lord Butler, raised, particularly what he said about the Executive not being able to surrender responsibility for security.

On the other hand, I very much agree with what my noble friend Lord Campbell-Savours said about the importance of privilege for the Intelligence and Security Committee and I am not entirely convinced that this can be solved in any other way. I have a dilemma. There are conflicting things that we are all trying to do. We are trying to make the Intelligence and Security Committee as effective as possible. I am not convinced that a Select Committee would in any way be more effective. I think that the current arrangements work rather well, but I am struck by my noble friend's desire to increase confidence on the part of the public in that committee and I know that that is what he is trying to do.

However, he has not gone into the practicalities of a Select Committee on this occasion as he has done on others. For example, every member of the House of Commons can attend a Select Committee, so the normal rules could not apply there. The practicalities of location could be met, I am sure. I am left with this dilemma because I do not think there is any way in which the Executive can give up their responsibility. I am not sure about the mechanisms that have been mentioned—for example, the Speaker giving authorisation—and I am worried about freedom of information, although I am worried about freedom of information on a raft of issues and not only on this one.

There are two groups of amendments and, in a sense, we are going on to the next group, which relates to parliamentary privilege and is absolutely essential to the issue of whether we need to go down the path of a Select Committee. My noble friend thinks however, that if there were to be a Select Committee as he envisages, with all the complications that exist, it would increase the confidence of the public. On the first occasion on which the ISC, as a Select Committee, refused to give information or agreed to redactions that people then probed and it was not able to give answers, the Select Committee would be criticised just as much as the ISC has been in the past. I hope that my noble friend will resist the temptation to raise expectations about any increase in accountability or transparency were this committee to become a Select Committee of the House because I do not think that it could function in that way.

Many of us who have been involved worry that the agencies took a little time to come round to giving information when the ISC was first established—I see the noble Lord, Lord King, who was chair at that time, nodding in agreement—and we could suffer a setback if this committee became a Select Committee. It might be recoverable, but we would have to re-establish a system of confidence once again. I hope my noble friend will not raise expectations that this would suddenly mean more accountability and transparency. The one issue that concerns me is making sure that the ISC has all the protection that it needs.

Lord King of Bridgwater: My Lords, the House is getting a surfeit of chairmen, members and former members of the ISC and I am delighted to follow the noble Baroness. She followed directly after me—I think that is right, if my memory is correct—and the noble Lord, Lord Campbell-Savours was a very diligent member of the committee during part of the time when I was chairman. I would like to welcome a promising new young member of the ISC in the shape of the noble Lord, Lord Butler—who, very unusually, has sat on both sides of the fence, as one might say, and speaks with all the authority of seeing it from both sides.

I respect the approach that the noble Lord, Lord Campbell-Savours, has taken. He has the credit of

holding this view continuously for a considerable number of years and has pursued it very diligently, as is clear from the speech he has made in your Lordships' House today and the detail into which he has gone. I am on record as saying that I have seen the evolution of this committee progressively over the years. The noble Baroness, Lady Manningham-Buller, made exactly the point that it was bound to evolve, has evolved, is continuing to evolve and will evolve in the future. The question that faces your Lordships today is whether we should now take a further major step forward and recommend it that it should go straight to a Select Committee.

I am very disappointed that the noble Lord, Lord Campbell-Savours, has tabled Amendment 1 because I thought the previous feeling of the debate in Committee was that it was right to consider Amendment 2—which had previously been Amendment 1—the proposal of the noble Lord, Lord Butler, and then, in the light of what the House thought about that, to move to the amendment of the noble Lord, Lord Campbell-Savours. The noble Lord is a very astute parliamentarian and his Amendment 1, if I may say so, is entirely a device to get in at number one, because if the House was to vote for it his subsequent amendments would abolish it. If the House agreed to Amendment 3, it would delete the clause in which he had just carried Amendment 1. It would then delete all the clauses that apply to the ISC. That, of course, is the position. He is saying that nothing should be set up under statute and therefore you do not need anything in this Bill about the ISC. You pass the responsibility for creating the appropriate committee over to the authorities in the House of Commons with the support of this House. We do not have the opportunity to consider the alternative approach yet, although the noble Lord, Lord Butler, has given us a good snapshot of what the House might be interested in doing.

There was common agreement in Committee that it is absolutely vital that the committee develops, as it has progressed significantly beyond the 1994 Act which limited its powers and responsibilities simply to the Secret Intelligence Service, the Security Service and Government Communications Headquarters—GCHQ. In those first few years, we extended progressively into the assessment staff in the Cabinet Office, the JIC organisation and the Defence Intelligence Staff. I brought in the NAO to oversee the finances and produce reports on financial aspects on which we needed further advice. We also took in evidence on police activities, including in the area of serious crime, and a whole series of different things which spread its range. I would like to think that, under successive memberships of the committee, it has commanded significant public confidence. Indeed, I remind noble Lords that it has been going for 18 years and I do not think there have been any serious allegations of leaks. There might have been, if not a nod, perhaps a suggestion of one, but I have to say that over the period there have been significantly more from the intelligence agencies, which are meant to be distrustful of our ability as parliamentarians to contain secrets. On this occasion I will not go into the details of Mr Shayler and Mr Tomlinson, both people who did not give great service to our country in particularly difficult times.

I did not realise that the noble Lord, Lord Butler, was going to mention this, but there is a role for the ISC that is quite outside Parliament, in the sense of being mandated by it, on which the Government did come to the committee. The Home Secretary at the time, Jack Straw, rang me and said, "We have a problem. Some very serious allegations are being made and it is not going to be dealt with simply by us issuing denials that they are true. Will the committee undertake to investigate the allegation of a failure by the Security Service in connection with the Secret Intelligence Service to root out serious Warsaw Pact Soviet espionage?". If people do not know what I am talking about, it got into the tabloids as the "granny who came in from the cold". A KGB archivist, Mr Mitrokhin, provided the most amazing fund of top secret intelligence. Having been turned down by the United States—I think he went to the US embassy in Vilnius, although at the time all sorts of people were turning up at US embassies, so they said that they had too many of them—but fortunately a suitably intelligent British agent spotted the potential value of the archive. It was top secret stuff and I said that we would undertake the investigation only on the condition that we had access not as circumscribed in the Act but to any secret information that was in any way relevant to the case. We took full evidence, including from Mr Mitrokhin himself, and many noble Lords will have seen the outcome of that. The report showed that although one or two mistakes were made, the more serious allegations against the intelligence and security agencies were not justified. I like to think that that report, from an all-party committee drawn from both Houses, investigating an absolutely top secret matter, commanded considerable public confidence.

It is important that this committee commands public confidence in this country. As the Foreign Secretary says in his article in the *Times* today—more in connection with Part 2 of this Bill—it is important, too, for this committee to have a role in maintaining international confidence. As a country, we depend enormously on our intelligence agencies and what they produce, but also considerably on a whole network of alliances of intelligence agencies. The difficulties of the world at present are such that one cannot be sure from where the next challenge, terrorist threat or any other sort of threat, such as that from organised crime, might emerge. We must maintain international confidence that our intelligence agencies and parliamentary oversight procedures are secure to the standards that our allies would expect for information that may be extremely sensitive as far as they are concerned.

As the noble Lord, Lord Campbell-Savours, made clear, that background is such that, whatever we come out with here, it cannot be an ordinary committee. The noble Lord, Lord Campbell-Savours, wants to abolish the ISC as it stands under statute and just create a select committee. He then, very properly, includes a whole range of extra requirements that would have to be added to a select committee for it to operate in this way. He very confidently said that all the necessary safeguards would be available. However, I do not know what authority he has for saying that, as it will be a matter for the House to decide which of those safeguards it wishes to impose. That is why the point

[LORD KING OF BRIDGWATER]
made by the noble Lord, Lord Butler, is surely right: the Government cannot surrender or pass over responsibility for national security. The Government must maintain that responsibility; our duty in Parliament is to hold them to account for how they discharge that responsibility.

I wait to see whether the Minister can help us on the legal point made by the noble Lord, Lord Butler. We have managed to stumble along for 18 years without getting too worried about the issue of privilege, but it now seems to be becoming much more of a concern that we should have that protection, if it is necessary. Why can it not simply be put in the Bill and made quite clear what that privilege protection is? That would seem to be an entirely satisfactory way to deal with it.

A number of complications arise, whichever route we take. When the noble Lord, Lord Henley, summed up the debate in Committee on this point, he made clear that the Government would go away and reflect on the comments that had been made. We were privileged at that time to have the noble Lord, Lord Carlile, here, who, as your Lordships will know, of course has considerable experience in the security field with the responsibility that he had. He said that he respected and welcomed what the noble Lord, Lord Henley, had said and that he would wait to hear the Minister's conclusions when he came back—we welcome the noble Lord, Lord Taylor, who has now taken over that responsibility—but he did not actually, as the noble Lord, Lord Campbell-Savours, knows, support the Select Committee route. I do not support it at this stage either but do support the steps that need to be taken. I think the noble Baroness and I are pretty much in step on this: we should ensure that the committee is recognised to have as parliamentary a status as is possible, while retaining for the Executive the overall responsibility for national security and ensuring that the ISC—which I would like to think has made a reasonably promising start—can continue to evolve and serve the nation as it has sought to do in the past.

4 pm

Baroness Smith of Basildon: My Lords, this has been an extremely interesting debate, as was the debate we had in Committee. I am at something of a disadvantage—or perhaps it is an advantage—as the Minister and I are the only speakers in this debate who have not been members or indeed esteemed chairs of the ISC. I think I heard the noble Lord, Lord King of Bridgwater, say, "Good"—I hope it is.

I support the amendments tabled by my noble friend Lord Campbell-Savours, and I will explain the reasons why. I join the noble Lord, Lord King of Bridgwater, in paying tribute to my noble friend Lord Campbell-Savours because the way that he has brought forward this argument today does the House a great service.

In Committee, many Members of your Lordships' House, who have had a lifetime's experience of these matters, proposed a number of different ideas for reform of the Intelligence and Security Committee, ranging from the designation of parliamentary privilege through to issues such as public hearings. What was striking in that debate—and is again today—was that there was an overwhelming consensus on all sides of the House that the Bill could be significantly bolder. It has been evident throughout the debate that there is some dissatisfaction with the Government's approach. Your Lordships' House does not feel that what is before it today adequately addresses some of the concerns raised in Committee.

We fully support the Government's stated aim, which is, as the noble and learned Lord, Lord Wallace of Tankerness, said at Second Reading,

"improved parliamentary and independent oversight of the security and intelligence agencies".—[*Official Report*, 19/6/12; col. 1661.]

What we have in Part 1 of the Bill, as illustrated by this and the next group of amendments, is a missed opportunity. In Committee, we discussed a range of different options for strengthening the independence of the ISC beyond what is proposed in the Bill. What emerged were two different blueprints for achieving pretty much the same aims and objectives. First, the noble Lord, Lord Butler, and the noble Marquess, Lord Lothian, two distinguished members of the committee, proposed an arrangement along the lines of existing parliamentary committees established by statute, such as the Ecclesiastical Committee, the Public Accounts Committee, the Speaker's Committee for the Independent Parliamentary Standards Authority, and the House of Commons Commission. The committee as envisaged would have the independence and powers afforded by being a creature of Parliament rather than the Executive, but would retain the security of checks and balances provided for in statute. The second way forward, proposed by my noble friend Lord Campbell-Savours, seeks to establish the Intelligence and Security Committee as a fully fledged Select Committee of Parliament, having all the privileges attached to that arrangement, but with safeguards or restrictions provided through resolutions of Parliament rather than statute. I think my noble friend Lord Campbell-Savours used the phrase "hermetically sealed".

However, both these blueprints are seeking to achieve the same end point. They are both seeking a concept of the ISC as a creature of Parliament rather than the Executive; independence that is recognised by the public but still guarantees the absolute security of sensitive information disclosed to the committee; and maintaining the good relations and trust that have been established with the agencies. It seems that the choice between the two concepts is one less of principle and more of practicality: which proposal will best achieve this end? My noble friend Lord Campbell-Savours and the noble Lord, Lord Butler of Brockwell, have both confirmed that they are seeking to achieve the same ends.

As my noble friend Lord Campbell-Savours has already stated, chief among the advantages gained by being a parliamentary Select Committee is parliamentary privilege. This would grant the ISC, among other things, protection of members and witnesses by parliamentary privilege, which encourages free disclosure within the secure confines of the committee; the power to take evidence under oath; and the power to hold witnesses in contempt for deliberately misleading the committee.

I have listened carefully to my noble friend's arguments about the designation of parliamentary privilege, and in Committee we debated and supported amendments moved by the noble Lord, Lord Butler, and the noble Marquess, Lord Lothian, to grant the ISC parliamentary privilege by amending the Bill of Rights. Indeed, I have attached my name to similar amendments in the next group, because I fully support the ISC obtaining parliamentary privilege. However, if, as my noble friend Lord Campbell-Savours, has compellingly argued today, there are serious problems with seeking to designate privilege in this way, it would appear that a Select Committee arrangement is the only option that would satisfactorily guarantee the committee these powers. The notion that privilege, if gained in the way that has been proposed by the noble Lord, Lord Butler, and the noble Marquess, Lord Lothian, may be struck down by the courts, which I am absolutely clear is not what they are seeking, is hugely concerning. If witnesses and members of the committee had given evidence to that committee under the assumption that they had immunity, only later to have that immunity revoked, it would have huge implications for the work of the committee. The absolute and total guarantee of parliamentary privilege is therefore a compelling reason to support the ISC's move to full Select Committee status.

The question then rests on whether a Select Committee arrangement could be relied on to act in a way that absolutely guaranteed, without qualification, the protection of our national security. The Opposition would support the establishment of the ISC as a Select Committee only where such a guarantee could be satisfied. Under no circumstances should any change in the structure of the ISC result in sensitive information being disclosed that could put at risk our national security or the safety of intelligence sources or operations. Restrictions or safeguards on the committee's powers could include a number of areas—we have heard of some of them today—and others that may be agreed by Parliament. For example, the Prime Minister could veto the publication of material by the committee for reasons of national security; proceedings of the committee could be closed to the public unless agreed by the Executive and/or provided for under its own terms of reference, such as annual public hearings of the heads of the agencies; there could be an executive prerogative to instruct the Leader of the House to dissolve the committee or to remove one of its members by a resolution of Parliament; or there could be a veto or agreement of a nomination to the committee. I use those just as examples— there will be others that I am sure will occur to your Lordships, particularly those who have been members of the ISC—but providing for such safeguards in legislation, as in the Bill before us, is perhaps the clearest way of ensuring that they are met.

In Committee, the noble Marquess, Lord Lothian, argued against a Select Committee structure on the basis that it would necessitate public evidence sessions. He rightly said that,

"there are many occasions when to attempt to take evidence in public would create an even less high regard for the committee that it maybe has at the moment, because questions would be answered by the agency heads with the words, 'We cannot answer that question'".—[*Official Report*, 9/7/12; col. 923.]

I completely agree with the noble Marquess on that point. In the majority of cases, the committee must sit in private. To do otherwise would not only damage the reputation of the committee, as I have said, but, most seriously, undermine its core function of effective oversight over the intelligence services. However, as has been argued by my noble friend, the mechanism by which Select Committee powers and terms of reference are constituted are sufficiently flexible conceivably to provide for any one of those concerns.

I understand from my noble friend Lord Campbell-Savours that he has it on the authority of clerks of both this House and the other place that Parliament may, either through the committee's order of reference or by instruction, specify the terms under which the committee may sit, may take evidence and report, including requiring the consent of another body including the Government. Indeed, there are already known precedents for such restrictions. The Defence Select Committee already holds evidence sessions in private in order to hear classified and national security-sensitive information. For its recent report on maritime surveillance, published in September this year, it held part of its first evidence session in private. As my noble friend has indicated, there have been instances in the past where the House has resolved that a committee report to the Prime Minister and it may even be precluded from publishing certain material on the grounds of national security. Given those assurances, a Select Committee arrangement would both guarantee the ISC parliamentary privilege and ensure the necessary safeguards for our national security.

My understanding is that, if the House were today to pass my noble friend's amendment and the Government accepted the will of your Lordships' House, the Government could seek to withdraw Clauses 1 to 4 of the Bill in the Commons and then issue a statement that they would seek agreement through a resolution of the House to establish the ISC as a Select Committee of Parliament. If the Government and the Opposition were unable to reach agreement over the terms of such a resolution—including all the necessary safeguards that I have referred to and others—then presumably the ISC would continue under its present arrangements.

We have heard a compelling argument from my noble friend Lord Campbell-Savours that it is not possible to designate a body of parliamentary privilege such as the ISC simply by amending the Bill of Rights or by other statutory means. If this is indeed correct, it is undeniably a compelling reason for pursuing the Select Committee route rather than the statutory one. However, even if were possible to do so, there is a further reason why we believe that the Select Committee should be the model that we aim for. That reason was expressed by the noble Lord, Lord Deben. I am sorry that he is not here today as his contribution in Committee was valuable. In Committee, the noble Lord, Lord Deben, was supported by the noble Lord, Lord King, and the noble Baroness, Lady Manningham-Buller, when he asked:

"Is it not better to use the strength of the Select Committee process and procedure and, above all, of public understanding rather than to try to create something special"?—[*Official Report*, 9/7/12; col. 926.]

[Baroness Smith of Basildon]

This is more than just a cosmetic change. The parliamentary Select Committee structure is one widely recognised as being capable of serious and robust scrutiny. It is a concept that is familiar to the public and one that they understand as being independent. While I agree with the noble Lord, Lord King of Bridgwater, about public confidence in the committee I do not think that most of the public know of the existence of the ISC, whereas they are aware of the structure and work of Select Committees. Even if it were possible to guarantee the committee watertight parliamentary privilege, as I now seriously doubt, it would still ultimately be a hybrid committee. A halfway house would undeniably be better than what we have in the Bill but it would still be a peculiar body. If we are to go to all the effort of dressing up the ISC to look and sound like a parliamentary Select Committee, although with question marks over parliamentary privilege, why not simply have a Select Committee to do the job fully?

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): My Lords, I thank the noble Lord, Lord Campbell-Savours, for presenting his amendments in such a typically articulate way. He draws to our attention the challenge that faces us in achieving confidence—the word that was used by many noble Lords and spoken of by my noble friend Lord King of Bridgwater. In a nutshell, this is about the scrutiny of Parliament and the responsibility of government, and how those two can be reconciled. Although the noble Baroness, Lady Smith of Basildon, talked about not wishing to create a special committee, this is a special committee because it deals with matters that are self-evidently outside normal public scrutiny.

This group of amendments, which I thank the noble Lord, Lord Campbell-Savours, and others for bringing to the House, concern the status of the ISC and, although we have not talked about it much, the remit of the Intelligence Services Commissioner. As my noble friend Lord Henley previously noted, the Bill proposes a number of important changes to the ISC's status. Members of the ISC would be appointed by Parliament, rather than as at present by the Prime Minister, and those members would be free to choose their own chair. The ISC is created by statute to ensure that there are safeguards in place to protect against the disclosure of sensitive information and therefore the Government do not consider it appropriate for the ISC to be a full Joint Committee established under the Standing Orders of each House, as other Joint Committees are. I hope that noble Lords will find it useful for me to expand on this reasoning.

It is essential that the ISC operates within a framework that protects the highly sensitive material to which it has access. In particular, the Government must be able to prevent the publication of sensitive material by the ISC. They must have be able to withhold the most sensitive material from the committee—albeit that those powers are rarely used currently and can be expected to be rarely used in future—and must have some role in the appointment of members of the ISC. Without guarantees in those three areas, the risk of disclosure of information that might damage national security would be increased. That might, in turn, lead to a situation where agency heads found it hard to reconcile their statutory duties to protect information with their duty to facilitate oversight. That could therefore lead to the sharing of less sensitive information and a corresponding reduction in the effectiveness and credibility of oversight.

The Bill provides the necessary guarantees in each of those three areas. The Prime Minister would be able to require matters be excluded from the ISC's reports if the matter would be prejudicial to the discharge of the functions of the agencies or the wider intelligence community. Ministers would be able to withhold information from the ISC in the limited circumstances provided for in paragraphs 3 and 4 of Schedule 1. A Member of this House or of another place would not be eligible to become a member of the ISC unless they had first been nominated for membership by the Prime Minister.

Although it may be possible to replicate those safeguards in Standing Orders of this House and another place, Standing Orders can be amended at any time, as noble Lords will know, and can be suspended for a specific period, or dispensed with for a specific purpose, by a Motion in the relevant House. Standing Orders do not therefore have the same permanence, or provide the same level of protection to sensitive information, as statutory provisions to the same effect.

It seems to me that we can divide the noble Lord's amendments into two sets. Both are concerned with the same aim—that the new ISC should be a Select Committee—but they get there by different routes and with different consequences. It is not absolutely clear what the effect of the noble Lord's first two amendments would be. If we were to accept them and the amendment that he proposes to Schedule 2, the ISC would still be created by statute in the Bill and safeguards would still exist to protect national security in the three areas that I have listed. My noble friend Lord King of Bridgwater drew attention to the inconsistency of the amendments, but we accept the noble Lord's wish to draw the issue to the attention of the House in the way that he has by tabling Amendment 1.

The noble Lord's amendment would not create a full Joint Committee, because that can be done only by the Standing Orders of each House. It would create an entirely novel body—a Select Committee established by statute. To what extent would such a body share the characteristics of other Select Committees? The Bill makes clear, even were it amended in other respects according to the noble Lord's wishes, that the ISC is quite different from other Select Committees in fundamental respects—for instance, in relation to appointments and reporting. That being so, it is unclear whether or to what extent changing the ISC in this way would give it the other characteristics of a Select Committee. Indeed, the risk is that describing the ISC as a Select Committee when it has characteristics that are not shared by such committees could mislead as to the ISC's true character. For these reasons, I hope that the noble Lord will see fit to withdraw his amendment and that the noble Baroness, Lady Smith of Basildon, will reconsider her position on it.

The noble Lord's next four amendments would, together, remove the first four clauses, which deal with the ISC. It is to be assumed that the noble Lord's intention with those amendments is that a new ISC should be created solely by the Standing Orders of each House. Indeed, the noble Lord said so in his speech introducing his amendment. I have already listed the vital safeguards relating to appointments, reporting and provision of information contained in the Bill. Without these safeguards, we will increase the risk of unauthorised disclosure of the sensitive information to which the committee has access. As I have already said, Standing Orders can not adequately replicate the safeguards against disclosure of information that might damage national security contained in the Bill. It is only by enshrining these safeguards in statute that we can ensure that they are sufficiently robust and enduring.

Lord King of Bridgwater: My noble friend has put much more clearly what I tried to allude to. The only correct position that would seem to emerge from the noble Lord, Lord Campbell-Savours, and the noble Baroness who speaks for the Opposition is that nobody should vote in favour of Amendment 1. If they vote for it and do not carry Amendment 6, we will have a complete muddle. What is involved here is actually not voting on Amendment 1; the issue about the Select Committee should properly be addressed under Amendment 6.

Lord Taylor of Holbeach: My noble friend may well be quite right.

Lord Campbell-Savours: If Amendment 1 were to be carried, there would be discussions in the House of Commons. It would probably come back with a decision and an announcement to the House that it intended to set up a committee by way of parliamentary resolutions, so none of those issues would arise.

Lord Taylor of Holbeach: I hope that I can reassure my noble friend and the noble Lord that I intend to use my eloquence so that the House is not presented with this issue of confusion. That must be my task, and I will pray in aid the words of the noble Lord, Lord Butler of Brockwell. I hope that the House will not mind if I quote him at length. In Committee, he said:

> "I think we all agree that the ultimate purpose is that the public should have confidence in the committee's scrutiny of the intelligence services. However, it was clear from the speech of the noble Lord, Lord Campbell-Savours, that if this were to be a Select Committee, it would have to be hedged around by a very large number of parliamentary resolutions, and that would have the same effect as the constraints that are written into the Bill. The question is: would that make it more convincing if it were a Select Committee when it was a Select Committee unlike any other because it would be so inhibited by those restraints?
>
> They say that something which looks like a duck and quacks like a duck can be regarded as being a duck, but this would not look like or quack like a Select Committee; it would be something completely separate".—[*Official Report*, 9/7/12; cols. 933-34.]

I hope noble Lords understand why I wished to quote the noble Lord; it was such a brilliant précis of the position.

I can see much force in that argument. It was reinforced today by the noble Lord and by the former chairman of the ISC, the noble Baroness, Lady Taylor of Bolton, and my noble friend Lord King of Bridgwater.

The noble Lord, Lord Campbell-Savours, raised the question of parliamentary privilege. It may be possible to give the committee bespoke statutory immunities that would provide it with protections which would replicate aspects of privilege. The noble Lord said that that might well be what the Government are proposing, but it would not be the same as legislating to provide the same privileges for the committee. If the ISC were given privilege by statute, as the noble Lord, Lord Campbell-Savours, said, that might encourage courts to rule on proceedings in Parliament. Courts already rule on this question. The Supreme Court judgment in the recent Regina v Chater case is an example of that. For instance, it might be possible to give protection for witnesses before the ISC so that the evidence they give to the ISC in good faith cannot be used against them in criminal, civil or disciplinary proceedings. The Government are considering whether that is a viable approach and whether it is the best approach to tackle this issue. We may bring forward amendments to deal with this issue at a later date.

The addition of the "of Parliament" amendment, proposed by the noble Lord, Lord Butler, and the noble Marquess, Lord Lothian—accepted in principle by the Government and to which we will come presently—would have a number of consequences. One possible consequence is that the ISC would have the power to take evidence on oath. This, in turn, raises the possibility that those who intentionally mislead the committee, while giving evidence under oath, would be subject to the same sort of sanctions which might apply in similar circumstances to a witness before a Select Committee. If, on further analysis, that is not a consequence of that amendment, we would be content to look at whether there is the need for a provision in the Bill to make clear that the ISC may take evidence on oath. I hope that the noble Lord, Lord Butler of Brockwell, will be happy not to move his amendment in the light of what I have described of the Government's position on these matters of privilege.

I turn to Amendment 30, which again is tabled by the noble Lord, Lord Campbell-Savours, and relates to the role of the Intelligence Services Commissioner.

Lord Campbell-Savours: That is an error on my behalf. I tabled it over the weekend when we were not here. I will not move that amendment.

Lord Taylor of Holbeach: My Lords, I apologise for that and will move on to deal with the substantive issue. The work of the commissioner is a different role from that of the committee. Of course, it complements it. I hope that we will be able to use our ability to enhance it and ensure that it continues to meet our needs. The Government believe in strengthening oversight and, clearly, the commissioner has a role in that.

On the basis of the arguments that I have presented, I hope that the noble Lord will withdraw his amendment.

Lord Campbell-Savours: My Lords, I am grateful to all those who have participated in this debate. In my response, I want to dwell on something that the noble Lord, Lord Taylor of Holbeach, slipped into the middle of a sentence. He used the word "aspects" of privilege. The distinction between what I am calling for here—Article 9 protection under the 1689 Act—as against what he is proposing, is full privilege for a Select Committee of Parliament to be known as the intelligence and security services Select Committee.

When I talk about full privilege, I am not talking about some qualification of freedom of information legislation, which I suspect is what the Government and perhaps even the noble Lord, Lord Butler, have in mind, but about full privilege under the Act: rights of access to documents covered by privilege; rights to call Ministers covered by privilege; rights to hold in contempt covered by parliamentary privilege; rights to insist on evidence being taken under oath, if necessary, under parliamentary privilege; rights to have witnesses protected from the courts; rights to have Members protected from assault on free speech; and protection of Members against a threat of intimidation or any undue pressure which prejudices their rights to act freely as Members of Parliament.

These are rights contained in Article 9 of the Bill of Rights, which I do not believe that it will be possible for the Government to allocate as they propose, whether under the statutory provision which we have been talking about up until today or the amendment of the freedom of information legislation, which is the debate going on behind the scenes.

I would like to deal with the issue raised by the noble Lord, Lord Butler of Brockwell, when he talked about transfer of responsibility from the Executive to the Speaker. As I understand it, under the arrangements that the Government propose, instead of a Speaker's Certificate being required in an FOI case there would be a ministerial certificate. This House is full of lawyers, and I am not a lawyer—but am I mistaken in thinking that a ministerial certificate can be overturned by an information tribunal? That is what the law says, although I am not a lawyer and am ready to stand corrected. But if that is the case, it means that this is not an argument over whether you are simply transferring the responsibility from the Executive to the Speaker, potentially you are transferring it from the Executive, on matters of national security, to the information tribunal. Perhaps I am wrong but, even as a barrack-room lawyer, I think that I have got that right.

On the view expressed by my noble friend Lady Taylor of Bolton, I regard perception as extremely important in this whole discussion. Is a halfway house committee, detached from Parliament, more credible in terms of public perception than a full Select Committee of Parliament, circumscribed in the ways that I have suggested to the House in the course of moving my amendment?

I am sorry that the noble Lord, Lord King of Bridgwater, cannot support me today, but we are on the route. As I said to him before, privately, inevitably we will end up with a Select Committee—the question is when.

My noble friend Lady Smith of Basildon pointed to the precedent of a Select Committee on Defence in the House of Commons handling these matters in conditions of secrecy and dealing with them as if they were matters of national security, and secret. I understand that committees of this House have dealt in exactly the same way with very sensitive material and have not leaked; all I am asking is that those committees be replicated in a wider Select Committee, comprising Members of both Houses.

Finally, this is not a precedent. Countries throughout the western world have Parliaments that have Select Committees on intelligence. Some on occasion even meet in public—I have not advocated that. They do not leak, and when the members of our ISC travel abroad, as I did when I was on the committee for five years we often met Members of other Parliaments who sat on Select Committees in their Parliaments dealing with these matters. In the United States of America, in the Congress and the Senate, they have Select Committees. If they can do it, why cannot we? It is on that basis that I wish to test the opinion of the House on this amendment.

4.33 pm

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Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Sharkey, L.
Sharp of Guildford, B.
Sharples, B.
Shaw of Northstead, L.
Sheikh, L.
Shipley, L.
Shutt of Greetland, L.
Skelmersdale, L.
Slim, V.
Smith of Clifton, L.
Spicer, L.
Stedman-Scott, B.
Stephen, L.

Stewartby, L.
Stowell of Beeston, B.
Strasburger, L.
Strathclyde, L.
Swinfen, L.
Taverne, L.
Taylor of Holbeach, L.
Taylor of Warwick, L.
Teverson, L.
Thomas of Swynnerton, L.
Thomas of Winchester, B.
Tonge, B.
Tope, L.
Tordoff, L.
True, L.
Trumpington, B.
Tugendhat, L.
Tyler, L.
Tyler of Enfield, B.
Ullswater, V.
Verma, B.
Waddington, L.
Wade of Chorlton, L.
Wakefield, Bp.
Wakeham, L.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Walpole, L.
Walton of Detchant, L.
Warnock, B.
Warsi, B.
Wasserman, L.
Wilcox, B.
Williams of Crosby, B.
Williamson of Horton, L.
Willis of Knaresborough, L.
Wilson of Tillyorn, L.
Wright of Richmond, L.
Young of Hornsey, B.
Younger of Leckie, V.

4.46 pm

Amendment 2

Moved by ***Lord Butler of Brockwell***

2: Clause 1, page 1, line 5, after "Committee" insert "of Parliament"

Lord Butler of Brockwell: In moving Amendment 2, I wish to speak also to Amendment 4, with which it is grouped. I hope that I can deal with this group of amendments shortly because the Minister, rather unusually, dealt with them in his response to the previous group of amendments and asked me to withdraw them, which I will do.

However, if I have a complaint against the Government, it is that I moved these two amendments in Committee, seeking that the Intelligence and Security Committee should be described as the Intelligence and Security Committee of Parliament to emphasise its role as a servant of Parliament rather than as a servant of the Executive. I also moved Amendment 4 in Committee, which seeks to confer privilege on the committee. On that occasion the Minister—the noble Lord, Lord Henley—spoke sympathetically in response to both amendments, as, indeed, has the Minister today. The noble Lord, Lord Henley, said on 9 July, some four months ago:

"Noble Lords will understand from what I have said that there is a degree of sympathy for both amendments, and particularly the first, but more work needs to be done".—[*Official Report*, 9/7/12; col. 918.]

Four months have passed and it seems that the Government have not done that work and reached a conclusion in amendments that they could put before the House today. That is a pity.

These are probing amendments. The Minister has said again that he is sympathetic to the addition of the words "of Parliament". A more substantial issue is Amendment 4, which seeks to confer privilege on the Intelligence and Security Committee. As has come out in the earlier debate, there are genuine difficulties about that. I acknowledge that in response to the noble Lord, Lord Campbell-Savours. I understand that the clerks of the two Houses of Parliament see difficulty in extending parliamentary privilege in this way.

On behalf of the Intelligence and Security Committee, I want to make it clear that the safeguards that are provided by parliamentary privilege are essential—not parliamentary privilege itself. Provided those safeguards can be in the Bill—in other words, the protection of witnesses and the protection of the proceedings of the committee from judicial intrusion or the Freedom of Information Act—that is equally satisfactory. The noble Lord, Lord Campbell-Savours expressed some doubts about that and the Minister, in reply, said that there were aspects to be considered. It seems to me that it cannot be impossible for those protections to be provided statutorily in the Bill. Provided that is done, I would not seek, nor would the Intelligence and Security Committee seek, to press Amendment 4. I hope to hear from the Minister, if he does not mind repeating himself a little, that the Government will seek to provide those protections that the Intelligence and Security Committee needs in an alternative way from that of privilege. I beg to move.

Lord Campbell-Savours: I wish to intervene only very briefly, perhaps to rephrase the question about the ministerial certificate that I put during the course of my previous intervention. Is it true that the ministerial certificate could be overturned by a tribunal? Perhaps those in the Box can advise the Minister. If that is the case, it means that the responsibility has been transferred from the Executive to the tribunal, as against being transferred from the Executive to the Speaker. We should know whether that is the case.

If I am correct, the noble Lord, Lord Butler of Brockwell, is suggesting that somehow that to which I am referring could be dealt with in the legislation whereby there would not be a right to challenge a ministerial certificate, as is the case with a Speaker's certificate. When he talked about judicial intervention, perhaps he was referring specifically to that. As I understand the freedom of information legislation, it is not possible for a challenge to be mounted against a certificate granted by the Speaker. That is why I always felt that it was far better that the Speaker had that role, because the Speaker of the House of Commons would always uphold national security. It is inconceivable that a Speaker could not be trusted in these circumstances. It seemed to be being suggested that because this power was being transferred from the Executive to Parliament, it was placing something in jeopardy. On the contrary, I should have thought that the Speaker of the House of Commons—whoever that might be at any stage, now or in the future—could be thoroughly relied on to be as secure as the intelligence services themselves in protecting national security.

In one of his amendments, the noble Lord seeks to add the words "of Parliament". Where we have a committee set up outside of Parliament—at arm's length—are we saying that, in order to make it look as if it represents Parliament in some way, we simply tag "of Parliament" onto the end to give it the imprimatur of Parliament. As a concept, it is ridiculous and it abuses the institution. What other organisations or statutory bodies of such notable importance are going to be set up with these words simply added onto the end in order to give them some extra credibility? I am opposed to an amendment of that nature.

Baroness Smith of Basildon: My Lords, much of the debate regarding this amendment was covered in the debate on the previous group of amendments. I will therefore keep my comments brief. We put our names to the amendments proposed by the noble Lord, Lord Butler, and the noble Marquess, Lord Lothian. We considered that the arrangements that they are proposing for the ISC, which is a variation of a statutory parliamentary committee, to be the next best option were the Select Committee option to fail.

In the previous debates, I referred to a committee being strengthened in its independence by the privileges and status afforded by being a creature of Parliament rather than a creature of the Executive, while retaining robust safeguards over the constitution and the work of the committee in the interests of national security. The idea of a security committee that is covered by parliamentary privilege and also bound by safeguards established by statute is of course attractive, as it would give the absolute guarantee needed on issues such as the disclosure of sensitive information and the appointment of members. However, my concerns lie—the noble Lord, Lord Butler, also acknowledged these deficiencies—with the argument raised by my noble friend Lord Campbell-Savours that parliamentary privilege conferred in this way would be suspect and potentially challengeable in the courts. That makes me nervous and I am sure that it makes other Members of the House nervous. If my noble friend is right that the present statutory committees of Parliament are not covered by privilege, it is difficult to see how statute can provide for it in this case, for the fundamental reason that the committee will not be a fully fledged body of Parliament.

In Committee, the noble Lord, Lord Henley, said that discussions would take place. The noble Lord, Lord Butler, referred to that. I am very concerned that, if I understand correctly, the noble Lord, Lord Butler, said that no discussions on the issue have taken place with the Government. There is an overwhelming desire on all sides of the House to get the issue right.

Lord Butler of Brockwell: Perhaps I may do justice to the Government. There have been discussions. My complaint is that they do not seem to have reached a conclusion.

Baroness Smith of Basildon: I do not know whether that is better or worse. It is disappointing that the Government have not been able to reach a conclusion, given the overwhelming desire on all sides of the House to get this right and to ensure that the committee has the privilege that it will need to do its job properly. I remain concerned about the process that is being used. I wait with interest to hear what the noble Lord will say about the consequences of pursuing parliamentary privilege in this way. Without assurances that the committee will have full privilege, I will have serious reservations about the viability of the proposed amendments, despite the fact that I fully support the aims behind them.

Lord Taylor of Holbeach: My Lords, I was tempted to make a relatively short summary for this debate, but the amendments tabled by the noble Lord, Lord Butler, give me the chance to elaborate on certain matters to which other noble Lords alluded. As we know, the proposal of the Government in the Bill is to change the ISC's status. It will be appointed by Parliament and will report to Parliament as well as to the Prime Minister. The two amendments in this group concern the status of the ISC. The first would change the name of the Intelligence and Security Committee to the Intelligence and Security Committee of Parliament. The Government's intention is that the ISC will be a committee of Parliament created by statute. It will not be a classic Select Committee that covers departmental bodies, but a statutory committee of Parliament.

The Government are in principle supportive of the amendments tabled by the noble Lord, Lord Butler, to change the name of the committee to the Intelligence and Security Committee of Parliament. While we are not in a position to support the amendment at this stage, we will be in a position to do so later. I hope that in what I say I will give the House reassurance that the time since July has not been totally wasted, and that the Government are quite a long way down the road of sorting out the particular issues to which noble Lords quite rightly drew the attention of the House. If the ISC becomes a committee of Parliament, it may even be necessary to make some consequential amendments. The amendment may bring the ISC within the ambit of the Freedom of Information Act 2000 by making it a part of the House of Commons and the House of Lords for the purposes of the Act, which was alluded to by the noble Lord, Lord Campbell-Savours. It may change the ISC's status under the Data Protection Act 1998, as Section 63A of that Act may become relevant, making the corporate officers of the House of Commons and the House of Lords the relevant data controllers for the ISC's data-processing activities.

5 pm

The noble Lord is right to make sure that the Government are aware of these issues. He may be referring to the exemption in Section 36 of the Freedom of Information Act. Suffice it to say that a number of other exemptions in the Act would also be relevant in an FOI request, not least Section 23, which is an exemption for information relating to or supplied by the agencies, which is an absolute exemption. If the noble Lord would like further details about this before Third Reading, I am happy to provide him with them. It may well be necessary to bring forward consequential amendments to make clear the status of the ISC under the Data Protection Act and Freedom of Information Act. Those matters will need to be thought through thoroughly. I hope that noble Lords will accept that the Government intend to proceed in this way.

The second amendment deals explicitly with the significant issue of parliamentary privilege. We have discussed this at some length in the previous group of amendments because much of the debate hinged on the protection of privilege. The House has considered this matter on a number of occasions in recent years. The Government's most recent consideration of the issue is contained in the Green Paper published in April this year.

Freedom of speech in the context of the Bill of Rights is just one aspect of parliamentary privilege. At present, the Intelligence and Security Committee

[Lord Taylor of Holbeach]
is a statutory committee. It is a statutory committee of parliamentarians, but it does not benefit from parliamentary privilege. The amendment would provide that the proceedings of the ISC under the Bill would be proceedings in Parliament for the purposes of Article 9 of the Bill of Rights.

The noble Lord tabled the same amendment in Committee and my noble friend Lord Henley expressed a degree of sympathy with it on behalf of the Government and said that more work needed to be done. I hope that I have reassured the noble Lord that this work has indeed been done. The parliamentary authorities and the ISC have both been involved in these discussions, and discussions with the parliamentary authorities have highlighted that it would be a unique proposition for a statute to confer parliamentary privilege in this way. Indeed, the noble Lord, Lord Campbell-Savours, referred to that. It is conceivable that doing so could have wider and possibly unwelcome ramifications for the relationship between the courts and Parliament.

As I have already said, we have considered whether it is possible, instead, to give the committee bespoke statutory immunities that would provide the committee with protections that would replicate certain aspects of parliamentary privilege. For instance, it might be possible to give protection to witnesses before the ISC, so that evidence they give to the ISC in good faith could not be used in criminal, civil or disciplinary proceedings. We are considering whether this is a viable approach and whether it is the best approach to tackling this issue, and we may bring forward amendments.

Lord Campbell-Savours: The noble Lord has repeatedly said, "We are considering", and "It might be possible". There is an element of doubt. It may be possible, but if it is not possible, are they then ruling out Select Committee status?

Lord Taylor of Holbeach: My Lords, I have every confidence that a solution to the issues and challenges of providing the necessary protection will be found. However, I was not intending to use this debate to present those conclusions to Parliament. I am sure the noble Lord will look forward with interest to hearing them in due course.

I thank the noble Lord, Lord Butler of Brockwell, for tabling these amendments. I hope he will feel able to withdraw this amendment in the light of my reassurances on progress.

Lord Butler of Brockwell: My Lords, I am grateful to the Minister for his reply and to other noble Lords who have spoken in the debate. I wish to make two points. First, the noble Lord, Lord Campbell-Savours, is being a little unfair in describing the Intelligence and Security Committee, even in its present form, as detached from Parliament. We do not feel detached from Parliament and, certainly in the circumstances described by the Minister, when we are more closely appointed by and report to Parliament, we will be even less detached. So there is some point in adding the words "of Parliament".

Secondly, the Minister raised a point about the certificate of exemption under the Freedom of Information Act. He said that a Minister's decision can be challenged at a tribunal whereas, on his understanding, the Speaker's certificate cannot, and so the committee would be safer in the hands of the Speaker than in the hands of the Minister. I had hoped, when he raised this point in the previous debate, that a lawyer would intervene and advise us. My understanding is that the Executive always has the last say on this. The Minister is quite right that a tribunal can overrule a Minister but, in the end, a Minister can overrule a tribunal. An example which the House will remember is the risk register on the Health Bill where, in the end, the Minister overruled the tribunal. My understanding is that a Minister always has the last word. I pause for a moment in case there is a lawyer in the House who can correct me but, if not, I offer that as my belief.

On the basis of what the Minister said and in the expectation that a solution can be found to providing the protections that the Intelligence and Security Committee needs other than by means of conferring parliamentary privilege, I am happy to withdraw the amendment.

Amendment 2 withdrawn.

Amendments 3 and 4 not moved.

Amendment 5

Moved by ***Lord Butler of Brockwell***

5: Clause 1, page 1, line 17, at end insert "and the Chair shall be remunerated in line with arrangements for Chairs of Departmental Select Committees of the House of Commons"

Lord Butler of Brockwell: My Lords, again I can speak quite briefly to the amendment, which provides that the chair of the Intelligence and Security Committee should be remunerated on a basis similar to that of chairs of Select Committees of the House of Commons.

I emphasise that the present chair of the Intelligence and Security Committee has not asked for this amendment to be brought forward. However, the members of the committee feel strongly that the chair has to do a large amount of work—as I am sure the noble Lord, Lord King, and the noble Baroness, Lady Taylor, also did—and that it is an anomaly that, whereas other Members of the House of Commons who are chairs of Select Committees receive remuneration, the chair of the Intelligence and Security Committee does not.

As I understand it, the Government's position is that this is, in these days, a matter for IPSA. However, I hope that they will be willing to put this issue to IPSA with their recommendation that it should consider it sympathetically. If the Minister is prepared to go as far as that, my colleagues and I on the Intelligence and Security Committee will be happy not to press the amendment.

Lord Campbell-Savours: My Lords, I vigorously support this amendment because it has always been my view that the chairman should be remunerated. I served under the chairmanship of the noble Lord,

Lord King of Bridgwater, and he should have been remunerated, as indeed should my noble friend Lady Taylor of Bolton. However, what worries me a little is that the matter is to be left to IPSA. That is a very controversial proposition to put, not because IPSA is as unpopular in the Commons as we know it to be, but why should an organisation established to deal with parliamentary allowances and expenditure be required to deal with the expenditure of an outside body? This is the first body, but are we to presume that in the future IPSA will extend its tentacles to managing the financial arrangements of more bodies that are established under statute? Is this the beginning of the growth of IPSA into something even larger than the current organisation which is causing so much grief to Members of Parliament? I simply put the question. If a mechanism is to be found, perhaps I may suggest that IPSA is not the ideal organisation to proceed with this responsibility.

Lord King of Bridgwater: My Lords, I support what the noble Lord, Lord Campbell-Savours, has just said—in the knowledge that there is no back pay in this world. It does seem very weird to be considering this. I am not sufficiently familiar with the remit of IPSA, but although we have been arguing about the extent to which this committee is or is not part of Parliament, in the area of pay and rations it appears to have been put right inside it.

Baroness Smith of Basildon: My Lords, my name and that of my noble friend Lord Rosser have been added to this amendment, as was the case in Committee. We argued then, and argue again now on Report, for the establishment of the ISC along lines similar to that of a Select Committee, and indeed preferably the same lines. It would therefore be inconsistent not to argue that the chair of this committee should be remunerated in much the same way as the chair of a Select Committee. The work that is undertaken is enormously serious and therefore the role should be recognised and fairly compensated on par with that of a chair of a Select Committee.

We have just heard comments about whether IPSA is the appropriate body for this role, and in Committee it was the Minister who said that it was. I have been involved in politics both in your Lordships' House and in the other place for a good many years and I still enjoy irony, which is much underused in politics, so I find the argument of the Government rather ironic given the debate over Select Committee status which has underscored the difference between this committee and a committee of Parliament. Perhaps the Minister can change the Government's position and we will accept the amendment.

The details of the committee's arrangements are to be established in statute, but when it comes to discussing remuneration, it will be for IPSA to decide. It really does not seem appropriate for that body to do so, and the Government cannot have it both ways. If the ISC is to remain a body provided for in statute and ultimately accountable to the Executive, which is the case in this Bill, then regardless of any closer ties to Parliament it remains a creature of the Executive. It therefore seems completely illogical for IPSA to be the body which decides on the remuneration of the committee's chair. I support the amendment. If the Government think that IPSA is the way forward, they have got it wrong, and I hope that the Minister will be able to accept the amendment.

Lord Taylor of Holbeach: My Lords, we turn now to the remuneration of the ISC chairmanship. I have to say that the loyalty which members of that committee have shown to the chairmen and the work they undertake reflects the commitment that those who have held that office have demonstrated to the security services. I note the widespread view that this position should be properly remunerated in some way or another, and the Government support that view. There is no real consistency in the way that Select Committees are treated and no absolute rule that all Select Committee chairmen will be paid. In the Commons at present, not all Select Committee chairman receive a salary for those functions. In the Lords, there is only one such salaried chair, the chairman of the EU Select Committee, who is paid a salary—not by virtue of holding that position but by virtue of also being the Principal Deputy Chairman of Committees.

5.15 pm

I ought to explain why the Government think that IPSA should be the body that considers the level of remuneration. At present for Members of the House of Commons, pay is the responsibility of IPSA. Currently IPSA pays MPs' salaries in accordance with resolutions of the House. Those resolutions specify which chairs of committees should receive additional pay. As I have said, not all Select Committee chairs are so specified. I should add for the sake of completeness that from 1 April 2013, IPSA will itself determine MPs' salaries in toto. It will have responsibility for setting the salaries for MPs generally and may determine that MPs who hold a position or office specified in a resolution of the House should receive a higher salary than ordinary Members of Parliament. That is, I think, a matter for Parliament. IPSA will only say what the pay should be for those holding such a position.

Where the chair of a committee is an office specified by a resolution of the House, the Government would be happy to support a Motion to that effect, which would indeed mean that the matter could be considered.

Lord Gilbert: I apologise for interrupting the Minister. Have the Government given any serious consideration to the possibility that the chairman of this committee, like the chairman of the PAC, should always be a member of the Opposition?

Lord Taylor of Holbeach: I have indicated to noble Lords that the chairman of this committee will actually be elected by the members of the committee itself, from within the membership of the committee. It is a matter for the members who they choose, in the customary manner. The chairman does not have to be a member of the Opposition or a member of the Government; he has to command the confidence of the members of the committee, who vote for the position.

Lord Gilbert: We have a long-standing convention that the chairman of the PAC is a member of the Opposition. I think that is thoroughly healthy and am

[LORD GILBERT]
just trying to find out—or tease out of the Minister—whether the Government have a view one way or another whether it would be appropriate to have a similar arrangement for this committee.

Lord Taylor of Holbeach: The noble Lord is persistent but he is more persistent than the committee has been long standing. The committee in its present form has not yet been set up. The new committee will establish its own traditions and it is not for me standing here at the Dispatch Box as a member of the Government to say how the committee should conduct its affairs when I, and the Government, have said that the committee will elect its own chairman. It is a matter for the committee to decide.

Lord King of Bridgwater: My noble friend will recognise that this is a long-standing issue that has been raised by the noble Lord, Lord Gilbert. I happen to strongly support what he said and believe that it would be in the interests of the reputation and credibility of the ISC—which is of great advantage to the Government and the nation—if it is seen to be a committee that is in no sense government-led, or led by a member or supporter of the Government, but is chaired by a member of the Opposition.

Lord Taylor of Holbeach: I am not at all doubting the value, for example, of the Public Accounts Committee, to which the noble Lord referred. However, it is up to this committee to decide whether to establish its own tradition. To predetermine its traditions, as suggested by the noble Lord, gives a false description of what "tradition" really represents.

I hope that the noble Lord will allow me to move on, because I was going to suggest another scenario: of course, there is no reason why the chairman of this committee should be a member of another place. It is a Joint Committee of both Houses, and although noble Lords may consider it unlikely that a Member of this House would be elected its chairman, that may indeed happen, and it probably would not be appropriate for the salary to be determined by IPSA in that respect. It would be a question of us seeking to resolve the issue should the occasion arise.

I understand what noble Lords and the noble Baroness are trying to achieve; that is, some sort of established practice within existing committee procedure. I have some sympathy with the argument. The ISC is an important committee, carrying out a very valuable oversight function, and the chairman of that committee has a critical role in that respect. However, deciding on the appropriate level of financial support for the chair of the ISC is very much a matter for existing mechanisms within the two Houses and would be best resolved in that way. It is for Members of the House of Commons and, for Peers, the House Committee to resolve this issue, not the Government. I hope that the noble Lord will feel able to withdraw his amendment.

Lord Butler of Brockwell: My Lords, on the basis that Members of your Lordships' House receive no remuneration for being chairs of Select Committees, I am happy to have removed any incentive to run for this position. On the basis that it would be within the power of the House of Commons to move a resolution referring this to IPSA, and that the Government would give a favourable recommendation and support that matter, I am happy to withdraw the amendment.

Amendment 5 withdrawn.

Amendment 6 not moved.

Schedule 1 : The Intelligence and Security Committee

Amendment 7

Moved by ***Lord Hodgson of Astley Abbotts***

7: Schedule 1, page 13, line 29, at end insert—

"(1) The Chair of the ISC shall be elected by the House of Commons by secret ballot.

(2) A candidate wishing to stand for election to the Chair of the ISC must seek in advance of the ballot the formal consent of the Prime Minister for their candidature, to be notified in writing.

(3) The first election will take place as soon as there is a vacancy in the Chairmanship, not at the next General Election."

Lord Hodgson of Astley Abbotts: My Lords, I rise to move Amendment 7. This is the first time I have intervened on Report so I draw the House's attention to the various relevant entries on the register of interests. I am grateful to my noble friend Lady Williams of Crosby for having put her name to this amendment.

I did not take part in the debates on Part 1 in Committee. My interests were much more with Parts 2 and 3, and I have tabled some amendments that we shall debate on Wednesday. However, developments since have led me to table this amendment, which inserts a new paragraph at the beginning of the section headed "Procedure" in Schedule 1 that provides for the direct election of the chairman of the ISC by Members of the House of Commons. To borrow the phrase of my noble friend Lord King, it is an evolutionary development in the power and prestige of the committee.

My purpose in moving this amendment can be simply stated. First, it is to buttress the independence of the chair of the ISC. Secondly, it is to increase the democratic accountability of that role. Thirdly and most importantly, it is to increase public confidence in the operations of the ISC. I make it absolutely clear that I am in no way attacking or criticising the existing or past holders of the office of chairman of the ISC, but my amendment reflects the fact that with the provisions of this Bill as a whole, the Government are moving into new, uncharted and potentially dangerous territory, which requires us to consider whether extra precautions are needed to buttress our civil liberties. I note in passing how the reputation and reach of the existing Select Committees appear to have increased since their chairs were directly elected.

The amendment would establish a further check and balance appropriate to the consideration of matters as complex and as delicate as national security. First, it would open up the chairmanship of the ISC to any Member of Parliament who wished to stand for it. In doing so, it would reduce the concern—I make no assessment as to whether it is justified—that leaving the appointment of the ISC entirely in the hands of the Prime Minister runs the risk of being rather too

cosy for modern conditions. I note, and my noble friend Lord Taylor has referred to this already, that the Bill as drafted permits—empowers—the members of the ISC to choose one of their number to be their chair. While I welcome that development, I do not believe that it goes far enough. Since the Prime Minister controls the membership of the ISC, he controls the population from which the chair is chosen.

Secondly, the amendment would balance this by requiring each candidate to obtain the formal approval and consent of the Prime Minister before standing. This would eliminate candidates who might have shown no prior interest in or experience of the intelligence or security field, or shown—dare I say it?—an overdeveloped interest in opportunities for self-promotion. Thirdly, the amendment does not seek to wrench apart the existing arrangements immediately. The other provisions of the Bill will take some time to bite and so should this provision.

Let me also make it clear what the amendment does not do. It does not seek to make the ISC a Select Committee of Parliament—we have had an extensive debate on the amendments proposed by the noble Lord, Lord Campbell-Savours—so the reporting arrangements would remain unchanged, with the Prime Minister able to require redaction or exclusion as under Clause 3(4) of the Bill. I accept the force of the argument that there must be limits to transparency in this area.

My principal reason for tabling the amendment is that, as we move slowly but apparently inexorably into the shadowy world of closed material procedures, special advocates and restricted reporting, we need to ensure that there is at least one person at the heart of the process who has a direct democratic mandate given to him or her. As an example of how this power might be used, a number of amendments have been tabled to Part 3 of the Bill about review procedures, sunset clauses and so forth. A directly elected chair of the ISC could and should play a vital role in reassuring Parliament and the public that the new powers to be given under the Bill are being exercised properly but above all proportionately. I beg to move.

Baroness Williams of Crosby: My Lords, my name is also attached to the amendment and I congratulate my noble friend Lord Hodgson of Astley Abbotts on an extraordinarily brief and clear description of the reasons for it. I begin by paying a moment's tribute to the person—no longer alive, I am sad to say—who started the whole process of Select Committees. I still remember when I was a Minister in the Labour Government which fell in 1979 the amazement that I felt when Lord St John of Fawsley got up and proposed the idea of Select Committees, which were to be independent of the Whips and free to be accountable to Parliament and to express their concerns about matters of public policy. I think that the Select Committees have done this Parliament very proud indeed, not least at the far end of this building, in the House of Commons, where, time and again, they have come up with remarkable insight and courage in a way that has added hugely to the prestige of Parliament, a prestige that was becoming slowly lost because of the inevitable predictability of so many of our open debates.

The amendment which my noble friend has moved, which I support, fully comprehends the point made so effectively by the noble Lord, Lord Butler of Brockwell, which is that no Act of Parliament should be able to take away from the Prime Minister his fundamental responsibility for the security of the citizens of this kingdom. However, there is no need to go as far as the present ISC does in accountability passing to the Prime Minister rather than to Parliament as a whole.

The ISC is of course a special case. It is unlike any other committee of Parliament. It is certainly unlike Select Committees, but also unlike other committees that have served Parliament over the years. It is different, of course, because of the sensitivity of the material that it deals with. It is therefore the responsibility of this House, in its consideration, to try to get the correct balance between accountability to Parliament and the sensitivity of much of the material that the ISC deals with. The noble Lord, Lord King of Bridgwater, said that effectively, but rightly indicated that there was room for some evolution of this committee. Perhaps I might say a word or two about that evolution.

The proposers of this amendment have chosen it very carefully to ensure that a totally unsuitable person cannot be appointed to be chairman of this committee. As my noble friend Lord Hodgson said, we are leaving a veto with the Prime Minister against a candidate for chairmanship who might be wholly unsuitable. That is absolutely right because the Prime Minister, by the nature of his office, has a greater access to detailed intelligence than most of the rest of us. However, I have one word of warning because the issue of accountability to Parliament is of the first importance. In responding to an earlier amendment, the noble Lord, Lord Taylor of Holbeach, properly stressed time and again the importance of treating sensitive information with due respect and care. What he did not mentioned enough was that the House faces a genuine concern about intelligence. It is simply not the case that there is no public concern about the work of the Intelligence and Security Committee. I hope that I do not offend people by mentioning two cases that spring to mind.

One is that the general issue of intelligence goes back a very long way. Those of us who recall the period immediately after the Second World War will remember the so-called Cambridge group, who turned out to be extremely able people in the intelligence that they sent to the Soviet Union, and that every one of them was totally accepted as a respected member of the establishment. It took a long time for people to realise that people such as Sir Anthony Blunt and others could actually be spies.

5.30 pm

Lord Clinton-Davis: I have a great deal of sympathy with this amendment, but I cannot understand why the Prime Minister should be asked for formal consent. Consent, yes, but I do not understand the argument for formal consent.

Baroness Williams of Crosby: If the noble Lord, Lord Clinton-Davis, will allow me, I will finish the argument I am trying to make—I will not be lengthy—and then endeavour to address his question.

[Baroness Williams of Crosby]

I want to go back for a moment to the other source of considerable concern about intelligence, one with which I have fairly close acquaintance: the doubts that were raised about the intelligence used as the basis for the British involvement in the invasion of Iraq. At the time, the question was whether the intelligence we had about the possibility of Iraq having nuclear and other weapons of mass destruction was sufficiently sound for us to rely on. It was my view and that of my party that it was not; it was the view, equally honestly held, of other Members of this House, that it was. There was uncertainty, which has left behind it a strong desire to seek greater accountability. We would be very foolish not to recognise that that is still a live issue.

I come back to the issues concerning the particular proposal that we have made and that my noble friend has put before your Lordships. The proposal that the House of Commons as such should be entitled to elect a chairman of such a key committee will enable it to take into account its experience of committees of this kind. I have a good deal of sympathy with the proposal of the noble Lord, Lord Gilbert, which was supported by the noble Lord, Lord King, that the chairman should normally be drawn from the opposition Benches. That seems to be a kind of double guarantee that the committee would seek to be objective and not to protect people who should not be properly protected.

The second argument for the House of Commons as such to appoint the chairman, subject to a veto of candidates by the Prime Minister, is that that would essentially make the committee the creature of the House as a whole. The committee would no longer report specifically to the Prime Minister; it would report generally to Parliament. That is an excellent idea because it brings all parties—indeed, both Houses of Parliament—together in supporting the intelligence committee.

I conclude by saying a word about formal recognition. That is simply to indicate how seriously the proposal of the Prime Minister's ability to draw the line at particular candidates must be taken. It would require him to agree in writing that that candidate should not be allowed to go forward in a certain, limited number of cases. I say as loudly and clearly as I can that this amendment meets the needs for greater accountability and what the noble Lord, Lord King, and the noble Baroness, Lady Manningham-Buller, said about the need for evolution of the committee to make it more accountable and democratic, in the broadest sense of the word. It is a proposal that the House should consider very carefully before making any final decision about it.

Lord Gilbert: I am grateful for the noble Baroness's support on my little, modest proposal but I am afraid that I cannot follow her on this business about any member of the House of Commons being able to stand for the chairmanship and then the Prime Minister having the right, or duty, to veto. Can she not see the possibility of the appalling public relations shambles which that could lead to? She has much experience in ministerial office. As soon as it is known that the Prime Minister has vetoed a candidate, there will be enormous pressure on him to say why and all sorts of invidious matters will be drawn out. I am afraid that it would be very unfortunate, to put it mildly.

Baroness Williams of Crosby: The noble Lord would not expect me to agree with him, and I do not. However, in our forthcoming discussion on Report, both today and on Wednesday, he will have the opportunity to consider further whether it is not now high time that we accept a greater degree of accountability—one that has to carry with it an ability to limit, in extreme cases, people who would be wholly unsuitable as members of the Intelligence and Security Committee.

Lord Reid of Cardowan: Perhaps I might respond to those two very rational and articulate contributions promoting the idea of a popular vote, as it were, in the House of Commons. I can see the benefits of that and those of ownership. The noble Baroness, Lady Williams, mentioned stakeholding in the House of Commons. However, it seems that at least four problems need to be thought through.

First, the amendment would explicitly exclude anyone from the House of Lords ever chairing this committee. In the previous debate, while not seeking it for this House, we envisaged the possibility that at some stage there might be someone appropriate in this House to chair it. As I read it, the amendment would effectively preclude anyone from the House of Lords—unless it is envisaged that there be a nomination process for this House but that nobody in this House has a vote; only the House of Commons has a vote. The noble Lord, Lord Hodgson, may have been about to suggest that that was possible. It would be a peculiarly quaint electoral procedure for those who were nominating candidates to be precluded from voting on them.

Secondly, it would almost inevitably undermine the possibility of another envisaged benefit of convention: of the place going to the Opposition. It would not preclude it but would make it much less likely that the tradition of the position going to a member of the Opposition would be carried through, if for no other reason than the Opposition being, by definition, a minority in the House of Commons. Anyone from the majority party would therefore have an enhanced ability to achieve the post.

Thirdly, I entirely agree with the noble Lord, Lord Gilbert. As someone who has held relatively recent ministerial experience, I can tell your Lordships that there is no way that the Prime Minister could veto a nomination for the chairmanship of this committee without it becoming a major issue—not least because the person thus vetoed would make it a major issue. Once that was out, there would be all sorts of demands, in terms of natural justice and fairness, to put into the public domain the reasons why a Prime Minister should think them so serious that he or she should veto a Member of Parliament—an honourable Member—who was considered unworthy or somehow deficient in integrity or in other skills from being chairman of this committee.

The fourth reason is that, having known the House of Commons relatively recently, I am not sure that this is a position on which we should envisage political campaigning, but I assure noble Lords that that is what we will get if this position is put up for a 100% franchise in the Commons. Therefore, having listened to what has been said, and appreciating what lies beneath the suggestion that there be an electoral college

for this composed of the whole House of Commons, I think that before going down this road we would have to think very carefully about the consequences that would arise in the dynamism of real politics from such a decision.

Lord Campbell-Savours: My Lords, I want to argue both ways on this issue because I am of a very mixed mind. I shall start by taking on the case put by my noble friend Lord Reid, who said that it would become controversial and difficulties would arise if it were to be subsequently known by the wider public that there had been some dispute over whether the Prime Minister had been prepared to endorse the candidature of a particular candidate. I would have thought that these matters would be dealt with by the usual channels. The amendment refers to seeking,

"in advance of the ballot the formal consent of the Prime Minister".

In other words, the Prime Minister would be asked discreetly through the usual channels whether he or she might be minded to endorse the candidature of a particular candidate or candidates, and in the event that there were to be a refusal I would not have thought that the candidate who had been refused would want it generally known that the Prime Minister of the day had turned down their prospective nomination for chairman.

Lord Reid of Cardowan: I entirely disagree with my noble friend. Not only would the candidate want it to be known, they might well have a particular reason for wanting to be chairman of the intelligence committee and indeed might even, in a rather covert fashion, be pleased to have been refused the endorsement of the Prime Minister. I do not want to mention any particular such candidates in the House of Commons, but off the top of my head I can think of half a dozen.

Lord Campbell-Savours: If we go back to the speech of the noble Lord who moved the amendment, he never said that any Member of the House of Commons could stand. I had to disappear outside the Chamber for medical reasons, but I understand that the noble Baroness, Lady Williams, argued that any Member of the Commons should be able to stand. However, I do not think that that was the noble Lord's suggestion. I am presuming that he was moving the amendment on the basis that there would be a membership of the committee that was put to the House on the recommendation of the Prime Minister, and from those members there would then be a person who, with the endorsement of the Prime Minister, could be chairman of the committee. We may be speaking at cross purposes and I stand to be corrected. If the noble Lord is indeed suggesting that any Member of the House could stand to be chairman of the ISC, then I would completely oppose that.

Lord Hodgson of Astley Abbotts: My purpose at this stage, and clearly the amendment has aroused a good deal of interest around the Chamber, was to ensure that we have the widest possible opportunity for people to stand. There are already provisions within the Bill about consultation between the Prime Minister and the Leader of the Opposition and about the procedure, and I did not see those falling away. As to whether anyone would be absolutely precluded—probably not.

5.45 pm

Lord Campbell-Savours: If it were indeed the whole House, then I would oppose the amendment, and I will explain why. I sat on the committee for five years when the chairman was the noble Lord, Lord King of Bridgwater. In my experience, and this will be the experience of those members of the committee who now serve under the chairmanship of Malcolm Rifkind, I noticed that this relationship was very special. I balance the openness of the Select Committee with, on the other hand, the special nature of that relationship between the agencies and the chairman. There are circumstances in which I can imagine that relationship breaking down. That is why it is an extremely sensitive appointment. You must therefore have a narrower shortlist, to put it bluntly, than simply the membership of the whole House of Commons.

I have another argument as well, although perhaps I am doing somersaults here. I have a reservation. Subject to the shortlist that I have just referred to, I have argued in the past that not only is the relationship between the chairman and the agencies very special, but I would take it far further than the Government propose to provide for in the legislation. I believe that the chairman of the ISC should have access to everything that goes on within the agency—everything operational or whatever—and should be the only person on that committee who has total access. The legislation before us will provide a qualified element of access to operational material, but it will not provide for looking at the activities of the agencies in future. It will essentially be about retrospective operations. Ideally, in the committee that I would like to see constructed, the chairman would have access to everything—future, prospective, current and past operations—but would be the only member of the committee to do so. In those circumstances, the idea that any Member of the House of Commons could stand as chairman of the committee would be ludicrous.

As I say, I have very mixed views. If it comes to a vote, I shall probably vote for the amendment, in the hope that it is much harder to overturn a resolution in the House of Commons when it has come from the House of Lords than simply to initiate a debate on an amendment in the Commons. On that basis, I hope that the amendment is carried.

Lord King of Bridgwater: My Lords, I share some confusion over this amendment. The noble Lord, Lord Campbell-Savours, has asked whether it is intended that the chairman should come from a group that has already been put forward and proposed, while the noble Lord, Lord Reid, made the point about the membership of the House of Lords. As I read the Bill, you could end up with one Member of the Commons and eight Members of the Lords. That is pretty unlikely, but I can certainly see that we have moved from having one Member of the Lords as a member of the committee to having two. I can see a situation in which the new Opposition do extremely badly in an election and are very short of membership in the Commons but still

[Lord King of Bridgwater]
have to man all the committees and so on. In those circumstances, they might well prefer it if they had one or two extremely well qualified members, perhaps recent Members who had lost their seat and moved into your Lordships' House and who would be very useful members of the ISC.

Against that background, there would then be the problem, as the noble Lord, Lord Reid, has said, of whether or not the Commons should vote for Lords. I would trust the members of the committee, knowing the ways in which they have arrived on it, to be well capable of deciding who should be their chairman. That is well established practice, as we know from elsewhere. I therefore feel that, subject only to the qualification that the noble Lord, Lord Gilbert, raised, I support the idea that the chairman should be a member of the Opposition. I feel an amendment coming on at Third Reading, and that is one that the Government might like to prepare for.

Lord Martin of Springburn: My Lords, the amendment makes heavy weather of finding a chairman. Most, if not all, members of this committee will have a long history and reputation in both Houses. I do not see where the difficulty would be if at the first meeting the members chose a chairman. I do not see anything wrong with that. That is a tradition that I found in local government. The first time we met after we were elected, we picked a leader of the group. That happens in the House of Lords and in the House of Commons, where I used to belong.

Lord Taylor of Holbeach: My Lords, I have a very full response to give to this amendment, but we have had a very full debate. It has been a very useful debate. I know that it is customary for Ministers to thank noble Lords who have presented amendments, but I thank my noble friends because they have brought to the Report stage an interesting idea about the relationship between the ISC, Parliament and the Prime Minister. Having said that, with even the noble Lord, Lord Campbell-Savours, having some doubts about the efficacy of this amendment, I am at one with the noble Lords, Lord Reid and Lord Gilbert, and my noble friend Lord King in seeing the great difficulties that this election might present. It was interesting to listen to the noble Lord, Lord Reid, analysing the motives that people might have for seeking to be rejected by the Prime Minister as being a suitable candidate. I have little doubt that some people would seek to exploit that situation.

I shall reiterate the Government's position on this matter. This committee will be elected by Parliament and nominations will be provided by the Government. Parliament will be the final arbiter of who sits on the committee. The Government propose that the chairman of the committee will be elected by the members of the committee. That represents a sufficiently practical solution to the particular task that this committee undertakes. We have had some speculation about whether the chairman of the committee should be drawn from the Opposition. I have given the Government's position, which is that it is for the committee to decide who should be the chairman of the committee. I do not believe that it can be done by an election by another place or by this House electing the chairman. For that reason, I ask my noble friend to withdraw his amendment.

Lord Hodgson of Astley Abbotts: My Lords, I am extremely grateful to all noble Lords who have contributed to the debate. I think I am probably the only person who has not served on the ISC. I think all the other speakers have served on it, so I am probably slightly blind-sided on some of this. The noble Lord, Lord Reid of Cardowan, said that the problem is that it would exclude Members of the House of Lords. It may possibly do so, but not necessarily. Secondly, he said that it would prevent the chairmanship going to a member of the Opposition. Again, it may possibly do so, but not necessarily. Both he and the noble Lord, Lord Gilbert, talked about the political fallout. Yes, but this is a very important committee, and it will be even more significant when we pass the rest of the provisions of the Bill. If the price of that is a little political disturbance, I do not think that is necessarily a bad thing. I understand his fourth argument, which was about political campaigning. At this end of the Palace, the arrangements for electing chairmen of Select Committees have gone pretty well. They have been shared out and fought over, and both parties have ended up with some chairmanships, but not all of them.

The issues are answerable. I am not saying that they are not challenging. I say to the noble Lord, Lord Martin of Springburn—

Lord Reid of Cardowan: Just to set the record straight, I have never been a member of the Intelligence and Security Committee, although I have been at the end of some of its pertinent inquiries.

Lord Hodgson of Astley Abbotts: I am happy to withdraw that allegation, if allegation it is. As for what the noble Lord, Lord Martin of Springburn, said about heavy weather, I ask the House to consider that the committee will play an increasingly important role. The Justice and Security Bill, when it becomes an Act, takes us into new territory with closed material procedures in courts. The chairman of the ISC will have a very important determinant role in this. Having a chairman who is selected from a narrow body of people pre-selected by the Prime Minister and the leader of the Opposition is perhaps just a little too cosy. I leave that thought with the House, perhaps for reflection when the Bill continues its passage through the other place. In the mean time, I beg leave to withdraw the amendment.

Amendment 7 withdrawn.

Amendment 8

Moved by ***Baroness Hamwee***

8: Schedule 1, page 13, line 31, at end insert "and to paragraphs (Pre-appointment hearings) and (Access to meetings)"

Baroness Hamwee: My Lords, my noble friend Lord Marks of Henley-on-Thames added his name to this amendment. Grouped with it are Amendments 9,

10, 11 and 12. At the previous stage of the Bill, we debated the procedure of the ISC. I acknowledge that it can determine its own procedure, subject to any specific provisions in the Bill. That is why my first amendment makes specific mention of two of the proposals in this group of amendments. The group is broadly about the interface with the public or, at any rate, about the face presented to the public and, to pick up a term used by the noble Lord, Lord King of Bridgwater, earlier this afternoon, the credibility of the committee. Given its remit, there is bound not to be that much of an interface, so it is even more important that means are sought to relate it to the public, where that is proper, in order to create trust and confidence. I am thinking about the direct relationship—putting the agencies into the public domain, so far as that is possible—and of the ISC itself, so that it is able to do its job properly.

Amendment 9, the first substantive amendment, is about pre-appointment hearings or, as they are also known, confirmatory hearings. I am flattered that the noble Baroness, Lady Smith of Basildon, has picked up the amendment I had at the previous stage word for word. In fact, after that stage, I decided that one word could be improved on. It is not necessarily wrong, but it could be bettered. It is to change the word "may" in what the ISC can do to "shall". The public increasingly expect more to be known about senior public sector figures—what sort of people they are, what their aspirations are, how they see the job and how they expect to spend the budget—and to be able to observe their body language on occasions. I say that having watched, on screen rather than in person, a confirmatory hearing in another part of government. I was fascinated by the way that after only a very few minutes of questioning, the person being questioned relaxed so much that the way he was sitting, the way he slumped in his chair, crossed his legs and generally looked far too much at ease for the occasion told me an awful lot about his approach to his relationship with the people who were questioning him. I do not know whether they read it in the same way.

6 pm

Given their positions, I would not expect very much about the individuals I have listed in this amendment to come into the public domain. However, that is not because they are civil servants—they are not civil servants. As we were reminded last time by the noble Baroness, Lady Manningham-Buller, they are Crown servants. I had a look at that and it is made entirely clear in Section 1—it could not be much more up front—of the Constitutional Reform and Governance Act 2010, which provides that the provision does not apply to certain parts of what is described as the Civil Service. I suppose that you could be a Crown servant within the Civil Service, but I do not know because this is well beyond my knowledge. In a sense, that is by-the-by for this argument. It seems to me that the public, above all, would expect the oversight committee overseeing these agencies to know about the heads of the agencies. Such arrangements as pre-authorisation hearings could happen without a specific provision but I want to make it clear that I believe that they should happen.

I am not sure whether this drafting of the list of people who should know that they will be questioned is the best way to do it but it needs to be made clear that this is the way in which the world is going and what the world expects. We are not talking about only the heads of the three agencies. Last time, I added—it is included in this amendment—the wors,

"such other persons as the Prime Minister may direct".

As we debated at the previous stage, not all intelligence and security matters are within the agencies, which Clause 2 makes clear.

I support Amendment 11 in the name of the noble Baroness, Lady Smith of Basildon, which proposes annual hearings. In Committee, it seemed clear that there was quite a concern around the House to consider in public what can be considered in public without danger to national security. I sensed an underlying view that this would enhance the reputation of the ISC.

Lord Foulkes of Cumnock: My Lords, is the noble Baroness aware that every year there is a debate, usually in the Moses Room, about the annual report? Has she been able to attend any of those?

Baroness Hamwee: My Lords, no, but I am aware of that. I am seeking to push the boundaries a little further. The noble Lord tuts quietly that I have not been there. Last year, I read the *Hansard* report when I began to take an interest in these matters. I sense a feeling that this would enhance the reputation of the Intelligence and Security Committee. Amendment 11 would be a broader arrangement than could take place in a debate in either House, whatever its venue, given that it provides for giving evidence before the ISC in a session open to the public. Therefore, it is more extensive.

I am very much alive to the danger to which some noble Lords pointed that questions asked in public can be so feeble, as can the answers, that it can have the opposite effect of just appearing to be completely stage managed and uninformative. I believe that we should give the ISC the scope to do the job that it is doing, and is capable of doing, in private to take it as far as it can go.

I have tabled Amendment 12 about access to meetings and I am aware that I take a different view on this from a number of other noble Lords. That is not because I want all or very many meetings with the ISC to be held in public. My point is that it should direct its mind to the issue. At the previous stage, from those with experience of the current arrangements, we heard ideas of what might be considered in public. Those ideas included recruitment to the agencies, issues of diversity, language, and recruitment from all sections of society. I would add to that retention, which generally goes along with recruitment, and a number of human resources matters, such as sickness rates and diversity at different levels of seniority. The noble Lord, Lord Butler of Brockwell, told us that today the ISC had been considering certain of these amendments. It might have been quite interesting to hear some of that debate in public. As regards financial matters, the cost of the GCHQ facility was mentioned.

All those issues quite properly can be debated, with care that the mark into dangerous territory is not overstepped. I have confidence that that would be

[Baroness Hamwee]
possible and that those debating the issues would be very alert to that. However, it also would be proper that issues of that sort—I am sure that there are others—should be heard and dealt with in public to add to the credibility of the committee. I beg to move.

Lord Butler of Brockwell: My Lords, commenting on what the noble Baroness, Lady Hamwee, said at the end of her remarks, perhaps I may say that it was not today that the Intelligence and Security Committee considered amendments. The committee has not had the opportunity to consider the amendments she has put down. Therefore, in offering a comment, it will be personal rather than on behalf of the committee.

I have no objection to Amendment 9 because it is a permissive amendment. However, Amendment 11 states:

"The ISC shall each year call the heads of the Agencies and the Secretary of State to give evidence before them in a session open to the public".

In principle, there is no objection to that. Indeed, the chairman of the Intelligence and Security Committee says that it is the committee's intention to have a public hearing. The arrangements for that are being considered at the moment. However, one would not want this to be a public hearing that is too staged, which would be worse than useless. I would counsel against passing an amendment which makes it compulsory for the Intelligence and Security Committee to have a public meeting each year. That may well be the outcome but there may be times when the work programme simply is not consistent with it. That is my only cavil against that.

I would not be in favour of Amendment 12, which states that the committee,

"shall conduct its proceedings in public, save when it determines that members of the public shall be excluded".

There would be so many meetings for which that resolution would have to be moved that it would be a matter of public comment and derision, which would reduce confidence in the ISC rather than increase it.

Lord Foulkes of Cumnock: My Lords, I have made a mental note never to tut tut silently in future, especially since that silent tut tutting can be observed by noble Baronesses even about 10 yards away. So I will be careful. The reason why I asked whether the noble Baroness, Lady Hamwee, had been able to attend the debates that we have had in the Moses Room is because, when I served, as I did for four years, on the Intelligence and Security Committee, I had the privilege of introducing and replying to those debates. We had great difficulty in encouraging people to attend and participate. If more Members of the House had attended and participated, it might have added to the information available in the debates that we have had at different stages.

A few years ago, when we had a Labour Government, before the Conservative Government came in, the Intelligence and Security Committee reported to the House on almost all, if not all, the issues that the noble Baroness, Lady Hamwee, has raised—on diversity and all the other points that she raised. We had indications and reports about it, and people raised it during the course of the debate. Even all those years ago, we discussed holding hearings in public; we discussed that in the debate in the Moses Room, along with the problems and opportunities that might be available if we held them in public. I hope that I am not giving any secrets away in saying this, but I was in favour of moving towards holding a meeting or two in public if we could do that. It is the right thing to do.

It would help and inform the debates that we have on legislation if Members came along to the annual debate. I presume that either the noble Marquess, Lord Lothian, and the noble Lord, Lord Butler, will introduce the report and reply to the debate. Noble Lords would find it a very interesting and educational experience.

Lord Reid of Cardowan: My Lords, there are two issues covered in this group of amendments. The first is the process of appointment of the heads of the intelligence services and agencies and, secondly, the degree to which their proceedings are held in public. Amendment 9 refers to the possibility of the ISC—enshrined in the word "may"—considering,

"the proposed appointment of the following, including … the Head of the Security Service … the Head of the Secret Intelligence Service",

and so on. I find that an attractive idea; I see no reason why it should impede, and many reasons why it might enhance, the appointment. It would be useful for the Prime Minister, before final ratification, to know the views of the ISC. It would be useful for Parliament to know that the proposed appointee had the endorsement, as it were, of the ISC, given that it will be elected on a wider franchise than Parliament and it contributes towards the ownership by Parliament itself.

The vagueness as to what happens with regard to the committee's deliberations when such a discussion or questioning of the prospective appointee has taken place is an advantage and a serious disadvantage. I am not quite sure whether the proposal is permissive of communicating negative views on any appointment to the Prime Minister. Does it amount in effect to a de facto veto? It is delightfully vague on those issues.

There is another issue to consider. At the moment there is a relative independence of the heads of the security service and the ISC. If the ISC is being sought as an endorser of the appointment of a particular head of a particular service, in future it may feel more inclined to defend the action of the person that it has appointed. That is not a major concern; it would certainly not undermine the perceived benefits of such a system, which is used elsewhere in the democratic world to no apparent disadvantage—and to advantage with regard to the solidity of the appointment.

6.15 pm

On the public end of the process of inquiries, investigations and meetings of the ISC, Amendment 11 places a burden each year on the committee by the use of the word "shall". That would be at least three or four further meetings that would have to be held in public. If that was slightly less compulsive and determinist it would be a useful thing to place on the record. My noble friend Lady Smith has made a very sensible

suggestion, but I wish that there was slightly more leeway about it, because precisely at the time when you might want to conduct a whole series of inquiries, at a time of heightened tension and so on, you might find that the provision would overburden you. Amendment 12 insists that the committee,

"shall conduct its proceedings in public, save when it determines that members of the public shall be excluded".

That would either be hugely burdensome or hugely problematic politically, as has been pointed out by my noble friend Lord Butler.

In general, this group of amendments has much to commend it, provided that there is a sensible application of the public process. Certainly, as regards the questioning of appointees to high positions in the intelligence services, and the heads of intelligence service, it has a great deal to commend it.

Lord King of Bridgwater: I very much share many of the views expressed by the noble Lord, Lord Reid. I am not quite sure where the United States stands on advise and consent now, with the well established practice over there, or whether a strong lobby is still in favour, or whether there are the problems that the noble Lord has identified—I think that he is absolutely correct—in that deciding to consent and back people inhibits in some way the critical faculty that might otherwise apply.

I am pretty sympathetic to the noble Baroness's amendment. In a permissive sense they have great merit—and, as has been indicated, public hearings certainly could be done. It is something that we have talked about for some time. It might be pretty disappointing for a public expecting some startling revelations to emerge. Also, I assume that if they were public they would probably be televised as well. While I am very grateful to the tribute paid by my noble friend to our former colleague, Lord St John of Fawsley, there is one great problem about Select Committees when they are televised, which I certainly appreciated not having to bother about when I chaired the ISC. Every member of the committee wishes to appear on television; they are only allowed to ask two or three questions before it is the next chap's turn, but other members of the committee do not follow their line of argument because they have worked out exactly what they want to say to catch their headline. When I was chairing the ISC, with the absence of television and all that, we were able to have consistent follow-up arguments, and people could follow up with reasonably penetrating questioning at times—as I believe that the noble Baroness may have experienced. We did not have that problem.

One therefore has to recognise the apparent attractiveness of public hearings but I certainly agree that the bulk of the work will have to be done overwhelmingly in secret, as it is at the moment. I would not wish this proposal for public hearings to be put in legislation as a compulsion, but I hope that there will be an opportunity for them. Without embarrassing the noble Baroness, Lady Manningham-Buller, she was very willing during her time in office to appear in public, make speeches and stand up and talk as widely as she could about the activities of the Security Service. The more that that can be done and the more publicity they receive, whereby they are not seen as rather sinister secret undertakings, the more it would be in the interests of the agencies themselves. These amendments are good ideas but compulsion needs to be avoided in the Bill.

Lord Gilbert: My Lords, the situation is considerably more complex than your Lordships have heard this afternoon. One has the impression from the debate that the only intelligence-gathering agencies are MI5, MI6 and GCHQ, and that is far from the case. We have the Defence Intelligence Agency and the intelligence work of the individual services, and a lot of other people in this country handle high-security intelligence by acquiring, analysing and distributing it. If we think that we have covered the waterfront just by approving the heads of MI5, MI6 and GCHQ, we are deluding ourselves.

Baroness Smith of Basildon: My Lords, we have had an interesting debate, and Amendments 9 and 11, in my name and that of my noble friend Lord Rosser, seem to have gained a significant degree of support from around your Lordships' House. In response to the concern of the noble Lord, Lord King, about the televising of proceedings, I suspect that if this debate were being televised at 4.30 am it would not get a great deal of viewership. Having said that, we will probably now receive letters from those who watch TV at 4.30 am.

Amendment 9 would provide the committee with a remit to hold pre-appointment hearings for the heads of agencies. The noble Baroness, Lady Hamwee, spotted my tabling of her amendment from Committee, when she convinced me that having a permissive amendment was a good way forward. She has now tabled a further amendment that would make the proposed hearings compulsory, but I do not think that that has found favour with your Lordships. We are very much in favour of pre-appointment hearings by Select Committees; indeed, the Labour Government in 2007 pioneered them. This Government have suggested that they are equally keen on pre-appointment hearings. The coalition agreement contains a specific plan to strengthen the powers of Select Committees to scrutinise major public appointments as part of improving government transparency. This seems to be one of those areas that would benefit from such hearings.

I take on board the wisdom, as usual, of the noble Lord, Lord Reid, on these matters and the concerns he raised. However, as to what he said about there being a veto on information, the committee would use its customary wisdom in passing on advice or information to the Prime Minister as it saw fit.

As regards Amendment 11 on annual public hearings, I must admit that I had not envisaged many separate hearings but perhaps one or two hearings a year at which heads of agencies could be questioned. There is an issue of public confidence, and the noble Baroness, Lady Manningham-Buller did a huge amount during her time as head of MI6 to open up the so-called secret services and increase public understanding of and trust in what the agency and other agencies do. She, more than anyone, understood how important it was that the public needs to have confidence in those at the head of organisations that have to, by necessity, operate outside the public view.

[Baroness Smith of Basildon]

I also do not disagree with those who said in Committee or in this debate that the credibility of the ISC would be undermined by farcical staged hearings, as we have seen on TV elsewhere when the only answer to questions has been, "I'm sorry I can't answer that or provide that information". Obviously, we would want any hearings to be genuine, give confidence to the public and not have a block that would provide a lack of confidence.

As has been pointed out in Committee, the ISC already has the power to sit in public if it so chooses. Amendment 12, which proposes that there be a presumption that the ISC would meet in public unless it were to meet in private, could create the kind of difficulties that have already been outlined. A presumption that the ISC would meet in public would be difficult for that committee to manage, but hearings taking place in public from time to time are useful and have a large part to play. We have to recognise the sensitive nature of the committee's work and information that cannot be made public.

When considering the amendments and the support for them, I hope that the Minister will accept Amendment 9. He has heard that it has significant support from around the House. If he is unable to accept that amendment, I will consider testing the view of the House.

Lord Taylor of Holbeach: My Lords, we have an opportunity to consider this group of five amendments. Although Amendments 9 and 10 are similar, the noble Baroness has pointed out the difference between them. Under Amendment 9, the ISC "may" consider the proposed appointment of individuals to the posts of director-general of the Security Service, the chief of the Secret Intelligence Service, the director of GCHQ and other such persons as the Prime Minister may direct. The committee would do this by questioning the prospective appointee at one of its meetings. Under Amendment 10, the ISC "must" consider the proposed appointments.

Pre-appointment hearings are a relatively new phenomenon in the United Kingdom. Since 2008, Select Committees have conducted pre-appointment hearings for a list of posts. There is guidance published by the Cabinet Office on the process followed for such pre-appointment hearings, which includes the list of posts. In general, this process has been a welcome development and gives departmental Select Committees a role in questioning proposed appointees. However, the important thing to note about the list of pre-appointment posts is that the posts concern public bodies—for example, the chairs of Ofcom and the Social Security Advisory Committee. The pre-appointments process has never been used concerning the appointment of civil servants. The heads of the intelligence and security agencies are civil servants at Permanent-Secretary level, and the recruitment process is therefore expected to follow the process for the appointment of civil servants of such seniority.

Noble Lords may find it helpful if I provide some detail on the present process for appointing the agency heads and their status. The agencies are excluded from the provisions of Part 1 of the Constitutional Reform and Governance Act 2010, as my noble friend Lady Hamwee mentioned. That legislation places the management of most of the Civil Service of the state on a statutory footing. Exclusion from the provisions of that Act merely reflects the specific nature of the agencies' operations. The agencies' staff, including their heads, are and always have been part of the Civil Service of the state. This is clear from the Act. If it were not so, the specific exemption for the agencies in Section 1(2) of that Act would not be necessary. Staff of the agencies are not, however, part of what is generally referred to as "the Civil Service", with a capital C and a capital S—that is, the Home Civil Service—nor are they part of Her Majesty's Diplomatic Service. They form a separate category of civil servants, but civil servants they are. They are also "Crown servants", but that is a wider term, covering, for example, members of Her Majesty's Armed Forces and non-civilians in the service of the Crown.

While the agencies are not bound by the Civil Service recruitment principles, I can reassure noble Lords that they do, in practice, follow the spirit of the principles, and the Civil Service Commission is expected to be involved in the process. Pre-appointment scrutiny by Parliament is not appropriate given that these roles are Permanent-Secretary level roles, and in practice those who fill them will be recruited by a process involving a Civil Service commissioner to ensure that the appointment is made on merit. In particular, I see no reason why agency heads should be treated differently from any other Permanent Secretary appointment.

Certainly, the roles that the agency heads play are very important and the appointments must be the right ones, but all Permanent Secretaries in the UK Government play very important roles. There is thus no reason for singling out this particular group for special treatment. The fact that all these posts are posts within the Civil Service of the state, serving successive Administrations, means that the pre-appointment process is not appropriate.

I hope I have given the noble Lord and the noble Baroness reassurance that the process which presently exists—

6.30 pm

Lord Reid of Cardowan: Unfortunately, the noble Lord has given me anything but reassurance. To argue partly on bureaucratic grounds, partly on the grounds of process and partly on the one substantive contention that there is no difference between a Permanent Secretary and the head of MI5, MI6 or GCHQ, is to me entirely unpersuasive. I have known, I think, 14 Permanent Secretaries in my relatively brief ministerial career, all of whom were excellent and very able Permanent Secretaries. They fulfilled a role, had a function and an importance in the life of this nation which was not the same as that of the heads of MI5, MI6 or GCHQ, on whom the very security of the nation depends. I hope that the Government will at least say that they will go away and reflect on this matter because, if there is a political will, all the apparent obstacles to procedure can be overcome. However, if the Government are saying that there are insurmountable bureaucratic obstacles to the ISC carrying out pre-appointment interviews, which are carried out in many countries of the world, I

am afraid that they will be seen to be hiding behind process and lacking a real understanding of how substantial these positions are.

Lord Taylor of Holbeach: I thank the noble Lord for that intervention but, as I have explained, the reality is that these posts are special and important. They are exactly as a Permanent Secretary's post is in terms of the continuity of Government over changes of Government. There is nothing bureaucratic about this. This is the way in which public servants are appointed. I hope that what I am describing is clarifying the Government's argument—namely, that these posts, important though they are, are Civil Service posts occupied by servants of the Crown performing the duties of particular posts. Procedures are in place for making sure that those appointments are made on merit. They are not political appointments subject to political scrutiny. I hope noble Lords will accept that argument.

Lord King of Bridgwater: My noble friend has set out admirably and very clearly what the position is as seen from the Civil Service point of view. However, there is a serious point here. I think that a number of newly appointed heads of the agencies would have welcomed the opportunity to have this sort of a hearing, possibly even in public, given the importance of credibility for the Intelligence and Security Committee, as we discussed earlier. Given the importance of gaining public credibility and confidence for those who have been appointed to lead these critical national security agencies, this would be a very important opportunity. Therefore, although there may be technical reasons why such a procedure does not square with the Civil Service code, or whatever, I hope that my noble friend, who has manfully explained the current position, will consider whether there is an argument for establishing such a permissive arrangement in this area.

Lord Taylor of Holbeach: I note my noble friend's guidance and assistance. However, I do not flinch from presenting the Government's position in this respect. These are not conventional public appointments. They are Civil Service appointments which provide for political impartiality and, indeed, are outside the scope of Parliament. Once we start to argue for public scrutiny of an appointment, we argue for a political process. However, we have always sought to avoid such a political process in Civil Service appointments.

Lord Reid of Cardowan: I am very grateful to the Minister for giving way. He devoted almost all his argument against my noble friend Lord Campbell-Savours, to stressing the uniqueness of these particular positions and organisations and explaining why, because of that uniqueness, you could not involve a Select Committee, as was being suggested, and that his argument had many benefits. Now, in order to defend the status quo, he is stressing not the uniqueness of these posts but their similarity with other departments and departmental heads. However, this is not a matter of what we have done in the past but of what we might do in the future. If the Government had the will to see the benefits in the suggestions of the noble Lord, Lord King, and in what I have said, a way could be found in the future to allow the ISC, at least in a permissive sense, to interview appointees prior to final ratification. That would have enormous benefits for everyone involved in the process. The uniqueness of these positions has been recognised in a previous debate. However, that is now apparently being put aside and they are being compared with other appointments in the Civil Service.

Lord Taylor of Holbeach: I do not wish to prevent the noble Lord intervening but we are on Report. Therefore, I remind noble Lords—

Lord Foulkes of Cumnock: I agree with the Minister, who I think has made a good case, and disagree with my noble friend Lord Reid of Cardowan. Members of the Joint Committee on National Security Strategy have already had a report that the line management of the heads of the various intelligence and security services is the responsibility of the Permanent Secretary. That has been made absolutely clear to us. We raised some concerns about that point and I am sure that the noble Baroness, Lady Manningham-Buller, will comment on it. If the Permanent Secretary has that line management responsibility, it would seem strange if these post holders were considered for appointment by a committee rather than by the procedure that the Minister has described. I know that my noble friend on the Front Bench is a bit irritated at what I have said, but I am glad to say that on this side of the House we have the freedom to say what we think.

Lord Taylor of Holbeach: Although I am encouraged by what the noble Lord had to say, I should remind noble Lords that we are on Report and it would probably be as well if I was allowed to finish what I was saying. The key thing is that the coalition agreement expressly says that we want to strengthen the role of committees in scrutinising public appointments. The Government are committed to doing that. However, the coalition agreement does not refer to Civil Service appointments. The pre-appointment scrutiny process, which we have in place for public appointments, is not the same as appointments to the Civil Service. Therefore, although the Government have made important progress in meeting the commitment on public appointments, that is not relevant to these appointments if they are Civil Service appointments.

I know that the roles that the agency heads play are very important and the appointments must be right. That is why I hope that I have given the noble Baroness and the noble Lord the reassurance that the process that presently exists for appointing the heads of these agencies is appropriate to the nature of the posts. It would not be appropriate to adopt the pre-appointment process that exists for posts in public bodies. On that basis, I hope that the noble Baroness, Lady Smith, the noble Lord, Lord Rosser, and my noble friends Lady Hamwee and Lord Marks will respectively see fit to withdraw their amendments.

I now address Amendments 11 and 12 which concern the ISC holding an annual hearing with the agency heads and the Secretary of State giving evidence before the committee in public. I can appreciate the intention behind the amendment but I have a number of concerns about the idea of creating a duty to hold annual public

[Lord Taylor of Holbeach]
hearings. As noble Lords will know, *The Governance of Britain* Green Paper in 2007 made a series of reform proposals aimed at bringing the ISC as far as possible into line with other Select Committees. One of those proposals was for some hearings of the ISC to be structured to allow unclassified evidence to be heard in open session. Those sessions did not subsequently happen. Building on this, the *Justice and Security* Green Paper noted that while the ISC's meetings will still have to take place, as a rule, in private, both the Government and the committee were committed to the concept of public evidence sessions where they can be held without compromising national security or the safety of individuals.

The noble Baroness, Lady Smith, spoke powerfully in Committee on the issue of public hearings and she has done so again today. We fully agree that they can be valuable but she noted that public hearings should never be automatic for the ISC but argued that they should become more routine as public confidence is taken into account. We fully agree that public hearings may improve public confidence in the ISC and its work.

The Bill does not need a specific provision for this; the existing ISC, created by the Intelligence Services Act 1994, has power enough to determine its own procedures and that is sufficient for its purposes—the ISC is provided for in the Bill. In that way, there is actually very little difference between the position that we take on the Bill and the position proposed by the noble Baroness. However, there are significant practical issues that have to be addressed before public evidence sessions can take place. I am sure that noble Lords will appreciate introducing public evidence sessions for a committee whose work is mostly concerned with sensitive and highly classified information. That will be challenging.

The Government remain committed to making public hearings work better in practice, and are currently in discussions with the committee about how to do so—for instance, on issues such as appropriate subject matter, timing and having appropriate safeguards against unauthorised disclosure of sensitive information. In Committee, my noble friend Lord Lothian, a current member of the ISC, made the valuable point that public hearings would be counter-productive so far as public confidence in the committee is concerned. If either the majority of the questions posed are met with a response, "I cannot answer that", or the subject matter for the hearing is anodyne and the process completely rehearsed, I am sure that noble Lords will feel that the process has not been worth while. The ISC will already have the power to hold public hearings with agency heads and with relevant Secretaries of State without any of these amendments. Leaving it to the ISC's discretion to determine when and how frequently to hold such meetings will enable it to make the best use of its available resources. I hope that I have convinced noble Lords that that is the right approach. I hope, on the basis of this information, that my noble friend Lady Hamwee will withdraw her amendment, and that the noble Baroness, Lady Smith, the noble Lord, Lord Rosser, and my noble friend Lord Marks will not move theirs.

6.45 pm

Baroness Hamwee: My Lords, I do not want to take too long in responding to this. I shall make a couple of comments on the amendments on hearings and access to meetings. On access to meetings, I always envisaged that the committee would be able to take a decision that would cover a number of meetings, and not have the embarrassing situation, on a weekly basis, of the public trooping in and being sent out immediately.

On the annual hearings, it was only when the noble Lord, Lord Foulkes, asked me whether I had attended the debate in the Moses Room that it began to come back into my mind that I had read the previous one in *Hansard*. However, a debate of a committee is, I think, very different from what is envisaged here and very different from parliamentarians undertaking that sort of debate, important as it is.

The point about the agencies, raised by the noble Lord, Lord Gilbert, was covered. Sub-paragraph (d) in Amendment 9 refers to persons other than the three heads of the services and Clause 2 of the Bill envisages the extension of the work to other parts of government.

Much of this debate has centred on pre-appointment hearings and whether they might be televised. A couple of weeks ago I was sitting reading my Blackberry, which possibly I should not have been doing during a debate, but an email came in which said, "Just seen you on live television". I thought there was a complaint coming about what I had said. The Commons had gone home so we were on prime time. The email went on to say, "How do you fit into the Hamwee family? I was once very good friends with someone called Hamwee". One never knows what people will take from what they see.

We have been told that this will become a political exercise and that it should not be political. Throughout the debates on the ISC, I have been hearing that there is huge resistance to it becoming a political and a party-political exercise. I would envisage that continuing with pre-appointment hearings. I would like to hear the ISC debating whether it should have pre-appointment hearings.

I am encouraged by what the Minister has said about discussions continuing on how to make the work more open, but the way it is, is not the way it has to be. I can tell that the mood of the House is not to provide for mandatory requirements, but there is considerable support for a permissive clause. So I shall not move my Amendment 10 but I hope that the noble Baroness will pursue the matter of permissive arrangements which are encompassed in Amendment 9. I beg leave to withdraw Amendment 8.

Amendment 8 withdrawn.

Amendment 9

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

9: Schedule 1, page 14, line 3, at end insert—

"Pre-appointment hearings

( ) The ISC may consider the proposed appointment of the following, including by questioning the prospective appointee at a meeting of the ISC—

(a) the Head of the Security Service;

(b) the Head of the Secret Intelligence Service;

(c) the Head of the Government Communication Headquarters; and

(d) such other persons as the Prime Minister may direct."

Baroness Smith of Basildon: My Lords, I had hoped that the Minister would at least consider taking this away for reflection. However, the mood of the House is clear. I beg to move.

Amendment 10, as an amendment to Amendment 9, not moved.

Baroness Smith of Basildon: My Lords, I wish to test the opinion of the House on Amendment 9.

6.50 pm

Division on Amendment 9

Contents 170; Not-Contents 200.

Amendment 9 disagreed.

Division No. 2

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7 pm

Amendments 11 and 12 not moved.

Amendment 13

Moved by ***Lord Butler of Brockwell***

13: Schedule 1, page 14, line 31, leave out paragraph (b)

Lord Butler of Brockwell: My Lords, Amendment 13 stands in my name and in the name of my colleague, the noble Marquess, Lord Lothian. I move it only to give the Minister the opportunity to move government Amendment 14. Amendment 13 seeks to leave out paragraph 3(3)(b) of the schedule which states that a Minister may decide that information should not be disclosed if,

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

This was rather a wide power for the Government to withhold information from the Intelligence and Security Committee.

Since that amendment was tabled, the Government have tabled an amendment making it clear that, in exercising this power, the Minister must be guided by regard to what are known as the Osmotherly rules—that is, the normal rules about what a civil servant can disclose to a Select Committee. My colleagues on the Intelligence and Security Committee and I are content with that limitation of this power. I beg to move.

The Deputy Speaker (Lord Geddes): I believe that the noble Lord will now want to withdraw the amendment.

Lord Butler of Brockwell: My Lords, I beg leave to withdraw the amendment.

Amendment 13 withdrawn.

Amendment 14

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

14: Schedule 1, page 14, line 34, at end insert—

"( ) In deciding for the purposes of sub-paragraph (3)(b) whether it would be proper not to disclose information, the Minister must have regard to any guidance issued by a Minister of the Crown or a government department concerning the provision of evidence by civil servants to Select Committees."

Lord Taylor of Holbeach: My Lords, it may be useful if I start by explaining why paragraph 3(3)(b) of Schedule 1 is necessary. There are a number of long-standing conventions that have developed in the relationship between Parliament—in the form of its Select Committees—and successive Governments. These conventions recognise that there are categories of information that in certain circumstances may be withheld from Select Committees on grounds of public policy. Noble Lords may know a good deal about this. Examples of this type of information are given in the Cabinet Office guide, *Departmental Evidence and Response to Select Committees*. Some noble Lords will know this by another name: the Osmotherly rules. The categories of information set out in the guide include information about matters that are sub judice, information that could be supplied only after carrying out substantial research or research that would incur excessive costs, and papers of a previous Administration.

The provision in the Bill is necessary to safeguard the long-standing conventions that are reflected in the Osmotherly rules in the context of the relationship

between government and the ISC. It provides a basis for withholding from the ISC the sorts of categories of information described in the rules. As I explained, we intend the ISC created by the Bill to be a committee of Parliament and not simply a committee of parliamentarians, so there is all the more reason for the ISC that the Bill would create to be subject to these conventions.

The provision gives only a Minister of the Crown the discretion to withhold material. In exercising that discretion, the Minister would of course have regard to the provision that the ISC has for keeping material confidential. The Osmotherley rules state:

"If the problem lies with disclosing information in open evidence sessions or in memoranda submitted for publication, Departments will wish to consider whether the information requested could be provided on a confidential basis".

For this reason, we would expect these powers to be used sparingly and only in exceptional circumstances. As I said, the powers to withhold information from the ISC have been used only sparingly in the past, and we expect this to continue. However, it is important that the safeguards are retained.

In Committee, the debate focused in particular on the word "proper". The noble Lord, Lord Thomas of Gresford, who is not in his place, queried the use and meaning of the word. In addition, the noble Baroness, Lady Smith of Basildon, was concerned that paragraph 3(3)(b) lowered the threshold for information being withheld from the committee compared with that which currently applies under the Intelligence Services Act. I assure the noble Baroness that that is not the case. The Intelligence Services Act contains a provision equivalent to paragraph 3(3)(b). In fact, the categories of information that can be withheld from the ISC, and the thresholds for withholding information, will be the same under the Bill's provisions as they are currently under the 1994 Act.

The noble Lord withdrew his amendment. I hope that Amendment 14 clarifies the situation and addresses his anxieties in this respect. I beg to move.

Baroness Smith of Basildon: My Lords, I am grateful to the Minister for seeking to clarify the matter. As he said, I raised my concern on this in Committee. Perhaps I may ask one question. If he is unable to answer today, perhaps he would write to me. I am not 100% convinced that Amendment 14 is sufficient to prevent paragraph 3(3)(b) being used as a justification, as the Minister claimed. Amendment 14 stipulates merely that the Minister "must have regard to" the Osmotherly guidance, as set out in sub-paragraph (3)(b). Will the Minister tell us whether, after considering the guidance he referred to, the Government could still use the conditions set out in sub-paragraph (3)(b) to refuse disclosure of information to the ISC even if the guidance was not relevant to the material in question?

Lord Taylor of Holbeach: I am not in a position to answer that directly, but if the noble Baroness permits, I will write to her and place a copy of the letter in the Library of the House.

Amendment 14 agreed.

Amendment 15

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

15: Schedule 1, page 14, line 42, leave out paragraphs (a) and (b) and insert—

"(a) the Secretary of State for that Department, or

(b) in the case of a Department without a Secretary of State, a Minister of the equivalent level, identified in a memorandum of understanding."

Baroness Smith of Basildon: My Lords, the amendment concerns the power to withhold information from the ISC and at what level the decision should be taken. The Bill states that the decision should be taken by a "Minister of the Crown". The amendment proposes that it should be at the level of Secretary of State in the relevant department and not just a Minister of the Crown. The response I was given in Committee was that the Cabinet Office does not have a Secretary of State and therefore it would be the Minister of State. As somebody who was the Minister of State at the Cabinet Office, that did not seem appropriate. Every department has a Minister who sits in the Cabinet. The reason for putting the amendment before the House today is to propose that, as a minimum, it should be a Minister who is at the equivalent level of Secretary of State. That would be justified because the explanation given by the Minister in Committee for lowering the threshold was not adequate given such a change in power.

We have sought to tighten up the drafting to make it clear in the Bill that in all but exceptional circumstances the power to withhold information from the ISC should be exercised only by a Secretary of State unless there is no Secretary of State in that department. In that case, it should be exercised by a Minister of comparable rank such as the current Paymaster General who is a member of the Cabinet as well as the most senior member in the Cabinet Office. The amendment is simply to specify that a reference to a Minister of the Crown should be interpreted as a Secretary of State for that department except where there is no Secretary of State where it should be someone of the equivalent rank.

I hope that that is clear and I hope that the Minister can accept or at least reflect on this because it would be a significant change if it was not the Secretary of State seeking to withhold information. I beg to move.

Baroness Stowell of Beeston: My Lords, I hope in responding to the noble Baroness, Lady Smith of Basildon, that I can give her some assurance so that she feels able to withdraw her amendment.

The Bill provides that Ministers may decide that information should be withheld from the ISC on two grounds. First, the Minister may consider that it is "sensitive information" as defined in the Bill, which in the interests of national security should not be disclosed to the ISC, and secondly for the reasons that we just discussed.

Currently, under the provisions of the Intelligence Services Act 1994, information can be withheld from the ISC on the same grounds, but the decisions to withhold are taken, in part, by agency heads rather

than Ministers. These powers to withhold information from the ISC have been used very rarely in the past, and we would expect the equivalent powers in the Bill to continue to be used sparingly, only in exceptional circumstances; however it is important that these safeguards are retained as there will continue to be material the nature of which is so sensitive that access to it must be very narrowly restricted in the interests of national security.

Where agencies' material is concerned, the Bill provides that decisions to withhold information from the ISC must be taken by the Secretary of State. However, where the ISC requests information from another government department, a decision to withhold is taken by the,

"relevant Minister of the Crown".

That means, for these purposes, such a Minister as is identified in the memorandum of understanding between the Prime Minister and the ISC or, where no Minister is so identified, any Minister of the Crown.

The effect of the noble Baroness's amendment would be that in circumstances where the Bill enables a Minister of the Crown to withhold information from the ISC, that power would rest with the Secretary of State for the department whose information is to be withheld, or for departments without a Secretary of State, a Minister of the equivalent level, identified in the memorandum of understanding.

The reason that we have included provision for the exercise of the power by a Minister of the Crown rather than a Secretary of State in respect of material held by government departments is that there may be some departments where there is no Secretary of State. The noble Baroness referred to this. For example, the post of Minister for the Cabinet Office is a Minister of State position rather than a Secretary of State position.

The current ISC has, over its history, taken evidence on, and made recommendations relating to, the Joint Intelligence Organisation and the central intelligence functions of the Cabinet Office. The Bill formalises the ISC's oversight role for bodies such as the Joint Intelligence Organisation so the Cabinet Office can expect more requests from the ISC for disclosure of information in future. It is therefore important that a Minister of the Crown should be able to make decisions about when and what information should be withheld from the ISC. This may not just be about the Cabinet Office. It may be that, in the future, other government departments involved in security and intelligence functions will not have a Secretary of State. This provision would also cover those circumstances.

I appreciate the intention of the amendment, which is to ensure that the Minister of the Crown making the decision to withhold information from the ISC is of appropriate seniority. I hope that I can reassure the noble Baroness that that is also the Government's intention. We hope to publish, before Third Reading, a document which sets out the areas that the Government expect the memorandum of understanding to cover, premised on the assumption that the ISC-related provisions in the Bill are enacted, substantially, in their current form.

In that document, we will state that it is the Government's intention that the Minister making such decisions should be of appropriate seniority and should have sufficient knowledge of the work of the department in question. The document will state that it is the Government's intention that, for the Home Office, the Minister making such decisions should be the Home Secretary, for the Foreign Office the Foreign Secretary, for the Ministry of Defence the Defence Secretary and for the Cabinet Office a Minister of State. As I said, I hope that that gives the noble Baroness enough assurance for her to withdraw the amendment.

Lord Gilbert: I apologise for interrupting the Minister, but surely the more important question is whether or not the Minister is required to let the committee know that he is not telling them something. If he does not tell them that he is not telling them something they will not know that they have not been told something. Anyone with any experience of ministerial office at all knows perfectly well that that is the principal work of civil servants when they want to undermine Ministers and they do not like government policy. They do not tell Ministers things. We are entering an opaque area and I cannot see any answer to those questions in what the noble Baroness said.

7.15 pm

Baroness Stowell of Beeston: The point of this debate and the amendment that we are discussing right now is the authority of the relevant Minister to decide whether or not to withhold information from the committee. It is not about whether the committee has the right to request information. The committee has under its wider remit the ability to request information from government departments, but it is for the relevant Minister to have the authority to be able to decide whether to agree to that request. This is about the authority of the Minister.

Lord Gilbert: On the same point, is there an obligation on the Minister anywhere in the legislation to inform the committee that he is withholding information from it?

Baroness Stowell of Beeston: That is not the issue that we are debating right now. If I may, I will have to come back to the noble Lord. I would think that that detail will be covered.

Lord Campbell-Savours: Can I help the Minister? Surely, if the committee has asked a department for information, it will know if it does not get it back that it has been refused. The issue is whether it will know which Minister refused the information.

Baroness Stowell of Beeston: I am grateful to the noble Lord for his assistance. That is absolutely right. If the committee requests the information, because the MoU will make it clear which Minister within a department is responsible for responding or deciding whether or not the department should provide that information, obviously the Minister has an obligation to respond to that request.

Baroness Smith of Basildon: My Lords, I am not sure that the noble Baroness has understood the central point that I am making and if she has, she has not answered it to my satisfaction. The query that I have

with this amendment is the level of the Minister who can exercise a veto. I entirely agree that it is an exceptional measure that will be used only in exceptional circumstances. It takes the power from the agency's head so that it rests with the elected representatives of the Government who are ultimately accountable to Parliament. But I have not heard from the noble Baroness an adequate justification from the Government as to why they have chosen to downgrade the level at which the veto is held from a Secretary of State to a Minister of State.

I mentioned the Cabinet Office because that was the department mentioned by the Minister previously. The noble Baroness responded and said that it could be another department that does not have a Secretary of State. The point being made is the level of Minister who can withhold information and exercise a veto against the ISC. It is entirely reasonable that it should be the Secretary of State or a Minister at the same level, not downgraded to a Minister of State level.

Lord King of Bridgwater: The answer my noble friend gave was extremely encouraging and recognised the importance of the seniority of the person. The only thing I do not understand is whether paragraph 3(5)(b) of Schedule 1, which reads,

"if no Minister of the Crown is so identified, any Minister of the Crown",

will survive.

The noble Baroness appeared to be saying that if a particular Secretary of State is for some reason not available—which is perfectly possible, particularly if you are dealing with the Foreign Office—any other Secretary of State will do. Would it not be much better to have a Minister of State in the same department who is familiar with the matter to deal with it, rather than some other Secretary of State? Have I got the noble Baroness wrong?

Baroness Smith of Basildon: No. The noble Lord is absolutely right. At the moment it is a Secretary of State but the Bill proposes to downgrade that to any Minister of the Crown. I know the noble Baroness says that there will be a MoU that will identify certain Ministers of the Crown but these decisions should be taken at Cabinet level.

Lord King of Bridgwater: I understand what the noble Baroness is saying but if the information concerns the Foreign Secretary, who is responsible for SIS and GCHQ, or the Home Secretary, who is responsible for the Security Service, or, in certain circumstances, the Secretary of State for Defence, who is responsible for the DIS and so on, and if by chance that Secretary of State is not available to deal with an urgent matter on which a reply is requested, it would be much better that the Minister of State in that department deals with it and that we do not have the Secretary of State from Defra or from some other department shifted in merely because he is of equal seniority and that meets the requirement.

Lord Reid of Cardowan: Perhaps I may help. This is not a new problem—it happens with intercepts. The only people allowed to authorise an intercept are Secretaries of State and, if the Secretary of State is not available or is not in London, his officials will get it to him—and these are far more urgent than anything envisaged here. The point that is being made is that the refusal to supply information to the ISC is such an important decision, given the confidence we are placing in the ISC, that the level at which that decision should be taken is Secretary of State level or equivalent. The Government are envisaging extending not only to a Minister inside the Home Office when the Secretary of State is not available but to any Minister of the Crown, on any refusal, the power so to refuse. My noble friend is saying that this is such an important decision that it ought to be taken only at the level of Secretary of State or equivalent. That is an entirely reasonable suggestion and is looser than the intercept provision which applies to only four Secretaries of State.

Baroness Smith of Basildon: My Lords, as ever, my noble friend Lord Reid has summed up the point I was making. The Minister did not refer to an emergency situation but to departments that would not have a Secretary of State and therefore it would be downgraded. It is entirely appropriate to ask that a decision as serious as to withhold information from the ISC should be taken only at the highest levels in government, and that means the level of Secretary of State.

Lord Butler of Brockwell: My Lords, I also support the amendment. It is no answer to say that if the information is held by the Cabinet Office, where there is not a Secretary of State, it should be at some other level. Any intelligence information held by the Cabinet Office will belong either to the Home Office, the Foreign Office or some other department where a Secretary of State is responsible. It is not the case that provision ought to be made for an exception where the Cabinet Office is involved. I support the amendment moved by the Opposition.

Baroness Smith of Basildon: My Lords, I should like to test the opinion of the House.

7.24 pm

Division on Amendment 15

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Amendment 15 disagreed.

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Consideration on Report adjourned until not before 8.35 pm.

Church of England Marriage (Amendment) Measure

Motion to Present for Royal Assent

7.35 pm

Moved By ***The Lord Bishop of Bath and Wells***

That this House do direct that, in accordance with the Church of England Assembly (Powers) Act 1919, the Church of England Marriage (Amendment) Measure be presented to Her Majesty for the Royal Assent.

The Lord Bishop of Bath and Wells: My Lords, the Measure is somewhat technical, so it may assist noble Lords if, instead of getting into the minutiae, I give something by way of background which explains that under the Marriage Act 1949, a marriage according to the rites of the Church of England normally had to take place in the parish where at least one of the parties currently lived or where one of the parties was on the church electoral roll. That was the position until 2008, but it was thought to be too limiting in modern conditions. Legislation was brought forward to extend the range of places where people could marry in church. The Church of England Marriage Measure 2008 gave people the additional right to marry in any parish with which they had a "qualifying connection".

There are various qualifying connections. For example, a couple now have the right to marry either in a parish where the parents of one of the couple live or used to live; or in a parish where one of them was baptised; or in a parish where a parent or grandparent was married. There are a number of other qualifying connections and, without delaying your Lordships unduly, they can very helpfully found on the Church of England's weddings website. The website shows couples how to find churches where they can get married and provides a whole variety of information. It has proved to be very popular, and since these new arrangements have been in place, the number of weddings in church has increased.

The Measure is in two parts. Clause 1 makes a few tweaks to the 2008 Measure, which has been effectively in force for some four years. Experience has shown that there are ways in which its detailed operation can be improved. Particular practical situations sometimes arise when people want to marry, for example, where a parish does not have a parish church; where the parish church is closed for repairs; or where a number of different parishes are joined together in a single benefice. In those situations, the 1949 Marriage Act confers rights to marry in the parish churches of adjoining parishes. Clause 1 brings the 2008 Measure into line with the special provisions of the 1949 Act by applying the bundle of rights contained in the 1949 Act to those couples who wish to marry on the basis that they now have a qualifying connection with a particular place.

A helpful way of showing how the changes will be of practical help to couples might be by way of an example. A couple may want to get married near the bride's parents' home, but her parents' parish church is temporarily closed for repairs and will not be available during the summer that the couple want to get married. The new measure will allow them to get married in the parish church of any of the parishes that border her parents' parish. The other provisions in Clause 1 make similar arrangements possible in the other situations with which they are concerned. That is, if I may say so, the rather more complicated bit.

Clause 2 is rather more straightforward and concerns the publication of banns. Banns are, of course, the normal legal preliminary to marriage in church. The Marriage Act 1949 requires the form of words contained in the 1662 *Book of Common Prayer* to be used when publishing banns. There is nothing in Clause 2 that will prevent the continued use of the *Book of Common Prayer* form, but a slightly modernised form of words, as an optional alternative to the traditional form, was considered a useful addition.

Common Worship, the current prayer book, so to speak, of the Church of England, like the *Alternative Service Book* before it, offers the modernised form. In terms of its legal substance, it is not any different from the traditional form; but instead of asking whether anyone knows "cause or just impediment" why the persons who are named may not marry, it asks simply whether anyone knows,

"any reason in law why they may not marry each other".

Clause 2 will put the alternative, modernised formula on a statutory footing.

Clause 2 also alters the procedure for publishing banns to make it a little more flexible than at present. As things stand, the default position is that banns have to be published at morning service on Sundays. However, the experience of the clergy is that many couples are more likely to come to an evening service. The Measure addresses that by requiring the banns to be published at the "principal service" on Sundays, to ensure maximum publicity, but allows them additionally to be published at any other service on the same day, allowing the necessary degree of flexibility to meet the pastoral needs of the couple.

The amendments made by the Measure are all minor, common-sense improvements to existing legislation. The Measure was passed entirely without dissent in the General Synod—something one would wish for more often—and the Ecclesiastical Committee has reported and finds the Measure expedient. I beg to move.

Motion agreed.

7.42 pm

Sitting suspended.

Justice and Security Bill [HL]

Report (1st Day) (Continued)

8.35 pm

Clause 2 : Main functions of the ISC

Amendment 16

Moved by ***Baroness Hamwee***

16: Clause 2, page 2, line 8, leave out "such"

Baroness Hamwee: My Lords, I have tabled Amendments 16, 17, 20 and 21 in this group, of which the substantive amendment is Amendment 21. Taken

[Baroness Hamwee]
together, these four amendments would ensure that although the Secretary of State may, through a memorandum of understanding, alter the provisions concerning the ISC, a memorandum of understanding could not limit the functions of the ISC.

I hope that the Minister can give me an assurance that Clause 2 does not intend that the ISC's functions could be limited in this way and that the Government are not seeking the opportunity to restrict its functions. If that is not wholly clear, perhaps the Government can look at it, but the Minister may well be able to persuade me that it is wholly clear. In any event, I am sure that he understands the short but important point that I am making. I beg to move.

Lord Campbell-Savours: I wonder if we might be told when we can expect to see this memorandum of understanding.

Baroness Smith of Basildon: My Lords, we have tabled Amendment 22, which replicates the one tabled in Committee by the noble Baroness, Lady Hamwee, and the noble Lord, Lord Thomas of Gresford, and is very similar to one tabled by my noble friend Lord Campbell-Savours.

This amendment requires a memorandum of understanding that will further define the remit of the ISC and other elements of its functioning. We consider that this should be approved by Parliament. Throughout the debate we have been arguing for greater ties between the ISC and Parliament in order to underline its accountability to Parliament rather than the Executive. This is an important example of how we can assist in effecting such change.

If the ISC is ultimately accountable to Parliament, it seems right that Parliament should approve the MoU that governs the ISC's relationship with the Government over and above that which is set out in the Bill. I am sure that we will replicate this debate next week in the Crime and Courts Bill about the framework document for the National Crime Agency. If something is outside the remit of what is in the legislation, it is very helpful to have sight of that and Parliament should have the opportunity to debate and approve it.

The Government have argued against the establishment of the ISC as a full Select Committee of Parliament. One of the arguments is that it is necessary to circumscribe in statute the rules under which the committee may operate. It seems justified and very reasonable that the MoU should be subject to greater scrutiny and formalisation by coming before the House and having formal parliamentary scrutiny and approval before it can be acted upon.

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): My Lords, legislation is often a process of distillation and this evening the House has distilled itself down to this particularly rich mixture.

The Government intend to use the memorandum of understanding to make a substantial contribution to central government's intelligence and security activities. It will be subject to ISC oversight. It is our intention that the activities should include certain activities within the Ministry of Defence, the Office for Security and Counter-Terrorism in the Home Office and the central government intelligence machinery in the Cabinet Office, including the Joint Intelligence Organisation. The scope of the memorandum, therefore, is wider than the three core agencies.

As my noble friend Lord Henley said in response to an amendment from the Opposition on this same subject in Committee, it is right that the memorandum of understanding should spell out the precise remit of the ISC in relation to bodies other than the agencies, because the memorandum of understanding can make provision at a level of detail which is not appropriate in primary legislation. This is particularly important because parts of government departments engaged in intelligence and security activities may be engaged in other activities which would not properly fall within the remit of the ISC.

The House will know that things change over time—departments reorganise. Functions done in one department one year may be done in another the following year. The intelligence world is no different from any other part of government. A memorandum of understanding is flexible. It can be changed much more easily than primary legislation. It will enable the intention of the Government to be realised now and in the future.

The effect of the amendment spoken to by my noble friend Lady Hamwee would be that, instead of the ISC's widened remit beyond the three agencies being defined precisely in a memorandum of understanding, it would be defined in primary legislation, which is not in the interests of a good definition of the ISC's role and is less flexible as I have said.

The Government's intention is that the memorandum of understanding will enable the ISC to oversee certain activities; for example, within the Ministry of Defence as I have described. A memorandum of understanding is the best place to make provision at this level of detail.

The effect of Amendment 22, as proposed by the noble Baroness, Lady Smith, would be that a memorandum of understanding agreed between the Prime Minister and the ISC for the purposes of Clause 2 would need to be approved by a resolution of each House of Parliament before it could take effect. The memorandum of understanding is an important document. It will define the activities of government in relation to intelligence or security matters, other than the activities of the agencies, which the ISC may oversee. It will also specify additional principles and provisions, other than the criteria specified in the Bill, with which the ISC's consideration of operational matters must be consistent. It will also specify the arrangements by which the agencies and other government departments make information available to the ISC.

The Bill also provides that the memorandum of understanding may include other provisions about the ISC or its functions. It must be agreed between the Prime Minister and the ISC and can be altered or replaced at any time by agreement. It is therefore different from a parliamentary document.

While the ISC is dissolved on Dissolution of Parliament, the memorandum of understanding will continue in place during a succession of government until a new memorandum of understanding is agreed with the Prime Minister.

As is usual for a memorandum of understanding, there is no parliamentary approval procedure. While the memorandum of understanding will be an unclassified document which is published and laid before Parliament, its precise terms are very likely to be shaped by matters which are sensitive in terms of national security and cannot therefore be made public. However, there is no restriction on the document laid before Parliament being debated in Parliament, and, indeed, one might expect on occasions for it to be so debated. Of course, the terms of the memorandum of understanding must be agreed with the ISC itself: a committee composed of parliamentarians that, as a result of the changes that we have been talking about, will be a committee of Parliament appointed by and accountable to Parliament. Requiring these parliamentarians to seek the approval of their parliamentary colleagues would be quite a restriction on the independence of that body.

8.45 pm

In answer to the question posed by the noble Lord, Lord Campbell-Savours, the Government expect before Third Reading to publish a document setting out the areas that the Government expect the memorandum of understanding to cover. In other words, it will be a framework document premised on the assumption that the ISC-related provisions in the Bill are enacted, substantially, in their current form. I should make it clear that the document which we will publish can at this stage record only the Government's intention, as the memorandum of understanding itself needs to be agreed between the Prime Minister and the ISC and we cannot presume on the ISC's reaction to that document. However, it is our intention to publish that document before Third Reading.

Lord Campbell-Savours: First, on this preliminary document, which will not be the final document, will there be anything more in front of the Commons when they consider this in Committee than what is provided to us before Third Reading? Secondly, why should not preliminary drafting work, which I presume is going on now, be made available to the House—or certainly to the Commons—at an earlier stage?

Lord Taylor of Holbeach: I think I can reassure the noble Lord that I am doing my best to make sure that this House is informed before Third Reading of the nature of the document and the context in which it is being presented. I hope that the same document would indeed be available to the House of Commons. Until the Bill is enacted, the document cannot of course be laid before the House other than in a framework format. I hope that I have reassured the noble Lord that he and his colleagues in another place will have the information on which to see how this aspect of the Bill—the memorandum of understanding—is designed to bring flexibility into the procedures of the ISC.

Indeed, we wish to ensure that the memorandum of understanding is not used to restrict in any way the ISC's remit or its functions as set out in the Bill. As we explained in our memorandum to the Delegated Powers Committee—another memorandum—the purpose of this clause is to enable provisions to be included in the memorandum of understanding to ensure that the ISC's oversight of operational matters does not: interfere with the statutory accountability of the intelligence services to their Ministers; overlap with the roles of other independent oversight bodies, such as the Intelligence Services Commissioner; or lessen the effectiveness of the intelligence services and other intelligence and security bodies, or place any undue resource burden upon them. We believe that a clear understanding between the Government and the ISC as to how the ISC can most effectively oversee operational matters without compromising these imperatives is best achieved in a flexible instrument agreed between them. These amendments would, I fear, seem to preclude that. On that basis, I hope that the noble Baroness will see fit to withdraw the amendment.

Baroness Hamwee: My Lords, I got the assurance that I wanted almost at the end there, in the response to the noble Lord, Lord Campbell-Savours. I was certainly not seeking to reduce the oversight of the parts of Her Majesty's Government that relate to intelligence and security matters and which are beyond the three agencies. Quite the contrary; I want to make it clear that I do not think my amendments would not have done that.

Having heard the Minister tell the House that it is intended to protect the scope of the work of the ISC and, like others, looking forward to seeing some form of document within the next few days because I think Third Reading is next week, I beg leave to withdraw the amendment.

Amendment 16 withdrawn.

Amendment 17 not moved.

Amendment 18

Moved by ***Lord Butler of Brockwell***

18: Clause 2, page 2, line 12, leave out from "as" to end of line 13

Lord Butler of Brockwell: My Lords, this amendment is in my name and that of the noble Marquis, Lord Lothian. I shall couple with it Amendment 23. I am grateful to the Opposition, who have given their support to these amendments. They relate to circumstances in which the ISC may consider operational matters. At the moment, these are defined in Clause 2(3), which states:

"The ISC may … consider any particular operational matter but only so far as the ISC and the Prime Minister are satisfied that

(a) the matter—

(i) is not part of any ongoing intelligence or security operation, and

(ii) is of significant national interest, and

(b) the consideration of the matter is consistent with any principles set out in, or other provision made by, a memorandum of understanding".

[LORD BUTLER OF BROCKWELL]
The problem is that that is too restrictive, but I want to make clear at the outset that the ISC does not aspire to consider current operational matters unless the Government have some particular reason for asking it to.

The reason why the wording is too restrictive is that at present there are three tests that have to be passed by an operational matter for the ISC to continue to consider it. The first is that it,

"is not part of any ongoing intelligence or security operation".

The second is that it,

"is of significant national interest".

The third test is that,

"the consideration of the matter is consistent with any principles set out in, or other provision made by, a memorandum of understanding".

However, the preface to that is that the ISC and the Prime Minister must be satisfied that those conditions are met. That would curtail the present operations of the ISC considerably.

I shall cite one example. When the SIS operation in Libya went so badly wrong and it got into the newspapers, the first thing that happened, quite rightly, was that the chief of SIS wrote a letter to the committee to explain what had gone wrong. If the words of this provision were taken literally, he could have done that only if he had first cleared his lines with the Prime Minister. I could repeat lots of examples of matters where something appears in the press and the heads of the intelligence agencies then report to the ISC. However, the provision says that before any operational matter can be considered, the Prime Minister has to be satisfied that the three tests are passed. My first amendment would omit the words,

"the ISC and the Prime Minister are satisfied that",

so that the provision would read, "The ISC may consider any particular operational matter but only so far as" the three tests were passed. In other words, it would remove the hurdle of satisfying the Prime Minister, which certainly does not apply at the moment. To have to satisfy the Prime Minister in each case would add a new and cumbersome bureaucratic procedure, which I doubt very much that the Prime Minister would welcome, let alone the ISC.

Doing that alone, however, is not sufficient, and that is where Amendment 23 comes in. That amendment says that the three tests would have to be passed before the ISC could consider an operational matter, and one of those tests would be that it was not part of any ongoing intelligence or security operation.

As I said, the ISC has no aspiration to consider an ongoing operation, unless the Government ask it to. We normally looks at operations retrospectively, but there are circumstances in which it suits the Government to ask the ISC to look at an ongoing operation, so Amendment 23, which my noble friend and I have tabled, states:

"The ISC may, notwithstanding subsection (3), consider any particular operational matter if the relevant Minister of the Crown agrees to consideration of the matter or it is consistent with the memorandum of understanding".

An example of where this was necessary was cited by the noble Lord, Lord King. When he was chairman of the committee, it was asked by the Home Secretary of the day to consider the Mitrokhin case. That was a circumstance in which it suited the Government to ask the ISC to consider that operational matter. It would be very quixotic if the ISC had to say to the Government, "Sorry, you may have asked us to look at this matter because it would help you, but I am afraid we're not allowed to because there is an absolute ban on it in the Bill".

The purpose of these two amendments is to give more flexibility to the Government about the circumstances in which the ISC may look at an operational matter. It is not the ISC's wish, in normal circumstances, unless the Government want it to, to look at matters retrospectively. The purpose of this amendment is to increase the flexibility which has been removed by the current drafting of the Bill. I beg to move.

Baroness Smith of Basildon: As noble Lords will see from the Marshalled List, we have added our names to Amendments 18 and 23, as the noble Lord, Lord Butler, noted, and we have also tabled Amendment 24 in this group.

The noble Lord, Lord Butler, has proved a worthy proponent of his Amendment 18, which would return the procedure for determining whether a matter should be considered by the committee back to the status quo by removing the requirement for the committee to seek the approval of the Prime Minister before making any such decision. It seems absolutely clear that the committee is bound in statute to abide by the remit set out in Clause 2 and it should not have to seek the approval of the Prime Minister to determine that it had done so. I agree with the members of the ISC and the noble Lord, Lord Butler of Brockwell, who have argued that not only is this overly bureaucratic but it is a step backwards from the current position where the committee itself determines, on the basis of given criteria, whether a matter falls within its remit.

Amendment 23, to which we added our name, and Amendment 19, which was tabled by my noble friend Lord Campbell-Savours, address the same point, but in a slightly different way. The Bill reflects the status quo by incorporating operational matters, which the committee has been de facto undertaking for some time, into the formal remit of the ISC. However, it seems overly prescriptive for the Bill expressly to prohibit the committee from reviewing ongoing operational matters. All Members of your Lordships' House fully accept that there are security issues to do with reviewing operations that are current and may risk compromising individuals involved. However, there may be rare cases where an operation carries on for a long time and, despite the risk being minimal, it is still considered current by the standards of the Bill. It seems much more reasonable to make a general stipulation against the review of ongoing operations but to allow the committee to review such matters in special circumstances if it has the express consent of the relevant Minister.

Opposition Amendment 24 is a repeat of that tabled by my noble friend Lord Campbell-Savours in Committee. It would require the ISC to consider a request by a Select Committee to review a certain matter related to

the ISC's remit as well as any request to provide the Select Committee with information. It should be clarified that under no circumstances would the amendment require the ISC to act on any such request from a Select Committee, for instance, to disclose sensitive information or that simply would prove to be unmanageable for the committee's workload. It would be a request. However, fostering greater communication and collaboration of Select Committees in Parliament could be only a positive development for the ISC.

9 pm

Lord Campbell-Savours: When I originally read this wording in the Bill prior to the Committee stage, alarm bells immediately rang. When I saw the reference to ongoing operations, I tabled the original amendment. The noble Lord, Lord Butler of Brockwell, in his contribution, really set out the case very much in the way that I would wish to argue it and I do not wish to repeat what he said.

However, he referred to one operation, which perhaps illustrates where the problem might arise. I refer to the issue of what happened in Libya. I did not know the detail of what happened there but I presume, from what the noble Lord said, that it was reported to a committee. I should have thought that that is a typical example of something which fell under the description of these matters given by the noble Baroness, Lady Manningham-Buller, in Committee when she referred to operations being—if I recall correctly—finite and coded. Am I right in saying finite and coded?

Baroness Manningham-Buller: Yes.

Lord Campbell-Savours: I should have thought that that operation in Libya was a typical example of something that was finite and coded but which, as we know, was referred to the committee prior to the operation being completed. One wonders whether that operation would have fallen foul of what is in the Bill as it stands. I have no doubt that the Minister has in his brief, in very large red letters, "resist at all costs"—perhaps more than many of the other amendments that we have considered today. I would imagine that the services are particularly worried about this area. However, I would say to them that they must go away and reconsider this issue.

This is classic House of Commons debating material. I should have thought that the House of Commons will latch on to this wording and really drive it in Committee very hard. The Government should get a better line in dealing with these matters than we have heard hitherto.

The Advocate-General for Scotland (Lord Wallace of Tankerness): My Lords, I am grateful to the noble Lords, Lord Butler and Lord Campbell-Savours, and the noble Baroness, Lady Smith, for introducing these amendments, three of which concern the ISC's ability to oversee operational matters and the fourth concerns the relationship between the ISC and Select Committees. It is worth reminding ourselves that one of the purposes of the Bill is to extend the ISC's statutory remit. It makes clear its ability to oversee the operational work of the security and intelligence agencies and of other parts of the Government's intelligence machinery.

With this formalisation, we certainly expect that the ISC will provide such an oversight on a more regular basis. The provisions of the Bill allow the ISC to consider,

"any particular operational matter but"—

as the noble Lord, Lord Butler, quite properly indicated by quoting from the Bill—

"only so far as the ISC and the Prime Minister are satisfied that … the matter … is not part of any ongoing intelligence or security operation, and … is of significant national interest".

The starting point is that the ISC's oversight in this area ought to be retrospective and, so as not to cut across the role of Ministers, should not involve, for instance, prior knowledge of approval of agency activity. It is important that when there is an ongoing operation, or indeed a future operation, the responsibility for national security lies with Ministers. The noble Lord, Lord Butler, made it clear that the ISC is not seeking to intervene in that and accepts that the primary and principal responsibility lies with Ministers.

The ISC's consideration of an operational matter must also,

"be consistent with any principles set out in, or other provision made by, a memorandum of understanding".

The first amendment would have the effect of leaving it solely to the judgment of the ISC to decide when the criteria for considering a particular operational matter are met. It is our intention that the memorandum of understanding will set out the factors that should be taken into account in assessing whether a particular operation is still ongoing or is of significant national interest. None the less, while fully accepting that the committee does not have ambition or aspiration to extend beyond what is said, I am sure that even reasonable people could come to a different view about whether those particular criteria are met or not in a particular instance.

I hope that noble Lords will agree that the judgment as to whether an operational matter meets the criteria is one that should properly be for both the ISC and the Government and not just for one or the other. It is important that the judgment is got right; I do not think that anyone is suggesting in any way whatever that there will be any deliberate attempt to intrude in circumstances where it has not previously been anticipated that the ISC should, but the last thing that anyone wants is for a different judgment to be struck that could lead to impeding the operational effectiveness of the intelligence agencies.

The noble Lord, Lord Butler, indicated what was perhaps at the crux of his concern. He mentioned the case of Libya. I understand that there may be a concern that the requirement that both the ISC and the Prime Minister should be satisfied that the criteria are met will slow down responses to more routine requests from the ISC for information about operational matters. The noble Lord used the word "cumbersome". I assure your Lordships' House that that is not the Government's intention, nor do we believe that it will be the effect of the clause. However, I further assure your Lordships that we are looking very closely at this and it may well be that a memorandum of understanding to be agreed by the Government and the ISC is the right vehicle for agreeing a process that will allow the

[Lord Wallace of Tankerness]
information that the noble Lord indicated to be provided to the committee, and in an appropriately prompt manner. Alternatively, it may be that there are other approaches that might make the position clearer, and I suspect that as this Bill progresses through Parliament we may return to it. But I indicate that it is a matter to which we will give further consideration. It may be that the memorandum of understanding is a better way to address it—and I hope that, on that basis, the noble Baroness will not press that amendment.

The noble Lord, Lord Campbell-Savours, said that he would wish to remove one of the key restrictions on the ISC's new power to oversee agency operations—namely, the requirement that its oversight of operations should be retrospective. There is nothing in red in my briefing, but there is an indication that the amendment should be resisted. We have worked with the current committee to develop the new arrangements, and it is the committee's view, as the noble Lord, Lord Butler, made clear in his speech to his amendment, that the committee agrees with the Government that it should not oversee ongoing operations.

There are clear lines of ministerial responsibility for authorising agency operations, and we believe that they could be undermined by the ISC having prior, even contemporaneous, knowledge of particular operations. Secondly, once a particular operation has commenced, it may well be that things move very quickly, and it is essential that the agencies can focus fully on the task on hand. It is better to bring the committee in and have retrospective oversight of a particular operation. Indeed, some operations will be so sensitive, with perhaps highly sensitive sources in play, that the details are kept within a very small, need-to-know circle, even within the agencies. The committee fully understands this; it is part and parcel of the work that it does, and which it recognises that the agencies do on our behalf. Once an operation has concluded, the ISC will then be well placed to carry out its work, which will no doubt include making strategic and policy recommendations, and giving views on any lessons learnt. The noble Lord's concern expressed in Committee, which he has reflected this evening, on how operations might be defined, particularly if there is a long-running set of activities, was whether that could be defined by the Government as a single operation. I certainly understand where the noble Lord is coming from, but that is not an appropriate or proper interpretation of the clause. The nature of operations varies, and this is one of the reasons why we have provided in the Bill detailed consideration as to how the ISC's operational oversight remit should operate and should be set out in a memorandum of understanding, which the Government will agree with the ISC.

Lord Campbell-Savours: Would it not be better simply to remove the whole section on ongoing operations and deal with the whole thing in the memorandum of understanding?

Lord Wallace of Tankerness: No, my Lords. One of our purposes is to ensure that this is put on a statutory basis. That has not been the case hitherto and this is a step forward. I can reassure the noble Lord that it is not the Government's intention that a long-running operation be outside the scope of the ISC's oversight for its entire duration. As the noble Baroness, Lady Manningham-Buller, explained in Committee, a long-running operation could, for instance, be broken down into discrete phases of operational activity, parts of which could be judged to be no longer ongoing and, on that basis, could be subject to the oversight of the Intelligence and Security Committee. I very much hope that on that basis the noble Lord will see fit not to press his amendment.

The third amendment in the group, Amendment 23, would allow the ISC to oversee an operational matter that does not meet the criteria in Clause 2(3) if the relevant Minister of the Crown agrees to the consideration of the matter. It is difficult to see the circumstances in which the provisions of that amendment would need to be used, although I listened carefully to what the noble Lord, Lord Butler, said. His concern was that there may be a circumstance whereby both the Government and the committee agreed that it was proper that there should be an investigation, but that it would be statutorily barred from that. The concern is that that amendment is aimed at allowing both to agree on what the ISC could consider. I am sympathetic to the kind of situation that the noble Lord described. The Government are not convinced that there is a need for this amendment, but we appreciate the intention behind it, which is to introduce a degree of flexibility that might prove useful in the future. It is certainly a matter that we would want to keep under review as work continues on drafting the memorandum. We would be willing to look at that again because, as the noble Lord indicated, it would relate to an issue on which there was agreement between the Government and the committee. It is just a question of how we can get that right without opening up to some unintended consequences.

Finally, I turn to the amendment of the noble Baroness, Lady Smith, and the noble Lord, Lord Rosser, which raises some important points relating to the relationship between the ISC and Select Committees. The first part of that amendment would mean that Select Committees could ask the ISC to consider any request to review any particular issue related to national security. The second part would mean that a Select Committee could request that the ISC transfer information to it that the Select Committee,

"has stated it needs to carry out its function".

The third part states:

"The terms of any consideration … are to be set out in a memorandum of understanding between the ISC and the Select Committee in question".

Again, I recognise and appreciate the intentions underlying that amendment—an intention expressed by the noble Baroness to create a stronger link between the ISC and other committees. It certainly would be our intention that the new ISC should be closer to Parliament than its predecessor and that it should be a strong and effective committee. Equally, an important feature is that the ISC operates within a framework that enables its members safely to be party to highly sensitive material and that it can scrutinise matters that are secret and of which the rest of Parliament and the public, for good reason, do not have sight. Of course, at the moment it is open to Select Committees to write

to the ISC requesting it to review a particular matter. There is nothing in the new arrangements that will stop that. I am sure that any such requests will be treated seriously by the committee.

However, I have a number of concerns about the idea of creating a formal statutory mechanism for making and considering the requests. First, I am concerned that the ISC could become overwhelmed with requests to report on particular matters. If it acceded to all requests, the programme of work could be overtaken with matters that are of interest to other committees, which would take the focus away from the core work of the ISC. Secondly, there is the question of what the ISC would be able to say in response, given the highly sensitive nature of the agency's work. Members of the ISC are of course bound by the obligations of the Official Secrets Act. Thirdly, if the ISC regularly refuses to action requests from Select Committees, an inevitable tension could arise between the ISC and those committees. I fear that that might undermine the perceived effectiveness of the new ISC and its closeness to Parliament.

On the requesting of information to help Select Committees with their work, it will be clear that there will be real limitations on what the ISC could provide, given that much of the material that is provided to the ISC is, by necessity, extremely sensitive.

9.15 pm

Lord Campbell-Savours: Have civil servants and the Minister considered the comments of the noble Lord, Lord Lester of Herne Hill, when he intervened in Committee on these matters? If they have not, why do they not meet him prior to Third Reading so that he can discuss with them his concerns arising from his experience as a member of the Joint Committee on Human Rights?

Lord Wallace of Tankerness: I recall having read, in the past 24 hours, a particular phrase from the contribution of the noble Lord, Lord Lester, to which the noble Lord, Lord Campbell-Savours, refers. I could take the Joint Committee on Human Rights in isolation but numerous other Select Committees could start making requests and the point I am trying to make is that if the ISC started to receive requests—indeed, it is possible at the moment and no doubt the committee considers them—but on a statutory basis, the concern would be that if the committee decided to respond positively to those requests, that would detract from its core function and purpose. Equally, the point I was making was that if it regularly refused action, that could lead to tension and detract from what we are trying to achieve by way of a greater closeness between the new committee and Parliament.

There is also the point that I was making about the information. By its very nature, some of that information will be extremely sensitive and will be classified as secret or top secret, according to the government system of protective markings, but the ISC, in its accommodation, staffing and procedures is set up to handle sensitive information. The ISC secretariat is vetted and its accommodation is secure. However, other committees are not set up to deal with such information, nor are they, we believe, in a proper position to assess the damage that disclosure could cause. If the ISC refuses to provide information, again, that could lead to tensions between committees.

The new ISC will need to consider how it works with Select Committees and with Parliament more broadly, but I am concerned that the provision suggested in this amendment might serve to skew or disrupt the ISC's work programme and its reputation could be damaged by refusals to take forward work or pass on information. It is important that the ISC can direct its own work programme as far as possible and focus its efforts on issues that it, with its unique perspective, thinks are most important. I appreciate the intention behind the amendment in the name of the noble Baroness and the noble Lord, but I hope that they will reflect on the concerns that have been expressed and feel able to withdraw it.

Lord Butler of Brockwell: My Lords, I am grateful for the Minister's sympathetic reaction to Amendments 18 and 23. I will make two glosses on it. If I heard him right, he said that Amendment 18 would leave solely to the judgment of the ISC the test for considering an operational matter. I think he is thinking of the amendment that was moved in Committee because this amendment removes both the ISC and the Prime Minister. The Bill says:

"The ISC may … consider any particular operational matter but only so far",

and it goes on to say that the matter,

"is not part of any ongoing intelligence".

In other words, it means that it is a matter of fact and not something that the ISC could decide by itself.

The second point is that the Minister spoke about it as if these were matters where the committee asked for information from the agencies. However, as I think the noble Baroness, Lady Manningham-Buller, will confirm, that is not usually the case. The circumstances are that the agencies themselves take the initiative in reporting to the committee. They give the information—I should think that that is the case nine times out of 10. It would be a great pity if that closeness that exists between the ISC and the agencies were to be inhibited by a requirement that the agencies clear their lines with the Prime Minister before they can report such a matter.

Baroness Manningham-Buller: I have not intervened in this debate because I have really just been listening with interest and support most of things that have been suggested. If there were a great story in the press—with some truth in it or not, about the operations of the service—I would certainly regard it as my duty to report to the ISC as soon as I reasonably could. It would be reassuring to believe that there is nothing in this drafting to prevent that. It is part of the ongoing confidence-building between the two that the ISC does not have to demand a report on something like that, but gets an early report of the facts from the agencies.

Lord Butler of Brockwell: I am very grateful to the noble Baroness, who makes the point from her direct experience.

Lord Wallace of Tankerness: I hope that I gave reassurance that we recognise some of the issues that the noble Lord raised and that there is certainly a willingness to work through this. There is certainly no intention to retreat from the things which have normally been part and parcel of the ISC's operations and deliberations up until now.

Lord Butler of Brockwell: I am very grateful to the Minister. On the basis on those assurances, I am very happy to withdraw Amendment 18.

Amendment 18 withdrawn.

Amendments 19 to 25 not moved.

Clause 3 : Reports of the ISC

Amendment 26

Moved by ***Lord Butler of Brockwell***

26: Clause 3, page 2, line 32, leave out "a draft of"

Lord Butler of Brockwell: My Lords, this may be the last amendment that we consider this evening. I can move it very briefly indeed because I am very grateful to the noble and learned Lord, Lord Tankerness, for putting his name to it and therefore take it that we are pushing at an open door. This amendment would remove the words "a draft of" in relation to the report submitted to the Prime Minister. The committee does not and never has submitted a draft of the report; it submits its report. The Prime Minister can then ask for certain redactions to be made before it is published. However, it is by no means provisional. I take it from the fact that the noble and learned Lord, Lord Wallace, has put his name to this amendment that the Government will accept the removal of the words "a draft of".

Baroness Smith of Basildon: My Lords, since we are considering the last group of the evening, I confess to being envious of the noble Lord, Lord Butler. I have been in your Lordships' House a relatively short time in comparison with him, but I have never had an amendment signed by both the Official Opposition and the Government. I congratulate him on that achievement.

There is not very much that I can say on this amendment that will not be said even better by others. However, I will say something regarding our Amendment 27. This is a revised version of an amendment which I tabled in Committee. This amendment would amend the grounds on which the Prime Minister may exclude matters from the annual reports. These are currently broadly defined in the Bill as that which the Prime Minister considers,

"would be prejudicial to the continued discharge of the functions of the Security Service".

It goes on in that vein. We have argued that the primary reason for the Prime Minister to request the redaction of material contained within the annual report should be on the basis of national security, or that it risks a disclosure of sensitive information as defined in the Bill. Again, we have reservations that the reason given in Clause 3(4) is a bit of a catch-all provision which allows the Prime Minister to prohibit the publication of material perhaps considered too critical and which may damage the reputation of government agencies.

Of course, we acknowledge that there may be circumstances in which the Government will need to prevent the publication of material. That may not be only on the basis of national security or the sensitivity of information. It could also be where the information might threaten the UK's economic interests. However, it would be better to make such additional criteria transparent and accountable, in order to prevent any misrepresentation of the role of the Intelligence and Security Committee. Amendment 27 allows the Prime Minister to prohibit publication on grounds in addition to national security and the sensitivity of information, along the lines defined in the Bill, but also requires that the scope of the information must be set out in the MoU with the Intelligence and Security Committee. It is a moderate and reasonable amendment and I hope that the Minister will give it his consideration.

Lord Taylor of Holbeach: My Lords, I am delighted that the noble Lord, Lord Butler of Brockwell, moved his amendment. It received support from around the House and I am pleased to say that the Government are in a position to accept it. In Committee, the noble Lord, Lord Butler, and my noble friend Lord Lothian made the important point that the committee should be independent. I agree wholeheartedly. It will submit its report, not a draft of its report, to the Prime Minister, who may insist on redactions to the document but may not insist on any other changes. Again, I agree with this, so we are happy to accept the amendment.

Amendment 27 would have the effect of changing the grounds on which the Prime Minister might exclude any matter from a report to Parliament. It would add to the grounds for exclusion already described so that material might be excluded if it were of such a nature that it would be prejudicial to the continued discharge of the functions of the security service, the Secret Intelligence Service, the Government Communications Headquarters or any person carrying out activities that fall within Section 2(2); if it were sensitive information as defined in paragraph 4 of Schedule 1; or if it were information that, in the interests of national security, should not be disclosed. For convenience, I will refer to the three possible grounds for excluding material as the prejudice to functions ground, the sensitive information ground and the national security ground. The amendment would also require that matters considered to fall under the prejudice to functions ground—currently the only ground for excluding information from the Bill—should be set out in a memorandum of understanding.

The ISC must be able to report candidly to the Prime Minister on sensitive matters. Inevitably, it will not always be possible to publish the full content of its reports because of the nature of the material contained in them. I do not think that there is any dissent in the House from that position. It follows that there must be an ability to redact information before ISC reports are published or laid before Parliament. In Committee, and amendment was tabled by the noble Baroness, Lady Smith—to which she referred—which would have made the criteria for excluding material from the

published report just the grounds of sensitive information and national security. The noble Lord, Lord Rosser, who is not in this place, explained that it was a probing amendment to try to find out why it was necessary to use the definition that was in the Bill rather than that in the amendment, which presented grounds similar to those in Schedule 1 for withholding information from the ISC. In the case of withholding material from the ISC, both grounds had to be fulfilled, whereas for these purposes material could be excluded from a report if either ground were fulfilled.

The sensitivity of information and national security grounds add nothing in substance. Material that falls within those grounds will necessarily also fall within the prejudice to functions grounds—unless in the case of sensitive information that is so historical or so widely known publicly that it is no longer sensitive, in which case there would be no real justification for excluding it from an ISC report to Parliament anyway.

9.30 pm

The test in the Bill is modelled on the one contained in the Intelligence Services Act 1994. It has worked well and is well understood by the committee and the Government. It has allowed material to be excluded where it should be excluded, but it has also allowed the Government and the ISC to ensure that as much of the ISC's reports that can be published are published. It is also not appropriate to require that matters considered to fall within the prejudice to functions ground should be set out in a memorandum of understanding. It would be impossible to describe the sorts of matters that would meet that test in an exhaustive way.

As previously noted, this criterion has worked well throughout the history of the committee. One reason for that, no doubt, is its inherent flexibility. The nature of the material that might need to be excluded from the published reports of the ISC will vary over time, and the precise consequence of the disclosure of such material may also vary.

I hope in the context of my explanation that the noble Baroness will understand why I ask her not to press her amendment.

Amendment 26 agreed.

Amendments 27 and 28 not moved.

Clause 4 : Sections 1 to 3: interpretation

Amendment 29 not moved.

Clause 5 : Additional review functions of the Commissioner

Amendment 30 not moved.

House adjourned at 9.32 pm.

Written Statements

Monday 19 November 2012

Businesses: Regulation
Statement

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Marland): My right honourable friend the Minister of State for Business and Enterprise (Michael Fallon) is today making the following Statement.

I would like to inform the House, I am announcing today a doubling of the rate at which Whitehall departments must cut the burdens their regulation places on business.

The Government are dedicated to enabling businesses to grow and create jobs, helping Britain compete globally. To achieve this, we must remove any unnecessary regulatory burdens that hold back growth and stifle enterprise.

Since January 2011, Whitehall departments have been expected to avoid increases in regulation, under one-in, one-out. This ambition has not only been met but exceeded, reducing net costs on business by around £850 million. It has worked alongside the Red Tape Challenge, which will identify 3,000 regulations to be scrapped or reduced, and the focus on enforcement initiative which is examining where inappropriate or excessive enforcement of regulation needs to be addressed. But even more is needed to remove red tape from business.

From January 2013, the current one-in, one-out constraint has required government departments to balance the costs of new regulation with deregulation that creates equivalent savings for business. This will be replaced with a one-in, two-out rule that whenever a regulation creates costs, twice as much saving must be found by scrapping or simplifying regulation. As under one-in, one-out, all cost and benefit calculations under one-in, two-out will continue to be validated by the independent Regulatory Policy Committee to ensure the credibility and robustness of the system.

One-in, two-out will be a new system, and departments will not be able to use previous achievements to compensate for regulation introduced in the second half of the Parliament. This means that every department, including those with good records to date, will have an even tougher constraint on new regulation. Additionally, the few departments which have not met one-in, one-out to date will have to use the second half of the Parliament to make up lost ground. By the end of the Parliament, they will be expected both to have achieved one-in, two-out from January 2013 and to have introduced enough deregulation to balance out the cost of any regulation they introduced over the past two years.

This new approach is intended to ensure that regulation is the last resort for government departments. The pressure it creates on Whitehall departments will mean that each new regulation is considered to ensure that it is necessary and delivered in a way which avoids unnecessary business burdens.

Child Poverty
Statement

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud): My right honourable friend the Secretary of State for Work and Pensions (Iain Duncan Smith) has made the following Written Ministerial Statement.

On Thursday 15 November the Government laid before Parliament and published *Measuring Child Poverty: A Consultation on Better Measures of Child Poverty*. The Command Paper is available online at: www.education.gov.uk/aboutdfe/departmentalinformation/consultations/a00216896/measuring-child-poverty.

The consultation will run until 15 February 2013.

The consultation is in three parts. It reaffirms the Government's commitment to ending child poverty and makes the case for a better measure, examines what the dimensions of a new measure might be and explores a number of design questions.

The most recent statistics showed 300,000 children moved out of relative income poverty. However, this was largely due to a fall in the median income nationally that pushed the poverty line down; absolute poverty remained unchanged and children who were "moved out" of poverty were no better off than before.

Family income remains an important part of how we consider child poverty, but income alone is not enough. The intention is to design a multi-dimensional measure that includes but goes beyond income.

The consultation proposes eight dimensions; worklessness, unmanageable debt, poor housing, parental skills, access to quality education, family stability and parental health.

Once the consultation has closed, the Government will consider how to take forward multi-dimensional measurement of child poverty and will respond to the consultation in due course.

Conflict Resources
Statement

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): My right honourable friend the Secretary of State for Foreign and Commonwealth Affairs has made the following Written Ministerial Statement.

I, together with my right honourable friends the Secretary of State for International Development and the Secretary of State for Defence, wish to inform the House about our plans for funding conflict prevention, stabilisation and peacekeeping activities for financial years 2012-13-2014-15, via the tri-departmental Conflict Pool.

We intend that this funding be spent within the strategic context set out by the Building Stability Overseas Strategy (BSOS).We reported progress on implementing the BSOS in our Written Ministerial Statement of 16 July.

Delivering this strategy is an important priority for the Government. Enhancing genuine stability by supporting the development of societies with strong and legitimate institutions which can manage tensions peacefully is central to our national interests. We have improved our early warning analysis, to better identify instability risks upstream and develop effective interventions. We have also enhanced the UK's ability to provide a rapid response where that is needed. The co-ordinated use of our highly respected diplomatic, defence and development expertise is central to delivering these priorities. The National Security Council ensures we target our efforts, including our joint conflict resources, on the highest UK priorities. The Government's commitment is reflected in the increasing size of the conflict resources settlement for the remainder of the spending review period. We are under no illusions about the size of the challenges, for example in the Middle East and in Africa. But we are equally clear that the UK can help make a difference, as we have done in Somalia.

Our Written Ministerial Statement of 5 April 2011 provided details of the total settlement for conflict resources for the spending review period, covering both the Conflict Pool and the Peacekeeping Budget. In FY 12-13, the overall settlement will increase to £644 million, rising further during the remainder of the spending review period. The settlement continues to provide a mix of official development assistance (ODA) funding and non-ODA resources.

The Peacekeeping Budget—from which we meet our obligatory and assessed international peacekeeping costs—has first call on the settlement. The settlement provides £374 million for the Peacekeeping Budget each year. If costs exceed this figure, they are met from the Conflict Pool. For FY 12-13, we have estimated our obligatory peacekeeping costs to be some £435 million. An additional allocation of £61 million has been made, therefore, to the Peacekeeping Budget from the Conflict Pool. In-year monitoring allows us to make adjustments, when necessary, to the balance of resources among budgets.

An allocation of £435 million to peacekeeping leaves a balance of some £209 million available for the Conflict Pool for FY 12-13. The allocation round for this financial year has provided an important opportunity to align Conflict Pool resources with the BSOS aims of early warning, rapid crisis prevention and upstream conflict prevention. Programme allocations have been decided on their ability to deliver results on the ground against these objectives, with a tight focus on the highest priorities, where the risks are high, where UK interests are most at stake and where we know we can have an impact. Due to the unpredictability of conflict programming we have overcommitted initial allocations to ensure we fully utilise the resources.

In the BSOS we said that the UK needed to be better able to respond rapidly to unexpected conflict risks. The new early action facility (EAF) helps us do that. The EAF provides a guaranteed, flexible funding resource of £20 million each year for the remainder of the spending review period to respond rapidly to early warnings of conflict and emerging opportunities to prevent conflict. Potential uses include funding a short-term surge in UK effort, support for peace negotiations or new peacebuilding opportunities. The EAF is already being used for projects in Syria, Libya and Somalia.

We have also introduced provision for sustained, multi-year funding. This is an important step forward, providing predictability to build long-term relationships where needed and to deliver greater value for money. For some programmes we have set firm multi-year allocations; in others, where medium-term perspectives are less clear, the allocations in the outer years of the spending review period are partial or indicative.

In line with priorities identified in the BSOS, we are aiming to increase the proportion of Conflict Pool activity focused on upstream prevention, including by supporting free, transparent and inclusive political settlements; working with governments to develop effective and accountable security and justice systems; and building the capacity of communities, regional and international institutions to resolve conflicts.

Conflict Pool Allocations for Financial Years 12-13 through to 14-15

Programme	*FY 12-13 £M*	*FY 13-14 £M*	*FY 14-15 £M*
Afghanistan	69.4	53.9	37.05
South Asia	15.2	8.1 (20)	7.3 (30)
Middle East and North Africa	23.7	10(24.1)	10 (26.8)
Africa	42.8	21.8(40)	21.8 (39.2)
Wider Europe	36.3	28 (34.9)	28 (34.9)
Strengthening Alliances and Partnerships	8	8.5	9.4
Stabilisation Unit	10.2	(10)	(10)
Early Action Facility	20	20	20
Total	210.1 (225.6)	142.2 (211.4)	133.25 (207.35)
Overall Conflict Settlement	644	664	683

Figures without brackets are firm allocations. Bracketed figures are indicative. The breakdown between peacekeeping and Conflict Pool is not yet determined for FY 13-14 and additional resources are expected to be transferred to the Conflict Pool in FY 13-14 and 14-15.

In FY 12-13, Afghanistan will remain the single largest allocation at £69.4 million, as part of our continued contribution to achieve a stable, viable Afghan state. The allocation will subsequently reduce over the spending review period, in line with the UK's transition planning in Helmand province.

Funding for the south Asia programme will largely focus on Pakistan and its neighbours, including improving relations and border management between Afghanistan and Pakistan. This programme will increase significantly over the spending review period. The programme will also work to reduce the risk of renewed conflict in both Nepal and Sri Lanka and instability in the Maldives.

The Africa programme has been allocated £42.8 million in FY 12-13. This allows an increase in funds to support additional work in Somalia and Sudan and South Sudan. Partial allocations for the outer years at this stage will also focus on these priority countries and ongoing capacity-building work in African institutions.

In response to the Arab spring, we intend to increase resources to the Middle East and north Africa region over the remainder of the spending review period. We are allocating £23.7 million for FY 12-13, with increasing indicative allocations for both FY 13-14 and FY 14-15. We will expand the range of countries where Conflict Pool activity takes place to include more activity in north Africa and the Gulf. Allocations for the outer years will be confirmed following further analysis. The early action facility will ensure we have the financial agility to respond to urgent needs as they emerge, including in Syria, but also elsewhere.

Allocations for wider Europe, covering the western Balkans, Caucasus and central Asia have been increased to reflect a stronger UK commitment to the EU-led military operation in Bosnia and Herzegovina. The allocation will remain broadly constant over the rest of the spending period. This programme also covers costs associated with the UK's military contribution to the UN peacekeeping mission in Cyprus, at £18.3 million a year.

In line with the importance highlighted in the BSOS of working with international partners to achieve our objectives, we are increasing funding for the Strengthening Alliances and Partnerships programme to £8 million in FY 12-13 with small further increases thereafter. Resources will help improve the performance of UN bodies and regional organisations and to support our work to prevent sexual violence in conflict.

The Conflict Pool also provides funding for the tri-departmentally owned stabilisation unit. The reduced allocation of £10.2 million for FY 12-13 reflects efficiency savings. Allocations for the remainder of the spending review period are indicative at this stage, pending work on restructuring and refocusing the unit, following a review earlier this year.

Our departments will continue to improve the impact and efficiency of the pool, taking into account recent reviews by the National Audit Office and the Independent Commission on Aid Impact.

We will continue to update the House on our use of these resources.

Disabled People: Access to Work

Statement

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud): My honourable friend the Minister for Disabled People (Esther McVey) has made the following Written Ministerial Statement.

I wish to announce today measures to strengthen and improve the Access to Work scheme.

Access to Work helps over 30,000 disabled people each year retain and enter employment. It provides valuable support such as help with travel to work, purchase of specialist equipment and support workers. Last year the Government spent £93 million on this highly effective and well regarded programme.

Following Liz Sayce's review of specialist disability employment programmes, *Getting In, Staying In and Getting On* the Government have already announced significant improvements to Access to Work, including an additional £15 million over this spending review period, availability of the scheme to young disabled people undertaking work experience under the youth contract, and a targeted marketing campaign. On 4 July we announced that we were establishing an expert panel, chaired by Mike Adams, to help us take forward some of the recommendations in Liz Sayce's report, and to provide advice on the further transformation of the programme. I am grateful to Mike Adams and the panel for their advice.

Today, I can announce that the panel has completed the first phase of its work, and that we will be implementing a number of changes between now and March 2013 aimed at further strengthening the programme.

I would like to announce a number of changes aimed at streamlining the application process for individuals who already have a good understanding of their needs, and experience of receiving this type of support:

we will introduce a fast-track assessment process so individuals who already know their support requirements will move swiftly through their application;

we will make it easier to transfer equipment so that individuals can move more easily between employers with their special aids and equipment; and

we will allow individuals to use their disabled students allowance assessment information as part of the Access to Work assessment process.

Access to Work aims to increase levels of personalisation and to promote independence wherever possible and appropriate, so in line with this:

Access to Work will aim to find the most appropriate independent travel to work option to make each individual aware of all available options, such as travel buddies, travel training, or adaptations to a vehicle, where appropriate. I wish to make it clear that there will be no withdrawal of taxi support for individuals for whom this is the most appropriate and independent travel option; and

Access to Work will strengthen the support agreement letter to place more emphasis on individually tailored travel plans so all individuals will have a personally tailored solution in their agreement letter taking account of all available travel options.

We will invite disabled people's user-led organisations to produce innovative employment related peer support proposals to support disabled individuals using Access to Work. Any proposals will then be assessed before being taken forward. This will mean that individuals accessing Access to Work will have the opportunity to benefit from peer support alongside their standard package of support.

Access to Work has an important role to play in facilitating an open, constructive and productive relationship between employer and employee. In line with the expert panel's advice, we will introduce changes that strengthen Access to Work's ability to perform this role:

Access to Work will amend its guidance and products to ensure that employers are made aware of when and how they will play a part in the application process;

Access to Work will ensure that its advisers consistently act as a catalyst to encourage employers to think of creative, individually tailored adjustments for every disabled employee, for example, by using case studies with employers to bring potential solutions alive; and

Access to Work will further upskill advisers to work more constructively with employers to deliver the most appropriate adjustments in order to ensure that their disabled employees are supported as effectively as possible.

I would also like to announce two further changes aimed at facilitating the relationship between employer and employee. Access to Work has, since 2010, operated a list of standard equipment it would not normally expect to fund. The list has not, however, always operated as effectively as it might have done, and may have discouraged some applications. Consequently, we will cease to operate this list and instead Access to Work advisers will work constructively with employer and employee to identify where Access to Work can assist.

I would also like to announce today that, while the principle of sharing costs of adjustments between employer and Access to Work will remain in place for medium-sized and large employers, we will remove cost share for those employing between 10 and 49 people. This brings these relatively small businesses in line with provisions that already exist for microbusinesses.

I would like to emphasise that these changes are aimed at making Access to Work more responsive and easier to use, especially for small businesses. Under the Equality Act, employers are under a duty to make reasonable adjustments for disabled people. These changes will not mean that the taxpayer picks up the bill for reasonable adjustments that others should be making.

Finally, I would like to announce further help for disabled people wishing to establish their own business through the new enterprise allowance (NEA), which provides valuable support for aspiring jobseekers wishing to start up their own business. From 3 December we will pilot extending Access to Work to eligible disabled people undertaking business start up activity on the NEA scheme in the Merseyside region. Subject to effective operation in Merseyside, we will aim to roll out the measure nationally in the new year.

The Access to Work expert panel has already moved on to the second, wider phase of its work and is considering how the system can be further personalised, how the scheme could support young people who are moving from education into employment, and how it can work more effectively for employers of all sizes, and those who are self-employed.

Collectively these changes represent a significant step forward for this effective programme, and a step closer to our goal of delivering disability employment support fit for the 21st century. I now look forward to the next phase of our work on this programme to further enhance the support that we can provide to help more disabled people get into, and remain in, employment.

EU: Balance of Competences

Statement

The Minister of State, Department for Business, Innovation and Skills & Foreign and Commonwealth Office (Lord Green of Hurstpierpoint): My right honourable friend the Secretary of State for Business, Innovation and Skills, (Dr Vince Cable) has today made the following Statement.

I wish to inform the House that, further to my right honourable friend the Secretary of State for Foreign and Commonwealth Affairs Office (William Hague) Oral Statement launching the review of the balance of competences in July and the Written Statement on the progress of the review in October 2012, the Department for Business, Innovation and Skills has published its call for evidence for the internal market synoptic report.

The internal market report will be completed by summer 2013 and will cover the overall application and effect of the EU internal market, often also known as the single market. The internal market of the EU is designed to ensure the free movement of goods, services, capital and persons: the so-called four freedoms. It will explore the current state of competence in the internal market as a whole and will assess the strength of arguments for the need for other areas of competence to enable the internal market to operate effectively.

The call for evidence period will last 12 weeks. The Department for Business, Innovation and Skills will draw together the evidence and policy analysis into a first draft, which will subsequently go through a process of scrutiny before publication in summer 2013.

The report will focus on the classic single market issues: the EU as an area without internal frontiers designed to ensure the free movement of goods, services, capital and persons (the four freedoms). It will look at Articles 26 to 66 and 114 to 118 of the TFEU, using these articles and the jurisprudence emanating from them as a legal base.

The Department for Business, Innovation and Skills will take a rigorous approach to the collection and analysis of evidence. The call for evidence sets out the scope of the report and includes a series of broad questions on which contributors are asked to focus. Interested parties are invited to provide evidence with regard to political, economic, social and technological factors. The evidence received (subject to the provisions of the Data Protection Act) will be published alongside the final report in summer 2013 and will be available on the new government website www.gov.uk.

The department will pursue an active engagement process, consulting widely across Parliament and its committees, businesses, the devolved Administrations

and civil society in order to obtain evidence to contribute to our analysis of the issues. Our EU partners and the EU institutions will also be invited to contribute evidence to the review. As the review is to be objective and evidence-based, encouraging a wide range of interested parties to contribute will ensure a high yield of valuable information.

The result of the report will be a comprehensive, thorough and detailed analysis of the wider functioning of the internal market. It will determine how the four freedoms operate together to create an effective single market and ultimately what this means for the United Kingdom. It will aid our understanding of the nature of our EU membership; and it will provide a constructive and serious contribution to the wider European debate about modernising, reforming and improving the EU. The report will not produce specific policy recommendations.

I am placing this document and the call for evidence in the Libraries of the House. They will also be published on the BIS website and accessible through the balance of competences review pages on the Foreign and Commonwealth Office website.

EU: Environment Council

Statement

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Baroness Verma): My right honourable friend the Secretary of State for Energy and Climate Change (Edward Davey) has made the following Written Ministerial Statement.

Lord De Mauley, Parliamentary Under-Secretary for Resource Management, the Local Environment and Environmental Science and I represented the UK at the Environment Council in Luxembourg on 25 October.

The Council held an orientation debate on ship recycling. The UK, together with other member states, said that close alignment with the Hong Kong convention was vital to ensure proportionality and enforceability. The majority of member states believed the issues of penalties and access to justice should be decided by member states in line with the subsidiarity principle.

Next, Ministers adopted conclusions on Rio+20: the outcome and follow-up to the United Nations conference on sustainable development 2012. A majority of member states, including the UK, backed the presidency text as drafted and following negotiations, a compromise was tabled. The European Commission tabled a declaration underlining its view that there is no need to review the sustainable development strategy as work is being taken forward under the Europe 2020 strategy but that it is open to plugging sectoral gaps in the 2020 strategy.

Following the morning session I attended a ministerial lunch hosted by the presidency. This lunch focused on climate change. Discussion included the outcome of the Pre-COP 18/CMP 8 ministerial meeting on climate change held in Korea, which I also attended, and climate finance.

In the afternoon session Council conclusions were also adopted on the preparations for the 18th session of the Conference of the Parties to the United Nations Framework Convention on Climate Change. I, and my ministerial colleagues, focused our discussions on paragraphs 14 (on the EU QELRO - quantified emission limitation or reduction objectives); 16 (AAUs – assigned amount units); and 29 (climate finance).

Under paragraph 14 (EU QELRO), consistent with the coalition's commitment to work for an increase in the EU's CO2 emissions reduction target, I suggested amending text to reflect the possibility of a QELRO that corresponds to an EU -30% target as well as the current one (which corresponds to an EU target of -20%). This would have sent a more positive signal on EU ambition ahead of COP18. However there was not a great deal of appetite for this inclusion among other member states, so I ceded the point, mindful that the EU's offer to move to a 30% target is stated clearly in paragraph 10 of the conclusions.

There was a great deal of discussion on how AAUs should be treated as the first commitment period of the Kyoto Protocol comes to an end and the EU prepares to move into the second commitment period from 1 January 2013. I emphasised the need to ensure environmental integrity and, therefore, was not willing to cede that strict limits need to be applied in some manner across the carryover of AAUs to, and the domestic use and trading of these carried-over AAUs in, the second commitment period. The presidency repeatedly proposed compromise texts aimed at bridging differences but these were rejected. As there was no consensus on any new text on AAUs the presidency reverted to the text we agreed at the March Council, which emphasises the need for environmental integrity.

Several member states emphasised the importance of the EU having a strong position on climate finance before Doha. The UK supported inclusion of references to previous ECOFIN conclusions but clarified that we should not intrude on ECOFIN territory in these Doha conclusions. The presidency presented compromise text on this paragraph, which signalled our ongoing consideration of climate finance and the need for continuation of finance provision post 2012. The paragraph was adopted.

In other business, updates were provided on access to genetic resources and the benefits arising from their use; hazardous substances in textiles; the mutual acceptance of low emission zones vignettes and the exchange of best practices. On EU legislation for meeting environmental objectives—the example of air quality—the UK highlighted that new legislation was not necessarily the answer, a greater focus was needed on ensuring that current legislation was delivered.

Judicial Review

Statement

The Minister of State, Ministry of Justice (Lord McNally): My right honourable friend, the Lord Chancellor and Secretary of State for Justice (Chris Grayling) has made the following Written Ministerial Statement.

I am today announcing a review of the judicial review process.

Judicial review is a critical means of holding the Executive to account, ensuring that decisions are lawful. However there has been a huge growth in the use of judicial review, which has expanded far beyond what was

originally intended. In 1975 there were 160 applications for judicial review, but by 1998 this had grown to around 4,500 applications, and to around 11,000 by 2011. In 2011, for every application for permission to bring a judicial review that was granted, five were refused (a higher proportion was refused in immigration and asylum cases). In those cases where permission was granted, an even smaller proportion was successful.

Much of this growth is the result of an increase in applications to review decisions in immigration and asylum cases, but judicial review is also used as a means of challenging other types of decisions, for example, in planning matters, in large infrastructure projects, in procurement exercises and in other key reform programmes.

The Government are concerned about the burdens that this growth has placed on stretched public services. This can lead to unnecessary costs and lengthy delays, and may in some cases stifle innovation and frustrate much needed reforms, including those aimed at stimulating growth and promoting economic recovery.

The Government therefore intend to seek views on a package of options designed to tackle these problems. This package will include shortening time limits in certain cases, restricting the opportunities for an oral reconsideration of the application for permission in certain circumstances, and introducing new fees. The purpose of this is not to deny or restrict access to justice, but to provide for a more balanced and practicable approach, ensuring that weak, frivolous and unmeritorious cases are identified early, and that legitimate claims are brought quickly and efficiently to a resolution. In this way, we can ensure that the right balance is struck between reducing the burdens on public services, and protecting access to justice and the rule of law.

Pensions

Statement

The Commercial Secretary to the Treasury (Lord Sassoon): My right honourable friend the Chief Secretary to the Treasury (Danny Alexander) has today made the following Written Ministerial Statement.

The Government have previously committed to reforming the Fair Deal policy and to delivery of this by offering access to public service pension schemes to staff who are compulsorily transferred out of the public sector.

The Government have today published a response to the consultation on the Fair Deal policy, which sets out further detail on the reformed fair deal policy for future staff transfers.

The document also contains some further questions for consultation, which will explore how Fair Deal should apply to those employees that have already been transferred out under existing Fair Deal when contracts are retendered. The publication also contains draft guidance setting out further details on how the policy will work in practice.

The Government welcome contributions from all interested groups.

The consultation document has been deposited in the Libraries of both the Houses and can be found on the HM Treasury website at: http://www.hm-treasury.gov.uk/consult_fair_deal_policy_pensions_ publicsector.htm.

The consultation will close on the 11 February 2013.

The Government have also published two policy papers which set out further detail on the Government's policy on actuarial valuation of public service pension schemes, and the operation of the employer cost cap in the public service schemes. These documents have been deposited in the Libraries of both the Houses and can be found on the HM Treasury website at: http://www.hm-treasury.gov.uk/tax_pensions_resources.htm.

Wales: Devolution

Statement

The Parliamentary Under-Secretary of State, Wales Office (Baroness Randerson): My right honourable friend the Secretary of State for Wales (David Jones) has made the following Written Ministerial Statement.

The Government established the Commission on Devolution in Wales (the Silk Commission) in October 2011 with the support of the Welsh Government and all the parties in the National Assembly for Wales.

The commission's remit is divided into two parts. I can inform the House that the commission has today published a report on part I of its remit. The report, *Empowerment and Responsibility: Financial Powers to Strengthen Wales*, makes recommendations on the devolution of fiscal powers to the National Assembly for Wales.

I welcome publication of the report and have placed copies in the Library of the House. The Government will carefully consider the commission's recommendations and respond in due course.

The commission will now turn its attention to part II of its remit, in which it will review the powers of the National Assembly for Wales. I wish to inform the House of changes to the membership of the commission for part II. I am making two new appointments to the commission to replace commissioners who are standing down: Helen Molyneux, chief executive of New Law Solicitors, Cardiff, is joining the commission as an independent member in place of Dyfrig John CBE, following a recommendation by the commission, and Jane Davidson is the Welsh Labour Party's nominee in place of Sue Essex.

I have also appointed Trevor Glyn Jones CVO as an additional independent member to ensure representation on the commission from north Wales for its part II work. Mr Jones recently retired as Lord Lieutenant of Clwyd, and all four party leaders in the assembly have agreed his appointment.

Written Answers

Monday 19 November 2012

Agriculture: Global Food Security

Question

Asked by ***The Lord Bishop of Derby***

To ask Her Majesty's Government what assessment they have made of the impact of climate change on global food security. [HL3079]

Baroness Northover: The Government's Foresight Report on the Future of Food and Farming explored the increasing pressures on the global food system between now and 2050. This included an assessment of the impact of climate change on food security. DfID has also undertaken a systematic review of research evidence on the projected impacts of climate change on food crop productivity in Africa and South Asia.

Further assessment on the impact of climate change on food security was made in the business case to provide a grant of £150 million from the UK's International Climate Fund to the International fund for Agriculture Development's Adaptation for Smallholder Agriculture Programme. DfID support to the programme will help six million smallholder farmers respond to climate change. The business case will shortly be published online.

Apprenticeships

Question

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government how many apprenticeships for young people there have been in each year from 2005 until the last year for which records are available in (1) each of the English regions, (2) Scotland and (3) Wales. [HL3280]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Marland): Table 1 shows the number of apprenticeship programme starts by those aged under 19 by English region. Final data are shown for the 2005-06 to 2010-11 academic years and provisional data are shown for the 2011-12 academic year.

Provisional data for the 2011-12 academic year provide an early view of performance and will change as further data returns are received from further education colleges and providers. They should not be directly compared with final year data from previous years. Figures for 2011-12 will be finalised in January 2013.

The department does not collect further education information relating to the devolved Administrations.

Table 1: Apprenticeship Programme Starts for those aged under 19 by Region, 2005-06 to 2011-12 (Provisional)

Region	*2005-06 (Final)*	*2006-07 (Final)*	*2007-08 (Final)*	*2008-09 (Final)*	*2009-10 (Final)*	*2010-11 (Final)*	*2011-12 (Provisional)*
North East	8,500	8,450	8,290	8,030	9,040	11,070	9,200
North West	17,660	18,670	18,540	16,360	20,840	23,800	20,470
Yorkshire and the Humber	13,830	14,800	15,450	14,850	15,930	16,760	17,430
East Midlands	9,490	10,030	10,900	9,640	10,850	11,840	11,690
West Midlands	11,450	11,370	11,490	11,340	13,590	15,690	15,220
East of England	8,570	9,130	9,820	8,560	10,170	12,160	11,940
London	6,060	5,980	6,100	6,100	7,880	10,620	10,390
South East	12,470	14,110	13,820	12,770	14,530	15,720	15,980
South West	10,160	11,670	11,680	10,560	12,620	12,850	12,700
Other	1,350	1,410	1,470	1,160	1,320	1,180	1,310
England Total	99,500	105,600	107,600	99,400	116,800	131,700	126,300

Source:
Individualised Learner Record

Notes

1. All figures are rounded to the nearest 10 except for the overall total which is rounded to the nearest 100.
2. Age is calculated based on age at start of programme.
3. Regional breakdowns are based upon the home postcode of the learner. 'Other' includes some postcodes outside of England and unknown postcodes.
4. Figures are based on the geographic boundaries as of May 2010.
5. Provisional data for 2011-12 should not be directly compared with data for earlier years.

Information on the number of apprenticeship starts by geography is published in a supplementary table to a quarterly Statistical First Release (SFR). The latest SFR was published on 11 October 2012:

http://www.thedataservice.org.uk-statistics-statisticalfirstrelease-sfr_current

http://www.thedataservice.org.uk-statistics-statisticalfirstrelease-sfr_supplementary_tables-Apprenticeship_sfr_supplementary_tables-.

Armed Forces: Medals

Question

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government, further to the answer by the Prime Minister on 31 October (*Official Report*, col. 229–230) that Sir John Holmes was conducting a review into the award of the Ushakov medal to Arctic convoy veterans, when they expect

that report to be concluded; and when a decision will be made about the award of the Ushakov medal to veterans. [HL3041]

Lord Newby: Sir John Holmes is not conducting a specific review into the award of the Ushakov Medal to Arctic Convoy veterans. However, in his Military Medals Review published on 17 July 2012 and available at: www.cabinetoffice.gov.uk/resource-library/military-medals-review-report-sir-john-holmes, Sir John Holmes made a number of recommendations, including that there should be a fresh look at the policy on the acceptance of medals from another country. The Government have invited Sir John to undertake further work to implement his recommendations. This review is being completed in stages, with some of the most pressing cases (including the issue of whether those who participated in the Arctic Convoys should be considered for a UK medal) considered first; this first stage is expected to be completed later this year.

Banks: Iceland

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government whether terms have now been agreed with Iceland for the repayment of funds due to HM Treasury in respect of deposits placed with Icelandic banks by United Kingdom depositors; and what were the terms of the loan. [HL3118]

The Commercial Secretary to the Treasury (Lord Sassoon): Negotiations with Iceland over the terms of a loan agreement are currently suspended, pending the outcome of proceedings by the European Free Trade Association (EFTA) Surveillance Authority against Iceland in the EFTA Court, in respect of Iceland's legal obligations to UK and Dutch depositors under the EU Deposit Guarantee Directive.

Banks: Money Laundering

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government whether the Financial Services Authority is examining money laundering by HSBC in Mexico. [HL3119]

The Commercial Secretary to the Treasury (Lord Sassoon): The Financial Services Authority (FSA) is the regulator for financial institutions in the UK. HSBC's operations in Mexico are not incorporated or authorised in the UK and are, therefore, not under the FSA's supervisory jurisdiction. However, the FSA maintains regular dialogue with the other regulatory authorities in relation to their investigations into the HSBC Group.

Bees

Questions

Asked by ***Lord Jones of Cheltenham***

To ask Her Majesty's Government what measures they have put in place to reverse the decline of the United Kingdom's wild bees. [HL3100]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley): This is a devolved matter. There are 17 species of bee in England (including five species of bumblebee) that are now very rare and are included on the revised list of threatened species under Section 41 of the Natural Environment and Rural Communities Act 2006. Natural England is leading work with partner bodies to identify actions to aid the recovery of these species, which forms part of the implementation plan for Biodiversity 2020—A strategy for England's wildlife and ecosystem services.

One species of bumblebee (Bombus subterraneus), that had recently become extinct in the UK was re-introduced in May 2011 as part of Natural England's Species Recovery Programme (with the support of partners including: RSPB, Bumblebee Conservation Trust and Hymettus). Fifty queen bees were released at Dungeness in an important step to re-establish the species in the UK. This project will be monitored over the coming years.

More widely, environmental stewardship (agri-environment) schemes in England include options designed to promote insect biodiversity on agricultural land. This includes various options to sow wild flower seed mixes on field margins and other areas to provide a nectar and pollen source for insects such as bees.

Defra is also providing £2.5 million over five years (from 2010-11) towards the £10 million Insect Pollinators Initiative which is being jointly funded with the Scottish Government, Biotechnology and Biological Sciences Research Council (BBSRC), Natural Environment Research Council (NERC) and Wellcome Trust. The initiative's projects are looking at different aspects of the decline of insect pollinators.

Further, we have awarded £7.5 million to 12 nature improvement areas to become better places for wildlife, creating more and better-connected habitats, helping wildlife to thrive and adapt to climate change, and enhancing ecosystem services, including pollination. We have also invited applications for local nature partnership (LNP) status, and published an overview of the LNP role which includes taking a strategic view of what is needed locally to conserve nature and sustain ecosystem services.

Asked by ***Lord Jones of Cheltenham***

To ask Her Majesty's Government when they expect the decline in the United Kingdom's bee populations to be stabilised and reversed. [HL3101]

To ask Her Majesty's Government whether they forecast that the decline of the United Kingdom's bees will be reversed by 2020. [HL3102]

Lord De Mauley: This is a devolved matter. HM Government recognise the importance of all pollinators, including bees, and their value to both food security and sustaining the natural environment. We are currently considering a range of evidence on the state of bees and other pollinators in order to determine what action is required.

Although there has been a decline in the number of managed honey bee colonies since the 1950s due to a number of factors, this trend has been reversed in

recent years as more beekeepers have taken up the craft. There are now over 28,000 beekeepers managing approximately 138,000 colonies in England and Wales registered on the Food and Environment Research Agency's National Bee Unit's voluntary BeeBase register, compared to 16,000 beekeepers managing 80,000 colonies in 2008.

Bumblebee populations in the UK are thought to have declined by about 60% since 1970, with three species becoming extinct. However, there is little numerical data on the previous declines of individual species, and without knowing this it is difficult to say exactly how soon we can stop and reverse the declines of individual species. We are working hard to stabilise and reverse these declines.

Current and developing work under the England Biodiversity Strategy is designed to ensure that the overall decline in our biodiversity (including bees) is halted and reversed by 2020. The plans to achieve this are still under development.

Benefits

Question

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

To ask Her Majesty's Government what is their forecast of the impact on provision of childcare costs through the benefits and tax credits system of the extension in 2014 of free early education to 40% of two year-olds; and whether they plan to use any savings to extend entitlement to childcare through the benefits and tax credits system. [HL3192]

The Commercial Secretary to the Treasury (Lord Sassoon): The Government tax credits forecast approved by the Office for Budget Responsibility do not incorporate any adjustment for the extension of free early education to two year-olds from 2014. As no savings have been identified, there are no funds to reinvest.

Bovine Tuberculosis

Questions

Asked by ***Lord Willis of Knaresborough***

To ask Her Majesty's Government, further to the Written Answer by Lord De Mauley on 22 October (*WA 6–7*), how in next summer's cull they will verify that the correct percentage of badgers has been culled in order to meet the 70% target. [HL3070]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley): The number of badgers culled and the culling method used in each case will be recorded by the operators and be part of the licence returns to Natural England. During the pilots, there will also be independent monitoring of the effectiveness of badger control, in terms of the proportion of the population removed.

As such, the Independent Expert Panel has recommended a genetic sampling approach using hair traps. The information collected will enable the panel to monitor the effectiveness of the cull.

Asked by ***Lord Willis of Knaresborough***

To ask Her Majesty's Government, in the light of increased badger numbers in Somerset and Gloucester, whether local farmers will continue to fund the total cost of the proposed badger cull in those areas. [HL3071]

Lord De Mauley: The pilot badger cull policy is based on a cost-sharing approach with the farming industry. The industry will be responsible for the operational costs of delivering culling and Defra will bear the costs of licensing, monitoring and policing the policy.

Children: Child Protection

Question

Asked by ***Lord Robertson of Port Ellen***

To ask Her Majesty's Government when the Secretary of State for the Home Department will reply to the letter from Lord Robertson of Port Ellen of 24 July, concerning child protection. [HL3130]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): The former Parliamentary Under-Secretary of State for Criminal Information (Lynne Featherstone) responded to Lord Robertson's letter on 4 September 2012. Another copy of this response has been sent to Lord Robertson.

Chronic Fatigue Syndrome and Myalgic Encephalomyelitis

Question

Asked by ***The Countess of Mar***

To ask Her Majesty's Government what is their policy on police protection for medical researchers working on chronic fatigue syndrome and myalgic encephalomyelitis. [HL3254]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): Criminal, violent or threatening behaviour towards anyone, including medical researchers, is not acceptable. Where there is a threat to individuals involved in medical research, it is a matter for the police to investigate and take the relevant action.

Civil Service: Secondments

Question

Asked by ***Lord Adonis***

To ask Her Majesty's Government how many senior civil servants at the Ministry of Justice are on secondment to companies or organisations in the United Kingdom; how many were seconded to such companies or organisations in 2011; and to which companies and organisations they are or were seconded. [HL3035]

The Minister of State, Ministry of Justice (Lord McNally): According to the information held centrally by the Ministry of Justice, as at 30 September 2012, 10 Ministry of Justice senior civil servants were on

secondment to external companies or organisations in the United Kingdom. The details of these secondments are shown in Table 1 below:

Table 1

Organisation	*Number of SCS secondees*
National Health Service	1
Essex County Council	1
Independent Parliamentary Standards Authority	2
Legal Services Commission	4
Olympic Delivery Authority	1
"Catch 22"	1
Total	10

The Ministry does not have complete information available centrally on the secondments of its senior civil servants to external organisations in 2011.

Commonhold and Leasehold Reform Act 2002

Question

Asked by ***Baroness Scott of Needham Market***

To ask Her Majesty's Government whether they intend to bring into force Section 156 of the Commonhold and Leasehold Reform Act 2002. [HL3140]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): The Government are keeping the appropriateness of commencement of Section 156 of the Commonhold and Leasehold Reform Act 2002 (as amended) under review but is not convinced that additional regulation is called for at this time as it could ultimately increase costs for leaseholders.

Courts: Magistrates' Courts

Question

Asked by ***Lord Beecham***

To ask Her Majesty's Government what proportion of local magistrates courts are manned by professional judges as opposed to lay magistrates; and whether they have any plans to increase that proportion. [HL3129]

The Minister of State, Ministry of Justice (Lord McNally): We do not collate data on the division of court work between district judges (Magistrates' Courts) and magistrates. There are no national plans to change the balance of work between magistrates and district judges; the decision to appoint a district judge is based on locally determined need. It is the Government's firm view that an appropriate balance of both magistrates and district judges (MC) is vital to run an effective and efficient justice system.

Crime: Domestic Violence

Question

Asked by ***Baroness Uddin***

To ask Her Majesty's Government how they will ensure that police and crime commissioners and local authorities implement national strategies to prevent and eliminate domestic violence. [HL3058]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): The Police and Crime Commissioners (PCCs) will be democratically accountable for ensuring the policing needs of the community are met. They will have a general duty to regularly consult and involve the public, and have regard to the priorities of the community safety partnerships in their police area. Where it is identified as a priority, PCCs should have regard to local and national strategies to eliminate domestic violence.

However, the Government have made clear the priority they attach to local services tackling domestic violence, and have ring-fenced nearly £40 million of funding for specialist local domestic and sexual violence support services until 2015.

Crime: Homicide

Question

Asked by ***Lord Tebbit***

To ask Her Majesty's Government how many people have been killed in the United Kingdom since 1963 by persons previously convicted of homicide. [HL2844]

The Minister of State, Ministry of Justice (Lord McNally): The Ministry of Justice (MoJ) holds information on those persons convicted of homicide offences having previously been convicted of a homicide offence. This information is provided in the following table.

However, the MoJ does not hold information centrally on the number of homicide victims associated with these crimes.

The table shows the number of previous convictions for homicide by people convicted of homicide in each year from 2001 to 2011. Homicide includes among others, the offences of murder, manslaughter, infanticide, corporate manslaughter and causing death by dangerous and careless driving. See footnote 1 for all types of homicides.

Table: Number of previous convictions for homicide by people convicted of homicide[(1)] in each year from 2001 to 2011

England and Wales

	Number of previous convictions				
Year	*Zero*	*One*	*Two*	*3+*	*All Offenders*
2001	875	8	0	0	883
2002	940	4	0	0	944

Table: Number of previous convictions for homicide by people convicted of homicide[1] in each year from 2001 to 2011

England and Wales

			Number of previous convictions		
Year	*Zero*	*One*	*Two*	*3+*	*All Offenders*
2003	860	3	0	0	863
2004	983	5	2	0	990
2005	1,008	8	0	0	1,016
2006	940	10	0	0	950
2007	940	8	0	0	948
2008	992	7	0	0	999
2009	1,003	3	0	0	1,006
2010	1,033	7	1	0	1,041
2011	928	13	1	0	942

Source:
Police National Computer, Ministry of Justice
[1] Homicide is defined by the following crimes and may include different crimes to other published data:
Common Law Murder of persons aged 1 year or over
Common Law Murder of infants under 1 year of age
Common Law & Offences against the Person Act 1861 S.5;9; 10. Manslaughter
Infanticide Act 1938. Infanticide
Infant Life Preservation Act 1929. Child destruction
Road Traffic Act 1988 Sec.! (I). As amended by the Road Traffic Act 1991 S.1 & CJA 1993 S.67 Causing death by dangerous driving
Homicide Act 1957 Sec.2. Manslaughter, Diminished Responsibility
Road Traffic Act 1988 Sect3 A. as added by the RTA 1991 S.3 & amended by CJA 1993 S.67. Causing death by careless driving when under the influence of drink or drugs
Cause/allow death of a child or vulnerable person. Domestic Violence, Crime & Victims Act 2004 S.5
Causing death by careless or inconsiderate driving; Road Traffic Act 1988 S.2B as added by Road Safety Act S.20
Causing death by driving: unlicensed, disqualified or uninsured drivers; Road Traffic Act 1988 S.3ZB as added by Road Safety Act S.21
Corporate manslaughter / homicide
Theft Act 1968 S.12A as added by the Aggravated Vehicle Taking Act 1992 S.1 - Aggravated taking where owing to the driving of the vehicle an accident occurs causing the death of any person

These data are produced using the same data from table Q71 in Criminal Justice Statistics Quarterly Update to December 2011 which was published on 24 May 2012. The full report can be found at the link http://www.justice.gov.uk/downloads/statistics/criminal-justice-stats/criminal-justice-stats-dec-2011.pdf.

The figures given in the table have been drawn from the extract of Police National Computer (PNC) data held by the Ministry of Justice. As with any large scale recording system the PNC is subject to possible errors with data entry and processing. The figures are provisional and subject to change as more information is recorded by the police.

Deposit Guarantee Scheme

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government how much has been paid to HM Treasury under the Deposit Guarantee Scheme introduced in 2008; and how much has been paid in claims. [HL3117]

The Commercial Secretary to the Treasury (Lord Sassoon): The UK's Deposit Guarantee Scheme is operated by the Financial Services Compensation Scheme (FSCS).

From 2008 until 31 March 2012, £4.3 billion had been recovered from the administration and wind-up of the failed banks and building societies. Of this, £2.4 billion has been used to reduce the FSCS's liability, £1.2 billion to reduce HM Treasury's liability, and £0.7 billion to reduce Iceland's liability.

Information on how much has been paid out in claims and paid to the scheme in levies is available in the FSCS annual report and accounts. These reports are available on the FSCS website here: http://www.fscs.org.uk/industry/publications/annual-reports/

Information on the allocation of liabilities and recoveries is available in HM Treasury's annual report and accounts. These are available on the HM Treasury website here: http://www.hm-treasury.gov.uk/dep_perf_reports_index.htm.

Egypt

Question

Asked by ***Lord Turnberg***

To ask Her Majesty's Government what discussions they have had with the Government of Egypt about that country's position on the peace treaty between Egypt and Israel. [HL3044]

Lord Newby: The Prime Minister, my right honourable friend the Member for Witney (Mr Cameron), met President Mursi on 26 September and they discussed relations with Israel. President Mursi confirmed Egypt's commitment to the peace treaty.

Elections: Police and Crime Commissioners

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government whether it is compulsory for electors to vote for a second preference candidate in the elections for police and crime commissioners; and, if not, why the ballot paper does not make it clear that a vote for only the first candidate is valid. [HL3116]

Lord Taylor of Holbeach: It is not compulsory for electors to vote for a second preference candidate under the supplementary vote system which will be used for the Police and Crime Commissioner elections. The instructions on the ballot paper are consistent with those which are provided to voters for other supplementary vote elections in the UK, for example mayoral elections. The instructions are designed to be very short and simple, with further information provided in advance by the Electoral Commission and on the notices in the polling booth or on the postal voting statement. The Home Office undertook user testing of the ballot papers with members of the public, including people with language or literacy difficulties, to confirm they were easy to use.

Embryology

Question

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government, further to the Written Answers by Earl Howe on 23 June 2010 (*WA 182–3*) and Baroness Garden of Frognal on 5 November (*WA 168*), whether they regard pronuclear transfer as a form of somatic cell transfer; whether eggs provided to the Medical Research Council-funded study Improving the Efficiency of Human Somatic Cell Nuclear Transfer (SCNT) for the purposes of research into SCNT were used for research into pronuclear transfer; and whether it remains the case that gametes provided by patients for a particular project have not been authorised for use in separate research. [HL3172]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Marland): The Government regard the technical procedures associated with somatic cell nuclear transfer (SCNT) and pronuclear transfer (PNT) as biologically very distinct. However, they share a number of technical challenges, in the sense that both involve removal and transplantation of nuclear DNA.

A defining feature of SCNT is that the resulting embryos are genetically identical to the person from whom the somatic cell is derived. By contrast, the genetic identity of a PNT embryo is unique to the sperm and egg from which the pronuclei are formed.

A second feature of SCNT embryos is that the somatic cell DNA must be reprogrammed to revert to an embryonic pattern of gene expression. In the case of PNT, the DNA within the pronuclei is derived from the sperm and the egg, and is therefore already poised to embark on an embryonic pattern of gene expression.

The technical similarities between the two procedures mean that lessons from PNT can inform SCNT research and vice versa. However, from a biological perspective, SCNT is more challenging than PNT.

The research team at the University of Newcastle have not used any eggs provided under the Medical Research Council-funded study *Improving the Efficiency of Human Somatic Cell Nuclear Transfer (SCNT)* for the purposes of research into PNT.

The Human Fertilisation and Embryology Authority (HFEA) is the UK's independent regulator overseeing the use of human gametes and embryos in fertility treatment and research. All research in this area is subject to ethical approval granted by the Local Research Ethics Committee and a licence granted by the HFEA. The HFEA have advised that on no occasion has it permitted embryos or gametes provided by patients for a particular research project to be used in separate research. The HFEA has advised me that this remains the case.

EU: Finance

Question

Asked by ***Lord Rooker***

To ask Her Majesty's Government whether they have discussed with other European Union member states the benefits of openness and transparency in dealing with the financial crisis affecting European Union citizens. [HL3055]

The Commercial Secretary to the Treasury (Lord Sassoon): The Government have regular discussions with other European Union member states on a wide variety of European issues including banking and transparency with regard to the financial crisis.

EU: Financial Assistance to Member States

Question

Asked by ***Lord Pearson of Rannoch***

To ask Her Majesty's Government how much they have (1) spent outright, and (2) provided in loans, in support of the euro; how much they have spent and loaned to support the economies of (a) Greece, (b) Portugal, (c) Italy, (d) Spain, (e) the Republic of Ireland, and (f) Cyprus; and how this compares with support for those economies by other European Union countries, the International Monetary Fund and others. [HL3104]

The Commercial Secretary to the Treasury (Lord Sassoon): I refer to the Answer provided on 8 November 2012 (HL2842) which sets out the UK's involvement in financial assistance packages to euro area member states.

The status of the UK's bilateral loan to Ireland is set out in the most recent report provided under Section 2 of the Loans to Ireland Act 2010, laid before the House on 15 October 2012: http://www.official-documents.gov.uk/document/other/9781909096097/9781909096097.asp.

The European Commission's website provides information on all financial assistance to EU member States: http://ec.europa.eu/economy_finance/assistance_eu_ms/index_en.htm.

EU: Multiannual Financial Framework

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government what assessment they have made of the comments by the Polish Minister of Regional Development, Elzbieta Bienkowska, on their approach to negotiations on the European Union multiannual financial framework. [HL3061]

The Commercial Secretary to the Treasury (Lord Sassoon): The Government monitor other member states' positions in their approaches to the negotiations on the European Union Budget and notes the Polish Minister of Regional Development's recent comments.

EU: Trade Agreements

Question

Asked by ***Lord Pearson of Rannoch***

To ask Her Majesty's Government, further to the Written Answer by Lord Davies of Abersoch on 9 December 2009 (*WA 129–30*), with how many countries the European Union has free trade agreements; and with how many it is negotiating such agreements. [HL3238]

The Minister of State, Department for Business, Innovation and Skills & Foreign and Commonwealth Office (Lord Green of Hurstpierpoint): At present, the European Union (EU) has free trade agreements (FTA) with four countries, namely: Chile, South Africa, Mexico, and South Korea. As part of the wider European Economic Area, the EU has adopted FTAs with Norway, Iceland, Liechtenstein, and Switzerland.

Negotiations with Central America (comprising El Salvador, Costa Rica, Guatemala, Nicaragua and Panama), Andean Nations (comprising Peru and Columbia), and Ukraine have been concluded, and will be ratified in due course.

Negotiations are ongoing with 10 countries or groups of countries, namely: Canada; India; Mercosur (Argentina, Brazil, Venezuela, Uruguay and Paraguay); Singapore; Malaysia; Vietnam; Moldova; Georgia; Armenia; and the Gulf Co-operation Council.

Of those FTA negotiations, we are confident that agreements with Canada and Singapore will be finalised in the coming months. The Government are supportive of negotiations starting in 2013 with Japan, Thailand and the USA.

Government Departments: Coalition Agreement

Questions

Asked by ***Lord Ryder of Wensum***

To ask Her Majesty's Government what progress the Department of Energy and Climate Change has made since May 2010 in respect of commitments relevant to it in the coalition agreement. [HL3231]

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Baroness Verma): DECC is committed to delivering the Government's agenda as set out in the coalition agreement. We, like other departments, have published our plans to implement the Government's agenda through our structural reform plans which detail the concrete steps this Government are taking to implement their agenda. DECC's business plan for 2012-15 was published on the department's website in May 2012 and sets out the programme of work the department plans to carry out over the next three years to support the Government's objectives, including the Structural Reform Plan. The Structural Reform Plan can also be viewed on No. 10's transparency website, which details information on the status of each action in the business plan as well as providing an explanation for any missed deadlines.

To date, the department has completed 17 of the actions it has committed to, 20 remain in progress and 13 are yet to be started.

Asked by ***Lord Ryder of Wensum***

To ask Her Majesty's Government what progress the Department for Environment, Food and Rural Affairs has made since May 2010 in respect of commitments relevant to it in the coalition agreement. [HL3232]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley): Core Defra continues to make strong progress towards delivery of its coalition agreement commitments.

Many of the concrete steps Defra is undertaking to implement the coalition agreement are set out in the department's business plan. Since May 2010, Defra has delivered 86 commitments from its business plan, including:

launching the first White Paper on the natural environment in 20 years, including new nature improvement areas to halt the loss of habitats and restore biodiversity;

responding to the recommendations made by the Farming Regulation Task Force with 137 commitments to reduce regulatory burdens on the farming industry and food processors; and

taking forward commitments from the water White Paper, *Water for Life*, including publication of a draft Water Bill to reform the water industry.

A further 49 commitments remain to be completed in the department's 2012-15 business plan. Progress in delivering the plan can be tracked on the No. 10 Transparency website http://transparency.number 10.gov.uk.

Government Departments: Correspondence

Questions

Asked by ***Lord Laird***

To ask Her Majesty's Government what was the average time taken to reply to letters sent to the Department for Environment, Food and Rural Affairs by (1) members of the House of Lords, (2) members of the House of Commons, and (3) members of the public, in each of the past five years. [HL3084]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley): Figures for the average time taken for core Defra to reply to letters in the last five years are given in the table below:

	2007	2008	2009	2010	2011
			Average number of working days taken to reply to letters:		
(1) from members of the House of Lords	16	18	19	12	15
(2) from members of the House of Commons	13	15	14	11	12
(3) from members of the public	7	8	9	8	8

Asked by ***Lord Laird***

To ask Her Majesty's Government what guidance is issued by the Department for Environment, Food and Rural Affairs to its staff about responding to correspondence; and whether they will place a copy of that guidance in the Library of the House. [HL3085]

Lord De Mauley: Core Defra correspondence is handled centrally by a Customer Contact Unit (CCU), which seeks to answer at least 85% of correspondence within 15 working days. The following information about correspondence is published to all staff on the core Defra intranet:

"The CCU aims to deliver the best possible service to Ministers, policy officials, MPs the public and Parliament by making constant improvements to our performance and ensuring a joined-up and consistent approach to handling correspondence, parliamentary questions and briefing".

There is also guidance that staff should:

"communicate clearly and write in plain English ensuring our replies are as polite and helpful as possible".

Government Departments: ICT

Questions

Asked by ***Lord Laird***

To ask Her Majesty's Government how many computers were (1) owned, and (2) leased, by the Department for Environment, Food and Rural Affairs in (a) 2006, (b) 2007, (c) 2008, (d) 2009, (e) 2010, and (f) 2012. [HL2997]

To ask Her Majesty's Government how many computers (1) owned, and (2) leased, by the Department for Environment, Food and Rural Affairs used (a) Microsoft, and (b) Apple, operating systems in (i) 2006, (ii) 2007, (iii) 2008, (iv) 2009, (v) 2010, and (vi) 2012. [HL2998]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley): The number of computers leased and owned by core Defra, by operating system, at 30 September 2010 and 30 September 2012 is provided in the table below. The number of computers owned or leased by core Defra for 2006-09 could only be provided at disproportionate cost.

Years	Owned		Leased	
	Microsoft Operating System	Apple Operating System	Microsoft Operating System	Apple Operating System
2010	0	2	2,981	0
2012	0	2	2,675	0

Government Departments: Procurement

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government what guidance is issued by the Department for Environment, Food and Rural Affairs to staff using the government procurement card. [HL3087]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley): The Government procurement card (GPC) policy for core Defra has recently been reviewed.

In summary the guidance is that GPCs should generally only be used for low value, one-off purchases to meet essential business needs, where items cannot be paid through invoicing.

The revised policy was implemented on 1 November 2012.

I will place a copy of the guidance in the Library of the House.

Government Departments: Staff

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government what surveys of staff employed by the Department for Energy and Climate Change are conducted; at what cost; at what time of year; and whether they will place in the Library of the House the results of each such survey held in the department or its predecessor departments in each of the last five years. [HL3315]

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Baroness Verma): The Department of Energy and Climate Change (DECC) has conducted surveys of all its staff as part of the annual Civil Service People Survey since 2009. This survey is undertaken in October each year in order to track progress on priority areas and help identify further areas for action. The survey is administered through a contract owned and managed by the Cabinet Office,

with costs shared between all departments. In 2011, DECC paid £8,948 as its contribution to the Civil Service Survey. The results of each of the surveys undertaken so far, have been published on our external website and can be viewed by following the hyperlink below: http://www.decc.gov.uk/en/content/cms/accesstoinform/about_decc/about_decc.aspx.

DECC also undertakes regular small in-house surveys on an ad hoc basis in order to assess staff views and its performance across specific targeted areas. The results of these surveys are reviewed and used by local management to inform future management decisions. These surveys are conducted using a software programme called Survey Monkey for an annual subscription of £300. This entitles DECC to conduct multiple surveys during the course of the subscription period.

DECC will place a copy of the results of each of the Civil Service People Surveys since 2009 in the Library of the House.

Health: Human Papilloma Virus

Questions

Asked by ***The Countess of Mar***

To ask Her Majesty's Government what trials were conducted on the effects of human papilloma virus vaccines on male and female reproductive systems before the vaccines were approved for human use; and what were the results. [HL3339]

To ask Her Majesty's Government what surveillance has been conducted on the effects on the menstrual cycles of girls aged (1) 12 to 14, and (2) 15 to 18 of immunisation with human papilloma virus vaccine since the vaccine was introduced; and what were the results. [HL3341]

To ask Her Majesty's Government what is their assessment of the reported finding that all human papilloma virus 16-L antigen from Gardasil vaccine crossed the blood/brain barrier and was found lodged in the brains of two girls. [HL3342]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The human papilloma virus (HPV) vaccines Gardasil and Cervarix have been safely used for over six years in tens of millions of girls worldwide. Prior to licensing non-clinical studies found that both vaccines had no adverse effects on fertility, pregnancy, foetal and post-natal development. This is supported by extensive data from clinical studies involving females of child bearing age. Large long-term studies post licensure in tens of thousands of females covering a range of ages also found no evidence that the HPV vaccines cause menstrual cycle irregularities including amenorrhoea.

Through the Yellow Card Scheme the Medicines and Healthcare products Regulatory Agency (MHRA) has received 11 spontaneous reports of amenorrhoea in association with HPV vaccine. A Yellow Card report is not proof of a side effect occurring, but only a suspicion of a possible link. Reported events may relate to underlying medical conditions or may be coincidental and would have occurred in the absence of vaccination.

Amenorrhoea is a naturally occurring condition in adolescent girls. For every one million girls vaccinated, around 25 cases of premature ovarian failure are expected to occur by coincidence within three months of vaccination. With over 6 million females vaccinated with Cervarix in the United Kingdom, there is no evidence that menstrual cycle abnormalities are occurring following vaccination any more than expected by chance amongst vaccinated girls.

The recent research by Tomljenovic and Shaw that suggests the presence of HPV-16-L1 antigen in the brain blood vessels of two girls vaccinated with Gardasil will be carefully evaluated. At present, the research is insufficient to establish a causal association between Gardasil vaccination and cerebral vasculitis. The MHRA will continue to keep the safety of HPV vaccines under close review.

Health: Medical Treatment Withdrawal

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government whether they will make it a criminal offence for NHS employees to withhold medical treatment or care from patients on the ground of age. [HL3115]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): Decisions on medical treatment or care should be based on a thorough assessment of the individual's needs and circumstances. Judgments based on age must not be used as a substitute for an individual assessment of a person's needs. The Government introduced a ban on unjustifiable age discrimination from 1 October 2012. If a patient feels they have been unlawfully discriminated against because of their age they are now able to take individuals or organisations to court. Where liability is established compensation may be awarded. It is not, however, a criminal offence, and we are not currently considering making it such.

Higher Education: Overseas Students

Question

Asked by ***Lord Turnberg***

To ask Her Majesty's Government what is their estimate of the number of (1) European Union, and (2) non-European Union, immigrant students entering United Kingdom non-university institutes of education, including language schools, during the academic years starting in 2011 and 2012. [HL2918]

Lord Wallace of Saltaire: The department only collects information on government-funded learners (funded by the Skills Funding Agency and the Education Funding Agency) undertaking further education and skills training delivered in FE organisations, sixth form colleges, independent training organisations, local authorities and other providers.

Privately funded education institutions in this country, such as language schools, operate as private businesses and, as such, are not required to register with the department which does not collect data on them.

Government-funded learning, as recorded on the Individualised Learner Record (ILR) for further education, is restricted to home learners. Therefore funded learners who are non EEA (European Economic Area) nationals must have been resident in the UK for the three years preceding their course start date and the main purpose for residence must not have been to receive full-time education during any part of that three year period. There are a limited number of exceptions to this, for example, refugees, learners with indefinite leave to remain status, or learners studying under reciprocal exchange agreements.

The table below shows the number of government-funded learners participating in further education and skills institutions (excluding schools) in England by country of domicile for 2005-06 to 2010-11, the latest years for which final data are available. Information on the nationality of learners in further education is not available. However, colleges do capture country of domicile information for funding purposes.

Table 1: Further Education and Skills Learner Participation by Country of Domicile, 2005-06 to 2010-11

Country of Domicile	*2005-06*	*2006-07*	*2007-08*	*2008-09*	*2009-10*	*2010-11*
UK	4,066,800	3,244,160	3,574,700	4,002,100	3,834,400	3,496,900
EU (excluding UK)	33,200	31,900	27,200	24,800	20,500	18,600
Non EU	10,250	8,530	8,550	9,230	7,410	5,980
Not Known	912,200	947,290	750,280	801,000	764,240	743,400
Total	5,022,400	4,231,900	4,360,700	4,837,100	4,635,500	4,264,900

Source:
Individualised Learner Record

Notes

1. These data include learning in the education and training, apprenticeship, workplace learning, community learning and university for industry funding streams.

2. All figures are rounded to the nearest ten except totals which are rounded to the nearest hundred.

3. EU countries are as defined at the start of the 2010-11 academic year.

House of Lords: Appointments

Question

Asked by ***Lord Pearson of Rannoch***

To ask Her Majesty's Government, further to the Written Answer by Lord Strathclyde on 7 November (*WA 210*), whether the Prime Minister intends to fulfil his commitment to ensure that the composition of the House of Lords reflects the share of votes secured by each political party at the most recent general election; and, if so, when. [HL3237]

The Chancellor of the Duchy of Lancaster (Lord Strathclyde): It is the Government's continued intention that Lords appointments will be made with the objective of creating a second chamber that is reflective of the share of the vote secured by the political parties in the last general election.

Imports: Plants and Animals

Question

Asked by ***Lord Higgins***

To ask Her Majesty's Government, in the light of recent cases of ash dieback disease in the United Kingdom, what steps they are taking to identify other risks arising from the importation of plants and animals. [HL3077]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley): Defra's International Disease Monitoring Team and the Animal Health and Veterinary Laboratories Agency (AHVLA) constantly monitor new emerging or high impact animal diseases in the UK and across the world. When we become aware of a new animal disease outbreak in another country, we carry out an initial rapid assessment of the risk of introduction of that disease into the United Kingdom taking into account the level of trade from that region and any possible illegal movements. This helps inform risk-based activity of enforcement agencies.

Should a new risk be identified, the Human Animal Infections and Risk Surveillance (HAIRS) group may also be involved in identifying whether an emerging disease may pose a threat to UK public health.

The Secretary of State recently announced the establishment of an expert taskforce to review our strategic approach to plant health and to prevent pests and diseases from entering the country. We are also urgently bringing forward those actions in the Tree Health and Plant Biosecurity Action Plan particularly aimed at keeping out serious pests and pathogens not currently present in the UK.

Israel and Palestine

Question

Asked by ***Baroness Tonge***

To ask Her Majesty's Government what discussions they have had with the Government of Israel about that country's exercise of its responsibilities under the Geneva Convention for the welfare of those under its occupation, and in particular about Israel bearing the cost of meeting those responsibilities. [HL3046]

Lord Newby: Our officials in Israel hold frequent and high level discussions with the Israeli authorities regarding the welfare of the Palestinian population of

the Occupied Palestinian Territories (OPTs), though not specifically with reference to the Geneva Convention. We have not raised the issue of Israeli responsibilities regarding the costs of maintaining the welfare of the local population of the OPTs but have frequently encouraged the Israelis to facilitate the speedy clearance of revenue transfers to the Palestinian Authority.

Justice: Youth Courts

Questions

Asked by ***Lord Hoyle***

To ask Her Majesty's Government, since the closure of the youth courts in south-west Lancashire on 1 July, how many cases from the south Ribble and Chorley areas have been heard at (1) Preston, and (2) Ormskirk, youth courts. [HL3030]

The Minister of State, Ministry of Justice (Lord McNally): This information is not available centrally and could only be obtained at a disproportionate cost as it would need a manual trawl of the court files. Her Majesty's Courts and Tribunal Service will however undertake an exercise to collect this information on cases currently going through the court system for a three-month period.

Asked by ***Lord Hoyle***

To ask Her Majesty's Government how many cases from Ormskirk have been listed at Ormskirk Youth Court on each date of sitting since the closure of youth courts in south-west Lancashire on 1 July; and how many cases from Chorley or South Ribble have been listed each day for the same period. [HL3051]

To ask Her Majesty's Government how many cases from Preston have been listed at Preston Youth Court each day since 1 July. [HL3052]

To ask Her Majesty's Government how many youth cases which originated from Chorley, South Ribble and Ormskirk Magistrates' Courts have been listed on each day since 1 July. [HL3053]

Lord McNally: This information is not available centrally and could only be obtained at a disproportionate cost as it would need a manual trawl of the court files.

Lebanon

Question

Asked by ***Lord Turnberg***

To ask Her Majesty's Government what is their assessment of the potential impact, and likelihood, of any transfer of chemical weapons or missiles from Syria to Hezbollah in Lebanon. [HL3045]

Lord Newby: We are concerned by reports of continued transfers of conventional weapons to Hizballah in Lebanon, including Hizballah's own claims that it possesses significant military capabilities. Any such transfers would be in violation of UN Security Council resolution 1701 and would pose a threat to Lebanese and regional stability.

The UK is closely monitoring all aspects of the current situation in Syria. We are working with international partners and countries neighbouring Syria to improve border controls to reduce the risk of weapons proliferating to third parties. We have made clear to President Assad, directly and through other parties, that any use or proliferation of chemical and biological weapons would be completely unacceptable. The security of Syria's chemical and biological weapons is a priority. We will work with the international community to ensure they are secured during any transition, and are destroyed if and when it is possible to do so.

National Association of Pension Funds

Question

Asked by ***Lord Dykes***

To ask Her Majesty's Government how they will assist the National Association of Pension Funds in order to increase the amount the Association secures from members to invest in Treasury-sponsored long-term infrastructure projects. [HL3121]

The Commercial Secretary to the Treasury (Lord Sassoon): The Department for Communities and Local Government recently launched the Local Government Pension Scheme: Investment in Partnerships Consultation. This consultation is seeking views by 18 December on whether local authority pension schemes should be allowed to increase the amount they invest in infrastructure assets.

National Crime Agency

Question

Asked by ***Baroness Smith of Basildon***

To ask Her Majesty's Government when they will make available the Framework document for the National Crime Agency. [HL3131]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): As my noble friend Lord Henley indicated to Peers during the House of Lords Committee hearings on the Crime and Courts Bill, on 20 June 2012 (*Official Report*, cols. 1781-82) the Government aim to share an outline version of the National Crime Agency (NCA) Framework Document with members of both Houses of Parliament in advance of the House of Lords Report debates on that Bill, which are due to start on 27 November 2012.The final NCA Framework Document will be published and laid before Parliament in due course, following Royal Assent to the Crime and Courts Bill and subject to the consultation requirements set out in that Bill.

National Insurance

Questions

Asked by ***Lord Laird***

To ask Her Majesty's Government whether employers based in the Channel Islands of teachers working in the United Kingdom are required to (1) pay employer national insurance contributions, and (2) collect income tax and employee national insurance contributions; and, if not; how those are paid; and whether superannuation contributions are collected and passed to the Teachers' Pension Scheme; and, if not, why not. [HL3088]

The Commercial Secretary to the Treasury (Lord Sassoon): Employers, based in the Channel Islands, of teachers in the UK are required to pay employer national insurance contributions (NICs) and collect income tax and employee NICs if they are present, resident or have a place of business in the UK.

If an employer outside the UK with no presence, residence or place of business in the UK, makes their employees available to a person or business here in the UK, the Social Security (Categorisation of Earners) Regulations 1978 treat the UK person or business as the employer and that person in the UK is liable for secondary employer national insurance and to deduct primary employee national insurance and income tax. This arises most commonly where a UK company is supplied with workers by a foreign agency or loaned employees from a foreign company.

Asked by ***Lord Laird***

To ask Her Majesty's Government, further to the Written Answer by Lord Wallace of Saltaire on 22 October (*WA 28–9*), why there is a difference between the estimate of 27,000 Romanians entering the United Kingdom in the four years from 2007–2010 and the figure of 81,630 adult Romanians registering for national insurance numbers in those years; which of those figures was used in annual net migration statistics for their migration target purposes; and whether they will review the efficacy of the International Passenger Survey as their preferred immigration measure. [HL3124]

Lord Newby: The information requested falls within the responsibility of the UK Statistics Authority. I have asked the authority to reply.

Letter from Glen Watson, Director General for ONS, to Lord Laird, dated November 2012.

As Director General for the Office for National Statistics (ONS), I have been asked to respond to your Parliamentary Question to Her Majesty's Government, further to the Written Answer by Lord Wallace of Saltaire on 22 October (*WA 28-9*), why there is a difference between the estimate of 27,000 Romanians entering the United Kingdom in the four years from 2007-2010 and the figure of 81,630 adult Romanians registering for national insurance numbers in those years; which of those figures was used in annual net migration statistics for their migration target purposes; and whether they will review the efficacy of the International Passenger Survey as their preferred immigration measure. (HL3124)

ONS uses data from the International Passenger Survey (IPS) to estimate long-term international migration (LTIM), with adjustments made for asylum seekers, people whose intentions change with regards to their length of stay, and migration to and from Northern Ireland. LTIM estimates adhere to the UN definition of a long-term international migrant, which states that a long-term migrant is a person who changes his or her country of usual residence for a period of at least a year.

There are several reasons why the figures for Romanian nationals derived from the IPS differ from figures on those registering for national insurance numbers (NINos):

NINos are compulsory for all migrants intending to work, regardless of the duration of their stay, so will include short-term migrants staying in the UK for less than 12 months, who are excluded from LTIM estimates;

NINo allocations do not necessarily reflect a recent move to the UK, as an overseas national may already have been in the UK for several years (for example as a student or a dependent) before they decide to seek employment; and

people who have been allocated a NINo may have subsequently left the UK. They will still be included in NINo figures, but not in net migration estimates.

The figure of 27,000 is the inflow of Romanian citizens, which coupled with the emigration figure of 4,000 for the years 2007-10 was part of the annual net migration statistics produced by ONS. This is the data the Home Office use for net migration targets.

At the national level, IPS estimates are considered very reliable. However, in common with all sample surveys, the reliability decreases as estimates are calculated for lower levels of detail, for example by geography, age, sex or nationality. This applies when IPS data are used to calculate estimates of small groups of migrants. ONS publish confidence intervals alongside these estimates. These intervals refer to the margin of error, and are a measure of uncertainty associated with making inferences from a sample. In the case of Romanian nationals, the confidence intervals indicate that inflow was between 19,000 and 35,000 in the years 2007 to 2010.

ONS have made an assessment of the different sources of data on international migration and published a report, available at the following link: http://www.ons. gov.uk/ons/rel/migration1/population-by-country-of-birth-and-nationality/sources-of-international-migration-data/differences-between-sources-of-international-migration-data.pdf.

ONS concluded that the International Passenger Survey (IPS) is currently the most appropriate source for the calculation of long-term international migration based on the UN definition.

Improvements have been made to the IPS as part of the Migration Statistics Improvement Programme, in response to the National Statistician's Task Force on Migration. Several changes were introduced to the IPS design in 2009 to reflect changing patterns of migration to and from the UK. These included changes to the

sampling at regional airports and have led to more robust and timely estimates of international migration at both the national and regional level.

Peacebuilding Funds

Question

Asked by ***Baroness Hamwee***

To ask Her Majesty's Government whether, in the light of the United Nations recommendation that 15% of all peacebuilding funds should be directed towards supporting women's rights and participation in peacebuilding, they will consider disaggregating data on spending totals to the level of detail necessary to demonstrate how much is spent on such rights and participation. [HL3090]

Baroness Northover: DfID follows internationally agreed formats for reporting official development assistance (ODA) as required by the Organisation for Economic Co-operation and Development (OECD). This format uses codes which allow DfID to report how much funding goes to gender issues, including activities related to women's rights and peacebuilding separately, but does not allow funding to peacebuilding to be disaggregated further to peacebuilding and women's rights and participation. DfID will continue to follow the agreed OECD reporting requirements. However, DfID has committed to provide £55 million to the United Nations (UN) Peacebuilding Fund between 2011 and 2015. In 2011 the UN Peacebuilding Fund started an initiative to ensure that 15% of its funds are spent on peacebuilding and women's rights and empowerment.

Pensions

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government whether they will review the statutory funding objective and the statement of funding principles in Sections 222 and 223 of the Pensions Act 2004 in relation to the calculation of technical provisions in the Occupational Pension Schemes (Scheme Funding) Regulations (SI 2005/3377); and to which public sector pension schemes those sections do not apply. [HL3218]

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud): Sections 222 and 223 of the Pensions Act 2004, and the Scheme Funding Regulations 2005, contain scheme funding requirements which apply to most private sector defined benefit occupational pension schemes. These requirements do not generally apply to funded public sector pensions schemes. We continue to monitor the effectiveness of these provisions on an ongoing basis, but we have no current plans to amend them.

Post-2015 Development Agenda

Question

Asked by ***Baroness Kinnock of Holyhead***

To ask Her Majesty's Government what discussions they have had with other Governments on the inclusion of peacebuilding in the post-2015 development framework. [HL3189]

Baroness Northover: In his role as co-chair of the High Level Panel, the Prime Minister has set out that he is keen to establish a new agenda to put in place the building blocks of development, including in fragile and conflict-affected states which face particular peace and security challenges.

The High Level Panel on the post-2015 framework held its second meeting in London on the 1 and 2 November. Ahead of the main panel meeting in London, the UK hosted a day of seminars for panel members. This included discussions on personal security.

We are keen to hear the voices from developing countries in particular and are consulting stakeholders from the G7+ group of fragile states through the International Dialogue on Peacebuilding and Statebuilding.

The UK will participate further in international fora where the integration of peacebuilding into a post-2015 framework is on the agenda. These include the OECD's International Network on Conflict and Fragility later this month and meetings of the International Dialogue on Peacebuilding and Statebuilding in December.

Protection of Freedoms Act 2012

Question

Asked by ***Lord Selsdon***

To ask Her Majesty's Government when they will publish the code of practice on powers of entry, as set out in the Protection of Freedoms Act 2012. [HL3200]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach): We are currently finalising a draft code of practice on powers of entry and will consult on it early in the new year.

Public Health

Question

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government why the Cabinet Sub-Committee on Public Health has been disbanded. [HL3410]

Lord Wallace of Saltaire: The Public Health Sub-Committee made an important contribution to the good progress that has been made in public health policy issues so far, in particular the development of the Public Health Outcomes Framework, Public health issues will now be mainstreamed into the broader domestic policy committees rather than sitting with a separate sub-committee. This will enable public health issues to be discussed and public health policy decisions to be taken by a wider group of Ministers from across Government.

Regional Growth Fund

Questions

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government how many of the regional growth fund winners in rounds 1 and 2 are still waiting for their funds. [HL3284]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Lord Marland): We now have an agreed position with nine out of 10 bids. However, 61 projects and programmes from rounds 1 and 2 of the regional growth fund have not signed final offer letters: of these, for example, some are in the process of completing due diligence reports or are in correspondence with us about their conditional offer. Our priority is to agree a way forward with these final bidders before Christmas.

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government how many winning bidders have withdrawn from the regional growth fund. [HL3285]

Lord Marland: There are 30 bidders from round 1 and 2 that have withdrawn from the regional growth fund (RGF): two bids that were selected for round 3 have decided not to proceed. For a fund of this size, the number of withdrawals is low and is evidence of the robustness of the RGF process, which is a point the NAO highlighted in their report in spring 2012.

Schools: Buildings and Land

Question

Asked by ***Lord Bradley***

To ask Her Majesty's Government what is the current guidance to local authorities regarding the disposal of school buildings. [HL3159]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): The disposal of local authority held school land—which includes buildings situated on that land—is controlled through legislation. Schedule 1 to the Academies Act 2010 (as substituted) and Section 77 of the School Standards and Framework Act 1998 (as amended) contain mechanisms requiring any local authority wishing to dispose of publicly funded school land to seek the consent of the Secretary of State before it may do so. The department also publishes non statutory advice documents on the transfer of local authority land to academies, and has recently published revised departmental advice on the protection of playing fields and the sale of publicly funded school land. This can be found on the department's website at: www.education.gov.uk/schools/adminandfinance/schoolscapital/a0010907/sale-of-school-land.

Taxation: Non-domiciled Taxpayers

Question

Asked by ***Lord Oakeshott of Seagrove Bay***

To ask Her Majesty's Government what is their estimate of the number of United Kingdom residents (1) entitled to claim non-domiciled status for tax purposes, and (2) paying the non-domiciled flat rate charge; how many taxpayers paid the non-domiciled flat rate charge; and how much was raised, for each year for which figures are available. [HL3110]

The Commercial Secretary to the Treasury (Lord Sassoon): HM Revenue and Customs (HMRC) only holds information on those individuals who are required to declare their domicile status because it is relevant to their tax affairs. HMRC do not hold any estimates for the number of individuals who are entitled to claim to be non-domiciled but choose not to do so.

The annual remittance basis charge of £30,000 was introduced with effect from the 2008-09 tax year when it was paid by 5,410 individuals, giving an Exchequer yield of £162 million. In the 2009-10 tax year, 5,100 individuals paid the charge, with a yield of £153 million.

Trees: Chalara Fraxinea

Questions

Asked by ***Lord Willoughby de Broke***

To ask Her Majesty's Government, further to the Written Answer by Lord de Mauley on 7 November (HL2995), why the Department for Environment, Food and Rural Affairs did not impose immediate quarantine restrictions on the nursery in Buckinghamshire where the symptoms of ash dieback fungus had been confirmed. [HL3225]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley): Ash plants with unrecognised symptoms were found in a routine inspection. Given suspicion about the presence of a harmful organism the nursery agreed voluntarily to hold the plants. None was moved from the nursery prior to confirmation that the plants were infected with Chalara fraxinea. Once this confirmation was given the plants were destroyed.

Asked by ***Lord Willoughby de Broke***

To ask Her Majesty's Government why, following confirmation of ash dieback fungus at a nursery in Buckinghamshire on 7 March, Ministers were not informed of the finding until 3 April. [HL3226]

Lord De Mauley: The finding of Chalara fraxinea was confirmed at one location in a consignment of recently imported plants, with no reason to believe that this was anything other than an isolated incident, requiring trace forward and action to destroy any potentially infected plants that had been circulated. The recent confirmation of findings of C. fraxinea in the wider environment have not been linked to this particular case, which involved young plants only recently circulated to customers. Many interceptions of imported plants and plant products are made each month involving unregulated, as well as regulated, organisms. Statutory action is taken regularly against such potentially damaging pests and pathogens and it is not normal practice to inform Ministers immediately about all such incidents. Any potentially significant issues are reported through a monthly update to Ministers on plant health issues and in the case of this particular interception, this was the mechanism used to inform Ministers.

Asked by ***Lord Willoughby de Broke***

To ask Her Majesty's Government what is the name and address of the nursery in Buckinghamshire where the first incidence of Chalara fraxinea ash dieback disease was confirmed. [HL3227]

Lord De Mauley: We do not release details of premises because of commercial confidentiality.

Plant Health and Seeds Inspectors work closely with nurseries and need their co-operation in tracing forward plants which have been supplied by the nursery in order to take any action required at the delivery sites. Such co-operation could be jeopardised by the publication of nursery names and addresses and the resulting publicity. In the case of the Buckinghamshire nursery inspectors have followed up all the deliveries and have required destruction of the trees supplied.

Trees: Imports

Questions

Asked by ***Lord Framlingham***

To ask Her Majesty's Government whether they have completely banned the import of ash trees from Europe; and, if so, when that ban came into effect; how long it will last; and on what legal basis it is being implemented. [HL3240]

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord De Mauley): New requirements on the import of ash trees came into force on 29 October under the Plant Health (Forestry) (Amendment) Order 2012, with equivalent legislation in Northern Ireland. The legislation restricts imports of ash trees to those from pest free areas established in accordance with standards agreed under the International Plant Protection Convention. No such pest free areas have been designated, which means that no imports of ash trees can take place.

The legislation was introduced in accordance with Article 16.2 of the EU Plant Health Directive (2000/29/EC) and will be considered by the European Commission's Plant Health Standing Committee to determine if measures should be introduced in EU Plant Health legislation. The European Commission will determine the timing of that process but, in any case, the UK legislation will be kept under review in light of emerging developments and the outcome of a disease control strategy, which is currently under preparation. No decisions have been made about the duration of the ban; it is an emergency measure to prevent further introduction of infected stock.

Asked by ***Lord Framlingham***

To ask Her Majesty's Government what steps they are taking to ban the import from Europe of tree species affected by new diseases. [HL3241]

Lord De Mauley: We are urgently bringing forward actions in the Tree Health Action Plan aimed at keeping out serious pests and pathogens not present in the UK. These include a review of our protected zone status under the EU Plant Health Directive, to determine if additional protection is needed in relation to specific tree health threats. The Secretary of State has asked his chief scientific adviser to set up a task force to carry out a rapid review of our strategic approach to threats to tree health, and recommend further ways to reduce the risk from plant pests and diseases entering the country.

United Arab Emirates

Question

Asked by ***Lord Stoddart of Swindon***

To ask Her Majesty's Government whether they have plans to station United Kingdom military aircraft in or in the vicinity of the United Arab Emirates; and, if so, for what purpose. [HL3208]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): We regularly deploy military aircraft to air bases in the United Arab Emirates as part of our routine exercise programme.

Universal Credit

Questions

Asked by ***Lord Touhig***

To ask Her Majesty's Government what was the original estimated cost of the universal credit information technology project; and what is the current estimate. [HL3210]

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud): The 2010 spending review settlement included funding of £2 billion for the period 2011-12 to 2014-15. This is intended to meet all the costs of introducing universal credit including any increases in benefit expenditure, additional benefit administration costs in the transition period, the costs of IT development and implementation, communications, staff training and programme management.

The department spent £103 million in 2011-12 and is estimating on current plans to spend a total of £345 million in 2012-13, £495 million in 2013-14 and £1,030 million in 2014-15.

Asked by ***Lord Touhig***

To ask Her Majesty's Government what assistance will be available to people receiving universal credit if their payments are wrong as a result of their employer failing to notify HM Revenue and Customs of their pay and tax details by the prescribed date each month. [HL3212]

Lord Freud: Information about employed earnings will be reported to the Department for Work and Pensions (DWP) via the real time information (RTI) system wherever possible. This will ease the reporting burden on claimants. If earnings are not reported through RTI for any reason, claimants will be requested to declare their earnings to DWP through the universal credit interface.

Young Offenders: Employment and Training

Question

Asked by ***Lord Quirk***

To ask Her Majesty's Government what were the average hours per person per week devoted to education and training in each of the past 10 years for inmates of young offender institutions in (1) the public sector, and (2) the private sector. [HL2988]

The Minister of State, Ministry of Justice (Lord McNally): The figures requested are available for the nine years 2003-04 to 2011-12 and are set out in the table below.

Table: Education and training: average hours per prisoner per week in young offender institutions in England and Wales

	Public Sector		*Private Sector*	
	Young Adult YOI	*Under 18 YOI*	*Young Adult YOI*	*Under 18 YOI*
2003-04	10.5	14.6	-	15.3
2004-05	10.8	14.2	-	18.3
2005-06	10.8	16.1	-	17.1
2006-07	10.7	15.8	-	18.3
2007-08	10.9	18.0	-	20.6
2008-09	11.4	19.2	-	23.8
2009-10	11.5	19.9	-	23.0
2010-11	9.8	17.0	-	18.5
2011-12	11.2	17.7	-	18.7

Comparable figures are unavailable for 2002-03.

These figures have been drawn from administrative IT systems, which, as with any large scale recording system, are subject to possible errors with data entry and processing.

The figures relate to young offender institutions (YOIs) whose primary function is to hold young adults aged 18-20 or young people aged 15-17. Data for establishments which have a dual function as an adult prison and YOI are not included in the above figures because the data are collected at whole-establishment level and not disaggregated between functions.

The difference in the number of education and training hours between under 18 YOIs and Young Adult YOIs can be attributed to the greater focus on education within under 18 YOIs. Young Adult YOIs make greater provision for work activities.

The figures do not include any vocational training as it is not possible to separate this out from work activities. This is particularly pertinent when looking at the education and training delivery in the public sector under-18 estate.

A number of establishments re-roled within the period covered by the reply, meaning that the establishments in each category will not be consistent throughout. Caution should therefore be exercised when comparing years.

The private sector under-18 YOI figures relate to only one establishment, Ashfield.

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