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PARLIAMENTARY DEBATES
(HANSARD)

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Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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House of Lords

Monday, 30 November 2015.

2.30 pm

Prayers—read by the Lord Bishop of Derby.

Introduction: Baroness Finn

2.38 pm

Simone Jari Finn, having been created Baroness Finn, of Swansea in the County of West Glamorgan, was introduced and took the oath, supported by Lord Howell of Guildford and Lord Maude of Horsham, and signed an undertaking to abide by the Code of Conduct.

Introduction: Baroness McGregor-Smith

2.43 pm

Ruby McGregor-Smith, CBE, having been created Baroness McGregor-Smith, of Sunninghill in the Royal County of Berkshire, was introduced and took the oath, supported by Baroness Verma and Lord Livingston of Parkhead, and signed an undertaking to abide by the Code of Conduct.

House of Commons: Ministers
Question

2.48 pm

Asked by ***Lord Wallace of Saltaire***

To ask Her Majesty's Government what plans they have to reduce the number of Ministers in the House of Commons proportionately to the intended reduction in the overall number of members in order to avoid any increase in executive influence over the elected House.

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, we have acknowledged the link between the size of the House of Commons and the size of the Executive, both in this House and in the other place, and we will continue to keep the number of Ministers under review as the consequences of the forthcoming boundary reforms are delivered and begin to take effect.

Lord Wallace of Saltaire (LD): My Lords, does the Minister agree that there is no other first Chamber in a democratic Parliament in the western world which has as high a proportion of people caught up in government as in our House of Commons? Would he also agree that that is part of the cause of tension between the two Houses, and the Commons as a result does not do its work of scrutinising and holding the Government to account as vigorously as a democratic Parliament ought to do and that, as we reduce the number of MPs, it is vital that we reduce the number of Ministers in the Commons as well?

Lord Bridges of Headley: First, I pay tribute to what the noble Lord did on this issue in the last Parliament, in which I seem to remember that this matter was discussed quite considerably. Just to illuminate the issue, as the noble Lord said, a number of comparisons could be made between the other place and other Chambers around the world. Some 14.6% of Members in the other place can be appointed Ministers, which compares with Australia where Ministers account for 23% of their Parliament and New Zealand where, also, 23% of their Parliament comprises Ministers. I, for one, think that the other place actually does a very good job, although I would like to pay tribute to this place as well, as it performs an excellent role in what I consider to be legislative acupuncture, which can be quite painful for those standing in this place but can be very good for the nation as a whole.

Lord Foulkes of Cumnock (Lab): Did the Minister manage to read the article in the *Telegraph* about a proposal to reduce the size of this place by 20% by what the former Leader of the House described as a "hair cut"? How does he reconcile that with the introduction of Peers two by two, day after day and week after week?

Lord Bridges of Headley: It is always good to see the noble Lord on such fighting form. I did read that—I always read the newspapers on a Sunday morning, obviously. It is always interesting to read about what might or might not happen in the weeks ahead. I shall save what might happen for the noble Lord, Lord Strathclyde.

Lord Elton (Con): My Lords, Parliament was invented to control government. No Minister was allowed into either Chamber until the reign of George I; then they came in by invitation or permission. Since then, they have multiplied, and the body that was invented to control them is now populated by large numbers of them. If we are going back to basic constitutional principles, surely we should increase the weight of parliamentarians and reduce that of the Government.

Lord Bridges of Headley: I am sure that noble Lords and Members in the other place will wish to return to this matter as the boundary review continues its work. Let me remind noble Lords that, if the number of MPs were reduced to 600 but the percentage of Ministers in the other place were to remain the same, the number of Ministers would need to fall by about seven, in my calculation, from 92 to 85. However, as the noble Lord points out, over the years there has been a considerable rise in the number of Ministers. In researching for this Question, I came to the understanding that there were about 60 Ministers when we had an empire. In the intervening period, while we may have lost an empire, Ministers have certainly found a role.

Lord Anderson of Swansea (Lab): My Lords, is it not a little disingenuous for international comparisons to use just the number of Ministers? Should the Minister not look at the total payroll vote, which includes Parliamentary Private Secretaries, and rework those figures to give a more accurate picture of the power of the Executive over Parliament?

Lord Bridges of Headley: The noble Lord makes a very good point. On my calculations, if the number of MPs was reduced from 650 to 600 but the number of Minister and PPSs in the other place remained static, the percentage of Ministers plus PPSs as a proportion of the other place would be 22.2%. That is equal to what it was in 2001.

Lord Pearson of Rannoch (UKIP): My Lords, does the Minister agree that the noble Lord, Lord Wallace of Saltaire, really has quite a nerve in asking this Question, because the most obvious abuse of influence over the House of Commons is the Liberal Democrats' massive overrepresentation in this House, which they can use to defeat the will of the elected Chamber—or can we assume that some 70 Liberal Democrat Peers are about to resign?

Lord Bridges of Headley: My Lords, the noble Lord, as usual, makes an interesting point. I am sure it is one that he will wish to continue to make in future.

Baroness Hayter of Kentish Town (Lab): My Lords, is the real issue not that the Government do not like to be challenged, whether in your Lordships' House, by Back-Benchers in the Commons or by the Opposition? How otherwise can the Minister explain that while the Chancellor apparently employs 10 political advisers at taxpayers' expense, and the cost of special advisers to Conservative Ministers rose by £2.5 million over the past five years, the Government are cutting the Short money which helps the Opposition hold the Government to account?

Lord Bridges of Headley: Of course I understand the interest that the noble Baroness has in this issue, and she is quite entitled to ask this question. Taxpayer-funded Short money has risen year on year from £6 million in 2010-11 to £9 million in 2015-16. That is a 48% rise. Subject to confirmation by Parliament, the Government propose to reduce Short money allocations by 19%. This will save in the region of £10 million. Under these proposals, state funding to opposition parties will be greater than the special adviser pay bill.

Lord Tebbit (Con): Will my noble friend say whether he has heard whether there is any suggestion to increase the number of hours sat by the House of Commons to make it a full-time affair instead of a part-time one?

Lord Bridges of Headley: As always, my noble friend makes a very interesting point. I am sure that the other place will listen to his words with interest.

Lord Soley (Lab): Does the Minister accept that there is a growing problem with the way that our constitution is working? Many changes have been made and they have left a number of things very unsatisfactory, and his answers today have indicated some of that dissatisfaction, not least the wider issue of the constitution of the UK. Will the Government please begin a serious look at this problem and maybe have a debate in this House where we can start to look at the more serious changes that need to be made over a period of time?

Lord Bridges of Headley: My Lords, this House is an extremely good place to debate a number of the constitutional changes that we are making. We have done so in the past few weeks over the Scotland Bill, and the noble Lord, Lord Purvis, has a Bill before this House on the convention idea, which again we will be discussing next week. We will continue to perform this useful role in all these matters.

Baroness Boothroyd (CB): My Lords, when is the situation in the Commons that is politely called "programming" going to cease so that Bills that go into Standing Committee there are properly scrutinised and debated? It is a total disgrace that they come to this House with only one-third of the Bill having been examined. It is high time that there was proper scrutiny there and programming was brought to an end by both parties.

Lord Bridges of Headley: The noble Baroness speaks with a great amount of experience and wisdom on these matters, and I am sure that the other place will take note of what she has to say.

Accident and Emergency Departments

Question

2.56 pm

Asked by ***Lord Jordan***

To ask Her Majesty's Government what steps they plan to take in the light of the investigation by the Royal Society for the Prevention of Accidents and the Royal College of Emergency Medicine into the part that accident prevention could play in relieving pressure on accident and emergency departments.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): The Government welcome the investigation's contribution to informing activity on public health and highlighting the part that accident prevention can play in relieving the pressure on accident and emergency departments. It is for local authorities with their local partners to consider the best actions to take to prevent accidents as part of their responsibilities for improving the health and well-being of their local communities.

Lord Jordan (Lab): I thank the Minister for his reply and declare an interest as vice-president of RoSPA. At a time when A&E departments are facing mounting pressure, the RoSPA and Royal College of Emergency Medicine report shows that accidents to children represent a disproportionate number of the injuries that A&Es treat. It also shows that 72% of injuries to children under five occur at home, and that head injuries are among the most common and most serious. Will the Minister urge the Government to back the report's analysis and its credible proposal to invest in proven techniques that would help to reduce some of the unacceptable pressure on A&Es and the spiralling costs of the NHS and, most importantly, make a significant contribution to reducing the pain, suffering and deaths caused to children by the failure to address this problem?

Lord Prior of Brampton: My Lords, I thank RoSPA and the Royal College of Emergency Medicine for the important work they have done in producing this report, and the work done by Queen Mary's College in substantiating it. The Government's policy is to put the main responsibility for children under the age of five in the hands of local authorities in the belief that they, by knowing the local conditions better than central government, can have a greater impact.

Baroness Walmsley (LD): My Lords, given that 15 to 24 year-olds are another of the three most vulnerable groups that are liable to have accidents, will the Government consider looking carefully at the national curriculum and ensure that PSHE, including personal safety and accident prevention, is taught in every single maintained school?

Lord Prior of Brampton: That is an interesting question. However, the report shows clearly that the main problem exists with the under-fives. Of course, there are issues at all ages, including falls and other aspects of accident prevention at the end of life. The interesting work that LifeForce has done in Birmingham shows that, for not very much money, we can have a big impact. Using the health visitors who are now employed by local authorities is a very important way in which we can address this important issue.

Baroness Gardner of Parkes (Con): My Lords, while I strongly support the referral of accident cases, is the Minister aware of the report in today's paper which says that all sorts of unnecessary referrals are made in response to telephone calls for advice on what are often simple things, such as the common cold? Does he not think that resolving that would be an alternative way to take some pressure off accident and emergency services?

Lord Prior of Brampton: My noble friend makes a very important point. Many people go to A&E departments who need not go there. The review of Sir Bruce Keogh, the medical director of NHS England, concerning how we structure emergency care in this country will be very important. Clearly, we can make much more of NHS 111.

Lord Hunt of Kings Heath (Lab): My Lords, the point that Minister's noble friend made was that the Government's decision to phase out NHS Direct, which used qualified nurses, and replace it with call handlers who simply use algorithms on their screens means that those call handlers are risk-averse, which therefore leads to many more people being sent to A&E. Is it not time to get qualified nurses back behind those screens and talking to patients?

Lord Prior of Brampton: The noble Lord makes a good point. If qualified people take the call, the level of risk they are prepared to absorb will be greater, and that applies throughout the whole system.

Lord McKenzie of Luton (Lab): My Lords, I draw attention to my interest in the register. As we have heard from the Minister, the Government seem to accept the case that accident prevention programmes can have a significant beneficial impact on A&E attendances, but the Minister says that it is all down to local authorities. Given the huge cuts in local authority spending, with more announced just last week, what is the Minister's assessment of the opportunities of local authorities to gain this benefit?

Lord Prior of Brampton: The report done by Queen Mary's, which was based in Oxford, indicated that the under-fives attending A&E departments accounted for 7% of all attendances, which gives an idea of the scale of what we might try to achieve. The reduction, in real terms, in local authority spending over the next five years is 3.9% per annum. Our feeling is that local authorities are well equipped to live with that kind of reduction.

Lord Patel (CB): How good are A&E departments nationally at collecting information on the nature of the accident, and at root cause analysis to prevent it, and how is this information fed into a national database?

Lord Prior of Brampton: I am afraid that I am not aware of how A&E departments collect and collate this information, but I will write to the noble Lord on that matter.

Baroness Farrington of Ribbleton (Lab): My Lords, would the Minister care to reflect on the fact that when this Government talk about reducing public expenditure, it is often by putting those with full training, experience and knowledge in charge, because they have won a tender, of a particular answering service, and that the health service is just one example of that? I call to mind other mistakes or misjudgments, such as police officers with skill and experience being replaced by people who just answer the phone. Will he take that issue back to the Government?

Lord Prior of Brampton: The noble Baroness makes an interesting point. In the main, contracts, particularly in the health service, are now based on outcomes: it is outcomes, rather than inputs, that are most important.

Draft Wales Bill: Silk Commission

Question

3.04 pm

Asked by ***Lord Wigley***

To ask Her Majesty's Government how many of the 61 recommendations of the report by the Silk Commission (1) have been included in the draft Wales Bill, (2) are still under consideration; and (3) have been rejected.

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, the Silk commission made 61 main recommendations, which break down into 100 discrete proposals. Over 75% of these are being taken forward in legislative form in the draft Wales Bill.

Lord Wigley (PC): My Lords, is the Minister aware that last month Sir Paul Silk gave evidence to a Committee of this House and expressed his "immense disappointment"

[LORD WIGLEY]
that the draft Wales Bill fails to deliver on the unanimous cross-party agreement of the Commission on Devolution in Wales—of course the Minister himself was a distinguished member—and that the Bill does not reflect its recommendations, noting in particular the lack of devolution of policing to Wales and the failure to legislate on resolving disputes between the UK and the Welsh Government? Will the Government now take note of this, and as it is a draft Bill, will the Minister give an assurance that the final Bill will implement such proposals?

Lord Bourne of Aberystwyth: My Lords, it is worth noting that, as the noble Lord has just said, this is a draft Bill. As my right honourable friend the Secretary of State has emphasised, consultation is going on. The primary aim of the Bill is to take forward not the Silk recommendations but the St David's Day agreement, which represented a political consensus.

Lord Morgan (Lab): My Lords, the St David's Day agreement and the Silk commission reported strongly in favour of the Welsh Assembly and Government having reserved powers. The draft Wales Bill is less clear on this point and this has led to very fierce criticism from the Welsh Government. It is noticeable that Government after Government treat Wales, which is strongly committed to the union, much more ambiguously than Scotland, which is not so committed. The noble Lord is a staunch and honourable supporter of Welsh devolution: why are his colleagues so evasive?

Lord Bourne of Aberystwyth: My Lords, it is not fair to say that progress is not being made on this issue. As the noble Lord is aware, the draft Wales Bill represents a move forward in favour of a reserved powers model. Work is continuing on that, as we speak, in discussions between the Welsh and UK Governments. It is not an easy thing to resolve, but significant progress is being made.

Lord Thomas of Gresford (LD): Will the Minister explain why the Government are prepared to devolve air passenger duty to Scotland, notwithstanding the effect that may have on Newcastle, but will not do so to Wales? South-east Wales, and Cardiff Airport in particular, might benefit very much from this.

Lord Bourne of Aberystwyth: My Lords, devolution of APD is not a straightforward issue, as I am sure the noble Lord is aware. In Scotland, most people who travel by air do so from Glasgow or Edinburgh. In Wales, most people would not necessarily travel from Cardiff Airport. For example, people in the north would not think of doing so. In addition, the significant issue of state aid has to be looked at. Those are the two main reasons why it was not taken forward.

Lord Lexden (Con): My Lords, what would the Government's view be of any proposal to reduce to 16 the voting age for elections to the Welsh Assembly?

Lord Bourne of Aberystwyth: My Lords, my noble friend is perhaps aware that the draft Wales Bill gives power over this issue, and over elections to the Welsh Assembly in general, to the Welsh Government. That being the case, this is a matter for Cardiff and for Wales to determine.

Baroness Morgan of Ely (Lab): My Lords, tomorrow Wales will become the first UK country to adopt the soft opt-out approach to organ donation. This was approved by the National Assembly for Wales, after a long and comprehensive debate and widespread public consultation. Will the Minister clarify whether the Assembly could have introduced such a Bill under the new measures proposed in the draft Wales Bill; or would it have been forced to go cap in hand to a Minister in Westminster to ask permission because, as the First Minister has claimed, the Government are trying to roll back the devolution settlement for Wales?

Lord Bourne of Aberystwyth: My Lords, the First Minister has recently acknowledged that significant progress is being made on the draft Bill. In terms of the consenting provisions, if there is an aspect of legislation from this House to apply in Wales, it needs a legislative consent Motion and vice versa. It is not one-way traffic. Because we are a United Kingdom, it is important to preserve the consenting process. Discussions are going on on the precise scope of that process.

Lord Harries of Pentregarth (CB): My Lords, talks on reserved powers are continuing. Will the Minister give an indication of the timetable for these talks coming to a conclusion?

Lord Bourne of Aberystwyth: My Lords, as I have indicated, significant progress is being made. I remind noble Lords that this is an ongoing process. It is not anticipated that this draft Bill will become a firm one until the end of next year. There is, therefore, a good period of time. I repeat that significant progress is being made and I am very happy to update the House as and when the process is concluded.

Lord Cormack (Con): My Lords, my noble friend will know that many of us in this House are concerned about piecemeal changes to the constitution and to the franchise. Is it not a pity that the power to give votes to 16 year-olds has been granted to the Welsh Assembly before the Parliament of the United Kingdom has been able to come to a considered conclusion on the matter?

Lord Bourne of Aberystwyth: My Lords, I understand my noble friend's views on this matter but I repeat that issues relating to election to the National Assembly for Wales are to be devolved in totality. It is a significant move to Wales, just as it is to Scotland, and it is for Wales to determine that issue.

Lord Rowe-Beddoe (CB): My Lords, will the Minister clarify a point that he made in an earlier answer—namely, what is the state aid problem with the devolution of air passenger duty to Cardiff and not to Scotland?

Lord Bourne of Aberystwyth: My Lords, I recognise that the noble Lord has significant expertise in these areas, particularly in relation to Cardiff Airport. However, perhaps I may inform him that there is a significant issue in terms of competition from Bristol Airport. There is not a similar competition element in relation to proximity to Glasgow or Edinburgh airports.

Restaurants: Service Charge

Question

3.11 pm

Asked by ***Lord Rennard***

To ask Her Majesty's Government what plans they have to ensure that customers of restaurant chains are made properly aware of the company's policy in relation to service charges and tipping.

The Earl of Courtown (Con): My Lords, we are currently assessing evidence gathered from our investigation into tipping practices. We will consider all the evidence and proposals put to us, including those to improve transparency, for the treatment of tips. We will propose any further action to ensure fair and transparent practice in relation to tips, gratuities, cover and service charges in due course.

Lord Rennard (LD): This Christmas, many restaurant customers may decide to be particularly generous to those who serve them well, and I hope that they will. However, does the Minister accept that many of these customers will be unaware that service charges paid by credit cards are the legal property of the employer, that the staff providing the service may not receive any of this money and that some restaurant chains deduct a proportion of it to pay other business costs? It is clear that voluntary guidelines on making restaurant policies in relation to tipping and service charges properly known to customers are not working. Now that the Government have gathered evidence on the issue, will they look at measures to ensure that these charges and companies' polices are prominently displayed in menus and on bills?

The Earl of Courtown: The noble Lord is quite right that some of these tipping practices are not as they should be. The code of practice brought in in 2008 listed a number of areas where tipping practices should be adhered to, such as making sure that all members of staff and all customers are aware of those practices. We will be looking at all the issues raised in the consultation, which finished on 10 November, and in time we will come to a decision on what we should do.

Lord Palmer (CB): My Lords, does the noble Earl not agree that, particularly bearing in mind the advent of the national living wage, tipping and service charges are completely outdated in 2015?

The Earl of Courtown: My Lords, as the noble Lord knows only too well, if one has a pleasing experience at any restaurant, whether in your Lordships' House or elsewhere, it is only fair to tip at the right time.

Lord Stevenson of Balmacara (Lab): My Lords, the issue is really one of fairness in overall pay rather than just in tipping. Can the Minister explain how to protect the requirement that everyone in the country benefits from a living wage without dilution from other factors, in particular tipping?

The Earl of Courtown: My Lords, sticking initially to the national minimum wage, when the Labour Government brought in the voluntary code of practice in 2008-09, they made it clear that tips and gratuities should not be used to uprate wages to meet the national minimum wage. The living wage will be coming in this year and will help many of the lower paid.

Baroness Burt of Solihull (LD): My Lords, the Autumn Statement last week referred to lower productivity in the UK than in other countries. I imagine that one's desire to work hard may be diminished by the knowledge that one's employer is hanging on to one's tips. I think that the voluntary code introduced in the other place clearly is not working. Would the Minister please ensure that, following the evidence review, steps are taken to ensure that employers who hold on to tips are named and shamed?

The Earl of Courtown: My Lords, this was drawn to the attention of my right honourable friend the Secretary of State in the other place. We will look at all the issues when it comes to the report being made.

Lord Cormack (Con): My Lords, what has all this got to do with us?

The Earl of Courtown: My Lords, the fact is that we all go out and eat in various restaurants and, to those who serve us well, we want to express our gratitude.

Lord Storey (LD): Can we be assured that when your Lordships give gratuities in this House, the gratuities go to the members of staff in full?

The Earl of Courtown: My Lords, somebody behind me whispered, "And be generous". The noble Lord is quite right. However, I know only too well that the noble Lord the Chairman of Committees actually enjoys coming to the Dispatch Box, so I suggest, if I may, that the noble Lord pose the question to him.

Baroness Hussein-Ece (LD): Is the Minister aware that in some instances staff rely on those tips for topping up their very low salaries? I have also come across occasions in some restaurants where staff receive tips and nothing else. Are any measures in place to monitor this kind of disgraceful behaviour?

The Earl of Courtown: The noble Baroness of course will be aware that everybody must be paid the national minimum wage.

Transport for London Bill [HL]

Motion to Consider

3.17 pm

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

That the Commons message of 17 November be now considered; and that the promoters of the Transport for London Bill [HL], which was originally introduced in this House in Session 2010–12 on 24 January 2011, should have leave to proceed with

[The Chairman of Committees]
the Bill in the current Session according to the provisions of Private Business Standing Order 150B (*Revival of bills*).

Lord Dubs (Lab): My Lords, I think the Chairman of Committees will agree that this is rather an unusual procedure; it is certainly not one with which I am familiar. This is quite a controversial Bill. Therefore, would the Chairman of Committees agree that it would be appropriate for the House to have an opportunity to debate the Bill fully and properly?

The Chairman of Committees (Lord Laming): My Lords, I well recognise the interest that the noble Lord and maybe others have in this Bill. In these circumstances, I think it is fair that I seek leave from the House to withdraw the Motion. I will re-table it at a time when it can be debated.

Motion withdrawn.

Representation of the People (England and Wales) (Amendment) (No. 2) Regulations 2015

Representation of the People (Scotland) (Amendment) (No. 2) Regulations 2015

European Parliamentary Elections (Miscellaneous Provisions) (United Kingdom and Gibraltar) Order 2015

Motions to Approve

3.18 pm

Moved by ***Lord Bridges of Headley***

That the draft regulations and order laid before the House on 12 and 21 October be approved.

Relevant documents: 6th and 8th Reports from the Joint Committee on Statutory Instruments. Considered in Grand Committee on 23 November.

Motions agreed.

Electricity Capacity (Amendment) (No. 2) Regulations 2015

Motion to Approve

3.19 pm

Moved by ***Lord Bourne of Aberystwyth***

That the draft regulations laid before the House on 16 March be approved.

Relevant document: 3rd Report from the Joint Committee on Statutory Instruments. Considered in Grand Committee on 24 November.

Motion agreed.

National Insurance Contributions (Rate Ceilings) Bill

Order of Commitment Discharged

3.19 pm

Moved by ***Baroness Altmann***

That the order of commitment be discharged.

The Minister of State, Department for Work and Pensions (Baroness Altmann) (Con): My Lords, I understand that no amendments have been set down to the Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Enterprise Bill [HL]

Report (2nd Day)

3.20 pm

Amendment 68

Moved by ***Baroness Neville-Rolfe***

68: After Clause 25, insert the following new Clause—

"UK Government Investments Limited

(1) The Treasury or the Secretary of State may—

(a) provide grants, loans, guarantees or indemnities, or any other kind of financial assistance (actual or contingent) to UK Government Investments Limited, or

(b) make other payments to UK Government Investments Limited.

(2) "UK Government Investments Limited" means the private company limited by shares incorporated on 11th September 2015 with the company number 09774296."

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, the Government have brought forward this amendment because we want to ensure that UK Government Investments Ltd—UKGI—can carry out its important work, which is managing most taxpayer stakes in businesses, running most corporate and financial asset sales, and providing corporate finance advice across government to ensure value to the taxpayer from publicly owned assets.

The Chancellor announced the creation of UKGI in May this year and it will open for business from next April. UKGI will bring together, into a single company, the Shareholder Executive from BIS and UK Financial Investments Ltd from the Treasury. The move will provide UKGI with additional independence and a corporate governance structure, allowing it to provide impartial expert advice to its customer departments.

The Chancellor of the Exchequer will be the Minister responsible for the company. It will remain focused on its core activities. It is not a company that we intend to privatise in whole or in part; it will bring together expertise from the private sector with that of civil servants.

The work to facilitate the transfer of functions and operations from the Shareholder Executive into UKGI is well under way. The issue of funding powers has been identified in recent weeks, hence its late introduction into the Bill. The 1932 concordat between Parliament and the Government, now reflected in the Treasury's manual, *Managing Public Money*, requires there to be specific statutory authority for significant items of ongoing government expenditure. The Government intend that UKGI will be directly funded by its parent department, HM Treasury. This is necessary to cover UKGI's running costs in providing a service across government. The amendment is an administrative measure to enable the Shareholder Executive's ongoing work to continue after its functions transition to UKGI and ensures that a specific funding power is in place in line with the 1932 concordat. I beg to move.

Lord Mendelsohn (Lab): My Lords, I thank the Minister for sending a very useful letter on this amendment. It was a late addition to the Bill and we were not entirely clear about its full purpose, so I am very grateful that she wrote to us as she did.

It is fairly standard for machinery of government changes to be announced in this way, but it gives us our first opportunity to ask a series of questions about how the change is likely to work. First, we understand that the amendment establishes powers to enable the Treasury to pay the bills of the new body and underwrite its liabilities. It can provide loans or grants to these entities as it wishes. We would be grateful if the Minister could give us some idea about the combined costs of UKGI and whether there are cost savings as a result of merging the two entities. What is the anticipated run rate over the next few years of UKGI?

Naturally, the argument for removing the Shareholder Executive from the Department for Business, Innovation and Skills and establishing it as a separate company with UKFI is, in essence, that the Shareholder Executive proved useful beyond the Department for Business, Innovation and Skills and now works across government. It should therefore go to the Treasury to ensure that it can work better with all departments and be much better utilised in government. Accordingly, it needs a degree of independence, which will be enshrined in its governance arrangements and its board duties. So, across the areas, perhaps I may ask the following questions.

On the suggestion that this structure allows it to attract top talent from the private sector and the Civil Service, was there an assessment of the existing Shareholder Executive and where it had failed to recruit staff of a sufficient quality, or where there were gaps in its current operation that this structure will support? Who will be responsible for recruitment for each of the operating divisions? Could the UKGI exist without civil servants? Could it recruit only from the private sector? If civil servants are recruited, are they on secondment or will they sign new employment terms with the agency directly? Will all the employees of every part of the UKGI be subject to the proposed public sector exit payment restrictions that are in the Bill? Will guaranteed bonuses be offered to the staff, which, for the higher earners in government, is a traditional method of incentive and currently outside the public sector exit payment provisions?

On whether it strengthens governance arrangements and the commercial disciplines and will be useful going forward, what is the case for a Permanent Secretary sitting on the board? Do the Government not think it would be better for governance arrangements to separate shareholders from company directors and their duties? How will the Permanent Secretary square their role as an accounting officer and their duties to the company under company law? Who will select the board? Who will appoint the leading executives? What will the relationship to Ministers be? Will the new body provide better governance to the management of external advisers? Will there be an internal market whereby individual departments can consider which provides the best cost option, be it the new agency UKGI or external advisers? Who will set the objectives and strategy? Will it be the board or will it still be the Treasury?

In identifying that there is a role to build a unique identity and culture, will the Minister explain what this means, or flesh out what the notions of identity and culture are for such an agency? What is the target culture of a government asset manager and what is the target culture of a government corporate finance vehicle?

Finally, on improving service to customer departments, what are the current identified weaknesses that this arrangement will help to improve? What is the Government's current plan to evaluate this? Who evaluated the current working arrangements and found the gaps? What independent body will be charged to evaluate whether it has provided a better service to customer departments?

Lord O'Neill of Clackmannan (Lab): I am always suspicious when Governments introduce amendments rather late in the proceedings because it tends to suggest that the initial thought processes have not been that rigorous. However, having said that, I am sure we have to be grateful to the Minister for some of the points to which she alluded in her introduction of this amendment.

One of the problems that we have encountered in recent years has been the issue of state aid and the European dimension. Can the Minister tell us how this arrangement will stack up with the requirements of Brussels? Obviously, if we are to be able to use some public money—money that has been earned through the success of earlier amendments—this will be a welcome step. However, we need to know what is going to happen because we would be concerned if the money ended up back in the Treasury via one massive loop, when we would want it to be reinvested in a whole range of worthwhile projects.

What, if any, will be the role of DECC in the new company? It is the department with responsibility for environmental improvements. It is also, in a number of respects, most important department in terms of government input. One thinks of the Treasury largely in the context of making sure not that the money is necessarily well spent, but that it might not be spent at all if it does not like the look of this new creature. When the Minister responds to what I imagine will be a relatively short debate, perhaps she could take up the following issues: Europe, the role of DECC and, ultimately, the degree of independence that this body will have, particularly independence from the Treasury, whose

[Lord O'Neill of Clackmannan]
dead hand many of us would be very suspicious of in pretty much any government involvement apart from the collection of taxes. But, of course, it has other responsibilities. Can the Minister give us some assurance on these points? I think the House will then consider this proposal an improvement on the original recommendations set out in the earlier version of the Bill.

3.30 pm

Baroness Neville-Rolfe: My Lords, I thank the noble Lord, Lord Mendelsohn, for his questions and the noble Lord, Lord O'Neill, for his intervention, which perhaps I may come on to. As I set out at the start, this amendment is of a technical nature allowing the Government to fund UKGI in an efficient and transparent manner. Noble Lords should rest assured that the Treasury will keep the required control of funding for the new company and it is not expected to expand into totally new areas in perhaps the way the noble Lord, Lord Mendelsohn, has suggested. UKGI will have additional independence and a corporate governance structure that will allow it to provide expert advice to its customer departments. Staff who transfer into UKGI will be public servants rather than civil servants. They will retain their existing terms and conditions and will not be treated worse, and their pension provisions will be covered by the new Fair Deal arrangements and protected, as will be their wider terms. UKGI staff will be subject to public sector pay policy, including the exit cap. Therefore, while we expect UKGI to attract staff of high quality from both the Civil Service and elsewhere in the economy, they will not be in any way an overpaid elite. However, it will obviously be an interesting place for people to work as part of their career path.

Lord O'Neill of Clackmannan: Before the Minister leaves that point, is it not the case that the people engaged in this work, interesting and worth while though it will be, may well be attractive to employers outwith the public sector? Although they will be doing good work, we may well find that they are poached by those from outside. That was the case, for example, in the Nuclear Installations Inspectorate, which was responsible for overseeing the expansion of the nuclear industry. There was great heart-searching on the part of the previous Labour Government, and then the NII was changed so that its staff would not be subject to Civil Service pay and conditions, allowing them to stay in their jobs because they had become less attractive to poachers.

Baroness Neville-Rolfe: The noble Lord makes a good point. Having worked, rather uniquely, in both the public and the private sectors, I think that the move between the two can be valuable. We will obviously need to watch for the kind of point he has made, but we are trying to set the company up so that we get an elite corps drawn from both sectors who will be working on very important issues of corporate finance and governance right across the government machine.

UKGI will be a government company: that is, a Companies Act company with HM Treasury as its sole shareholder. ShEx, which is currently part of the business department, will transfer and be rebranded as UKGI. UKFI will become a subsidiary company of UKGI, continuing to operate with its existing board and operating model of board, articles, framework document and investment mandate, until it fully merges with UKGI. UKGI's activities will in turn be governed by its articles, a framework agreement, and the UKGI board, which will, as I think I have said, be accountable to the Chancellor of the Exchequer and to Parliament.

The intention in setting up UK Government Investments as a company is to ensure that the culture is suitably commercial, that it can attract and retain staff with commercial skills, and that, while the Treasury is the shareholder, it has a distinct legal personality and is trusted by departments. The matter of its funding will not involve significant changes to the status quo. UKGI will be made up of personnel from the shareholder executive. As the shareholder executive is part of the core Civil Service, its costs are met from BIS, but the budget allocated to it will be transferred across to the Treasury. The proposed amendment will ensure that payment to UKGI, as a new government-owned company, can be made transparently and efficiently. Funding will be allocated from within the HM Treasury baseline agreed at the spending review.

For the same reason, I do not see a new issue with state aid. EU state aid rules will apply in the same way that they currently do. Asset management and disposals will have to be undertaken in a way that is compatible with those rules, as at present.

The new company will build on the existing shareholder executive staffing model and bring together staff from the private sector and the Civil Service. That mixture could be very powerful. As I have said, remuneration arrangements will be overseen by and agreed with Treasury Ministers. The change is not about enabling large pay increases for staff or a route around public sector pay policy.

The noble Lord, Lord Mendelsohn, asked a number of questions and the noble Lord, Lord O'Neill, asked about DECC. With their permission, I will take away those detailed questions and answer them in a letter that I will copy to anyone with an interest in this issue.

I have set out our main approach, which to me is eminently sensible. It is not a major change of policy or substance but, importantly, it brings together these teams in an appropriate way that complies with the rules of the 1932 concordat.

Amendment 68 agreed.

Amendment 69

Moved by ***Baroness Neville-Rolfe***

69: After Clause 25, insert the following new Clause—

"Disposal of Crown's shares in UK Green Investment Bank company

(1) Part 1 of the Enterprise and Regulatory Reform Act 2013 (UK Green Investment Bank) is amended as follows.

(2) Omit the following provisions—

(a) section 1 (the green purposes);

(b) section 3 (alteration of Bank's objects where it is designated by Secretary of State);

(c) section 5 (accounts, reports etc where Bank is designated by Secretary of State).

(3) In section 2 (designation of Bank)—

(a) for the heading substitute "Interpretation",

(b) omit subsections (1) to (8) (Secretary of State's power to designate), and

(c) after subsection (9) insert—

"(10) In this Part "UK Green Investment Bank company" means—

(a) the UK Green Investment Bank, or

(b) a company that is or at any time has been in the same group as the Bank.

(11) For the purposes of subsection (10) a company is to be regarded as being in the same "group" as the UK Green Investment Bank, if, for the purposes of section 1161(5) of the Companies Act 2006, the company is a group undertaking in relation to the UK Green Investment Bank."

(4) In section 4 (financial assistance from the Secretary of State)—

(a) in subsection (1)—

(i) omit "Where an order has been made under section 2,",

(ii) for "the UK Green Investment Bank" substitute "a UK Green Investment Bank company", and

(iii) for "Crown's shareholding in it is more than half of its issued share capital" substitute "Crown holds shares in it or another UK Green Investment Bank company",

(b) in subsection (3), in paragraphs (d) and (e), for "the Bank" substitute "the company",

(c) omit subsection (5), and

(d) in subsection (6) (no effect on other powers to give financial assistance to the Bank)—

(i) for "the Bank", in the first place, substitute "a UK Green Investment Bank company", and

(ii) for "Crown's shareholding in the Bank is not more than half of its issued share capital" substitute "Crown does not hold shares in it or another UK Green Investment Bank company".

(5) In section 6 (documents to be laid before Parliament)—

(a) in subsection (1)(a) omit "after an order has been made under section 2,",

(b) in subsection (1)(b) for "the Bank" substitute "a UK Green Investment Bank company", and

(c) omit subsections (3) and (4).

(6) After section 6 insert—

"6A Report on disposal of Crown's shares in UK Green Investment Bank company

(1) As soon as reasonably practicable after a disposal of shares held by the Crown in a UK Green Investment Bank company the Secretary of State must lay before Parliament a report on the disposal.

(2) The report—

(a) must state—

(i) the kind of disposal, and

(ii) the proportion of the company's share capital retained by the Crown (or that none has been retained); and

(b) must include—

(i) an assessment of how the Secretary of State's objectives for the disposal have been achieved, and

(ii) where the Crown still holds one or more shares in a UK Green Investment Bank company, details of the Secretary of State's intentions as to the Crown's future role and interest in such companies.

(3) The Secretary of State must give a copy of the report to—

(a) the Scottish Ministers,

(b) the Welsh Ministers, and

(c) the Office of the First Minister and deputy First Minister in Northern Ireland.

(4) Subsection (3) applies to a report as described in section (UK Green Investment Bank: transitional provision) as well as to a report under this section.""

Baroness Neville-Rolfe: My Lords, Amendments 69, 70 and 74 relate to the Green Investment Bank. They intend to repeal some of the legislation in Part 1 of the Enterprise and Regulatory Reform Act 2013, which places controls on the GIB. In moving Amendment 69 I will speak to the other amendments as a package.

For the benefit of those who were not present during Grand Committee, I will set out the Government's rationale behind these amendments and explain the changes since Grand Committee to address some of the concerns raised there. I have held a number of meetings involving noble Lords in which we have all agreed that the GIB needs further capital to continue its green mission. Frankly, we have all shared our frustration about the statistical rules by which we have to operate. In the spirit of transparency, my department has also issued a policy paper on the GIB that explains the history and policy background of this matter, as well as the Government's proposals for bringing in private capital and an explanation of some of the classification issues we face. I have placed a copy in the Libraries and I hope some noble Lords have had a chance to read it.

I believe that noble Lords in all parts of the House agree that the Green Investment Bank was one of the success stories of the last Government. It was set up in 2012 to mobilise private sector investment in the green economy, and it has done so remarkably well. It has leveraged more than £10 billion in green investment since it was set up—£2.3 billion from the GIB's government funding and the remainder from the private sector. Of course, government funding for the GIB has an opportunity cost elsewhere in the public sector purse.

That is why the Government's policy, as the Secretary of State announced in June, is to move the GIB into the private sector. Government ownership is holding back the GIB's ambition, limiting the amount of funding it can access, limiting its freedom to borrow and raise capital, and limiting the sectors in which it can operate because of state aid rules. This is holding it back from growing its business, increasing its green impact and expanding into a wider range of green sectors, as the noble Lord, Lord Smith of Kelvin, the chair of the GIB, has told noble Lords recently.

As the Prime Minister said in May, it is time that the market got to work on climate change. We want to bring private capital directly into the GIB rather than leaving it to compete for public funds. During Grand Committee, noble Lords were in broad agreement that private capital was the right next step for the GIB; indeed, it has been the intention ever since it was established. The Government's policy paper published in 2011 made it clear that the GIB would,

"initially be owned by the Government",

[Baroness Neville-Rolfe]
and would be,
"designed to allow for a possible eventual transfer of ownership from Government to the private sector".

A crucial part of the Government's proposal is to ensure that the GIB becomes classified to the private sector so that it can borrow and raise capital freely without affecting public sector net debt. The Office for National Statistics is the body which decides whether an organisation is classified to the public or private sector, using internationally agreed guidance and rules set out in the European System of Accounts 2010 and the accompanying *Manual on Government Deficit and Debt*. ESA is part of EU law and the rules apply to all countries across the EU.

In making its decision in accordance with these rules, the ONS will look at whether the Government have significant control over the organisation. Control is the key concept, and it covers a range of types of control, including regulation, legislation and contractual arrangements. I must also point out that Parliament and Government are equivalent in the eyes of the statisticians—curiously—in determining who exercises control. That is why, as I explained in Committee, legislation in the ERR Act 2013 is highly likely to constitute government control over the Green Investment Bank, whatever the size of the Government's stake. This is the only reason why we intend to repeal the legislation, as a necessary and technical step in the privatisation process. It is not something we have decided on lightly, and I can assure noble Lords that it is not a step we would be taking if we did not have to. Indeed, that is the reason why we did not include these provisions in the Bill as introduced, for which I apologise.

The Government have had a number of discussions with potential investors while considering a sale, which have demonstrated that bidders are not generally concerned about the statutory lock on green. I make that point to demonstrate that it is not for reasons of price that the Government are removing the control; indeed, it should also demonstrate that the kind of bidders we are seeking are supportive of the GIB's important green mission.

We have listened carefully to the concerns that were raised in Committee, and the amendments that I present today reflect this. We must still repeal the controls in legislation but we understand that we can do more to ensure that noble Lords and those in the other place are kept informed about the Government's proposals. Let me outline the changes compared with our amendment in Committee. Our Amendment 70 ensures that the repeal of legislation cannot come into effect until the Government have laid a report before both Houses setting out their plans for a sale. The noble Lords, Lord Stoneham and Lord Teverson, tabled a similar amendment during Committee, and I am pleased that we have been able to accept the spirit of their amendment.

3.45 pm

Amendment 69 ensures that the Government will report back to both Houses after a sale has taken place, and again in the future, should the Government initially retain a stake in the GIB which it later sells. Furthermore, reflecting the fact that the Government have listened to the concerns expressed by noble Lords, Amendment 69 also retains two aspects of the existing ERRA 2013. First, Section 4, which gives the Government the specific power to provide funding to the GIB, is now retained and extended. Currently that power applies only when the Government own a majority of the GIB but we are extending it to apply at any time when the Government are a shareholder. The spending review last week allows for the Government to continue to fully fund the GIB to the point of a majority sale, assuming one takes place next year, and to fund our share of a minority holding following a sale. Secondly, the duty in Section 6 of the original legislation, which requires the Secretary of State to lay a copy of the GIB's annual report and accounts before Parliament each year as long as he is a shareholder, is also now retained.

I understand the concerns that were raised in Committee around removing the statutory lock over the GIB's green mission. I know that noble Lords are concerned that without that control in place the GIB could become just another bank. The nub of the problem is this: if the Government were to retain control over the GIB's corporate policy, including mandating that it may invest only in green, the GIB would be deemed to be part of the public sector. That would not give the GIB the freedom and the access to capital that management are so clear are needed, as it would remain on the Government's balance sheet.

Green investment is what the Green Investment Bank does, and it is why people will be buying it. The Government want and expect a privately owned GIB to continue its clear focus on green sectors, mobilising more private capital and further accelerating the transition to a green economy. We will secure commitments from investors, including: to protect the green purposes in the GIB's articles of association; to continue to invest in green; and to continue the GIB's high standards of green reporting. We fully expect investors to sign up to those commitments quite willingly because they are a key part of what the GIB does.

Bringing in private capital to the GIB is the natural next step for the company. We are confident that the GIB has a successful green future in the private sector, with private investors who are committed to maintaining its green focus. Our plans have the support of the GIB and its independent board, including the noble Lord, Lord Smith of Kelvin. I hope noble Lords will also be able to support our revised package of amendments. I beg to move.

Lord Smith of Kelvin (CB): My Lords, before I make my remarks, I must declare a pecuniary interest in the Green Investment Bank, as set out in the register of interests. I am its chair, appointed by the then Business Secretary on its creation in 2012, and subsequently reappointed earlier this year by the current Business Secretary. Despite that interest, I hope that my position both as chair and as a Cross-Bencher without party affiliation will offer the House an opportunity to hear directly about the bank's current position and its future ambitions.

I have spoken to many noble Lords across the House over the past few weeks and have been very grateful for the time that they have given me. I think

we can all agree that the Government's amendments before us today are unfortunate but they are none the less necessary. In my discussions with noble Lords, I have been struck by the consensus that exists across the Chamber. I have been heartened by the support for the GIB's mission and our progress over the past three years. I have also been pleased to see broad support for the idea of introducing private capital to the GIB. This consensus is important to us and we do not take it for granted.

Noble Lords have rightly sought assurances that the GIB's special green mission and values will be protected under new ownership. I share those concerns, as does every member of the board of the Bank, and as I believe the Government do. As the Minister explained, the Government are restricted in what they can do to offer cast-iron guarantees because of the guidance from the ONS regarding the classification of the GIB. I think we all share a frustration with this advice.

While the Government are in a difficult position, I am heartened by the constructive approach that they are taking. It is right that we should seek the fullest measures available to secure the GIB's green approach and I believe that is what the Government have done and will continue to do. It is important that these discussions continue and that the Government take this opportunity to secure all measures to protect the GIB's green mission. However, that has to happen within the parameters of declassifying the GIB.

I am confident about securing the GIB's green mission. Let me set out to your Lordships the basis of that confidence. It is based on the logic that investors will be buying into the GIB precisely because they want it to be green, not in spite of it being green. The GIB is a global leader in green investment; investors will be buying, and most likely paying a premium, for that expertise. However, noble Lords and others have made the point that commercial logic is not in itself enough and I believe it is right that we do not rely on that logic alone. We must seek assurances and specific measured to protect the GIB's green approach. I am confident that the measures which the Government have set out, and others that they continue to consider, will deliver the maximum possible protections.

I conclude, though, with a word of caution over unintended consequences. The biggest risk to the GIB's green mission would be a failure to secure the capital that it needs to continue investing and growing. I have been told that the GIB has secured additional funding from the Government, as we have just heard, through the recent spending review. That commitment, however, is premised on a part sale of the GIB so it is vital that we are able to start raising capital from new investors. To do that, the Government must be able to proceed with the legislation which they believe will achieve their aim of declassifying the GIB. If we cannot move forward with certainty without delay, I fear that the tremendous success achieved by the GIB so far will be placed under threat. I thank the Minister for taking my intervention.

Lord Barker of Battle (Con): My Lords, I support this amendment but I do so reluctantly and having thought about it a great deal. Before I go any further, I should draw the attention of the House to my declaration in the register of interests regarding private equity and clean energy, but that is not the reason I wished to speak.

I particularly wanted to speak because as a Minister at the Department of Energy and Climate Change, and more importantly perhaps as a shadow Minister for climate change in 2009, I was intimately involved in the creation of the policy that led to the creation of the Green Investment Bank itself and setting up, in opposition, the Green Investment Bank commission, which did an excellent job. I am delighted and privileged to follow the noble Lord, Lord Smith, who has been an outstanding chair of that institution, created in the previous Government as a result of that policy. I think that the Minister said that the Green Investment Bank was one of the key successes of the term of the coalition Government. I absolutely agree. Perhaps I am slightly partial but I think it will be one of the important, enduring legacies of that term of government.

I therefore looked at this amendment very carefully and was rather puzzled why, having made such a success of this institution, there should be what seems like indecent haste in trying to take it off the public books. But the more I looked into it the more persuaded I was that it was unfortunate but necessary, in the phrase that the noble Lord, Lord Smith, used. In so doing, however, and particularly as we are debating this on the first day of the climate change conference in Paris, COP 21, it is very important that a clear message be sent out: this is not a retreat from the green agenda or a lowering of ambition here in the UK on our commitment to meeting our stringent and ambitious carbon reduction targets, which are implicit and explicit in the Climate Change Act. Far from it—what we are actually doing is recognising that, perhaps unfortunately due to these complex accounting rules, we are being pragmatic and sensible and following a route that will allow this fast-growing institution to continue on its mission to mobilise capital and set it to work in the UK low-carbon sector.

By doing that, we are allowing the GIB not only to raise new equity from new investors—up to £2 billion in the first instance, I believe—but to have access to far greater borrowing. This was a key demand of other political parties and the major green NGOs at the time that the GIB was created, and indeed in the run-up to the general election. A constant refrain from those that had a particular interest and concern with mobilising capital into the green economy has been that the GIB should be given powers to borrow. This legislation will, at last, allow the GIB to spread its wings even further.

Other benefits of the legislation will be to remove state aid constraints, to speed up the GIB's ability to make quick and prompt investment decisions and to allow it to invest in new sectors. One of the complaints I heard about the GIB was that it was not able to invest in things like low-carbon transport or storage, the latter of which is particularly important now. This will help widen the GIB's remit. There is protection in the fact that the Government will retain a minority, but nevertheless important, stake. I would be very concerned if there was a proposal to sell that stake completely. That minority share may not enable the

[Lord Barker of Battle]
Government to dictate the articles of association or to prevent the bank changing its remit, but it sends a very important signal, particularly to foreign investors, that Her Majesty's Government have skin in the game in the UK's low-carbon economy.

The most important element of the whole mission of the GIB when we were considering its creation was to demonstrate, at a time when we faced the prospect of almost unprecedented investment in these novel low-carbon technologies, such as offshore wind, energy from waste and other key elements of a successful low-carbon economy, that we would not leave it to the market alone but would harness the power, ingenuity and capital reserves of the market, with government nevertheless as a partner. I would certainly be very concerned if there were to be a complete selling down to 0% of the government stake. However, that is not what this legislation proposes, nor is it what the Minister has proposed from the Dispatch Box. I take a great deal of comfort from the thoughtful way in which the Minister has explained government strategy here. On balance, having come to these amendments rather sceptical about their intention but having looked carefully at them, I am very pleased to be able to support my noble friend.

Lord Teverson (LD): My Lords, I will speak to Amendment 70ZA, which is in my name and in this group. Following consideration in Grand Committee, I thank the Minister for all the co-operation that she has given us—as, I am sure, will other Members around the House—and for presenting a number of amendments on reporting, which we welcome completely. However, most of all, although this has been a mixed experience, I thank her for putting me in touch with the Treasury and the Office for National Statistics. I can now start to understand some of the Minister's frustrations in trying to resolve some of the issues. I say all of that most genuinely.

But I also say that we have good news—or, as it is the first day of advent, perhaps I should say "glad tidings"—for the Minister, for the noble Lord, Lord Smith of Kelvin, and, I think, for the noble Lord, Lord Barker, whom I very much welcome to the House. In the Grand Committee debate on 4 November, as she has today, the Minister rightly threw a challenge back at us. She said that the heart of the problem was that, if we could keep the legislation on the objectives of the bank without prejudicing the bank's status, we would do so. She rightly threw back a challenge to us to find a way to move forward.

4 pm

I agree with a lot of what the noble Lord, Lord Barker, and others have said. First, the GIB is definitely restricted through state aid rules. It is quite obvious that the Treasury—and I very much welcome the announcement last week—will not finance the Green Investment Bank for the long term in the way that it needs to be financed. That will also be a constraint. I have come to the conclusion, in some ways reluctantly although I treat it in a positive manner, that this privatisation needs to take place to ensure that future, under the excellent chairmanship of the noble Lord, Lord Smith of Kelvin, and his management team.

The question is, as the Minister asked in Grand Committee, how we can make sure that this privatisation can take place unhindered and without being slowed up, while retaining the objectives of the Green Investment Bank for the long term. Why is that important? Well, I am sure that the Minister's assurances are well meant and completely correct as far as they can go, as are those of the noble Lord, Lord Smith of Kelvin, but the fact is that all organisations change over time—and that is good; they have to. However, in this instance, because of exactly the scenario that the noble Lord, Lord Barker of Battle, outlined, we have a huge need for green investment in this country over the next decades.

We must consider the track record. I will not go through the example again in any detail, but 3i effectively went from being a publicly controlled body to a private body and, over time, its mission crept for a while and then accelerated into the completely different area of international investment, moving from SMEs to mid-caps, to become a very successful organisation—but one that did not fulfil its original objectives. That is why I have tabled my amendment, which among other things would entrench, as far as is possible within the rules, the existing green objectives of the GIB for the longer term.

How does my amendment do that? Well, as well as having spoken to the Office for National Statistics, I have gone through the ONS guideline—I commend it to Members as an interesting document—paragraph 3.1.1 of which is entitled, "is the unit public or private?". That is exactly the dilemma or difficulty or challenge that the House and the Government face, to which we are all trying to find a solution. The document asks 14 questions to determine whether a body is public or private following privatisation. As the Minister said, the issue is primarily about control, or whether legislation is active during that time, and how that moves forwards. It even asks about directors' appointments and so on.

That is why my amendment copies in some detail a number of instances used in the private sector to make sure that an organisation's objectives are kept for the long term and that, if those objectives need to change, there is a court of trustees—we might call them call "green guardians" in this instance—who can make sure that any decisions are reasonable. This ensures that the objectives of the company are, first, entrenched in the company constitution prior to privatisation. The amendment then sets up what we have called a "special share", which is owned by a charitable company which has a veto over whether those objectives are changed in future. It does not mean to say that the objectives cannot be changed, but those three members of that organisation are able to determine by unanimity whether those objectives should change.

I point out that the objectives at the moment are extremely wide, so they are not going to get in the way of any significant green investments in the way that state aid and other things do. In fact, the GIB executive board has said publicly that in no way would the breadth of the current objectives affect the value or the way in which the GIB would operate in future.

Basically, the amendment means that the charitable members are appointed first of all by the Committee on Climate Change, which is a public body, but this

has to happen prior to privatisation. After that process, if one of those three members—who would in effect be the "green guardians"—stand down as members of the charitable company, they would be replaced by the agreement of the other two members. This means that, yes, a quasi-public body would be involved prior to privatisation, but it would not be involved in any way following privatisation. There would be no public input whatever, and the last subsection in the new clause proposed in my amendment makes that absolutely clear.

On whether my proposal would pass the ONS test, I have gone through those 14 points and spoken to the ONS—which, as the Minister knows, gives no guarantees at any time on these issues—and I am certain, as are my colleagues, that this solution, which is tried and tested in the private sector, follows those tests. If it does not pass those tests, the fact that the directors of the board of the GIB will, I sincerely hope, remain directors and board members post-privatisation—because that is the success of the organisation and what gives it its value—would tick these boxes more than my amendment under construction does.

There is good news, in that we have a system here that is straightforward, is easily understood and is used in the private sector to protect such interests and objectives, and we can apply this to the GIB without fear of loss of value, without fear of loss of time and without fear that it would be a public sector body afterwards.

Lord Framlingham (Con): My Lords, I shall briefly follow the noble Lord, whose concerns I am sure we all share.

There is always a debate to be had about the balance to be struck between state and privately run enterprises. The truth is that it largely depends on the nature of the enterprise. In the case of the Green Investment Bank, I think that this launch is the right move at the right time. There is now—and, I believe, in the future—no shortage of investors because of the essential, green, environmentally friendly nature of the core business of the bank. Green is attractive in every way in banking terms: it is profitable and at the same time good for the environment; it captures both the imagination and the capital.

The bank must, of course, remain true to its green principles, and this is what particularly concerns me. I believe that it will do so, for two reasons. First, its strict terms of reference and articles of association oblige it to do so, and it will no doubt be subjected to the closest possible scrutiny from all quarters as it proceeds. Secondly, if it is not genuinely green, it is nothing; it becomes at once just another bank—it loses its claim to be different, its environmental integrity and its investor appeal.

Under all the circumstances, I believe that to allow the bank to move forward in this way is the right move at the right time. Freed from government constraint, the bank will—if you will forgive me for using the word—blossom. I trust that the House will give the proposal a fair wind this evening.

Lord O'Neill of Clackmannan (Lab): My Lords, I congratulate the noble Lord, Lord Teverson, on his amendment. He covers a number of the concerns which we all have about the proposals. He laid great and correct emphasis on the systems of control of this bank—the board, et cetera—but one thing has not yet been mentioned. Perhaps the Minister can give us some information on whether the Green Investment Bank will continue to be British. The international character of banking is such that many banks are not British, and they will take an interest in this. We have already seen that many railway companies are not British—indeed, some of them are not even private enterprise companies—and they take ownership of British assets. Can we get an assurance that the process of privatisation will not involve the selling off of these assets—which are of an almost unique character, given the ambitions and mission of the bank—and that they will not be put into the hands of countries which may not be wholly sympathetic to the green ambitions which this Government and most of us in this Chamber espouse? One would question, for example, some of the green credentials of our new-found friends from China or, indeed, the green credentials of a number of Indian institutions, to mention only two. So the House needs reassurance that before we pass legislation to dispose of these government-owned assets—in the main: I realise there will be a UK element—all efforts will be taken to avoid a unique British institution becoming foreign-owned in the main.

Lord Leigh of Hurley (Con): My Lords, I rise to support the Minister's amendment. The Green Investment Bank is a great success. It is the first of its kind, and it probably has the largest specialist team of green investment experts in Europe. The Government did the right thing in starting it up and are now doing the right thing in allowing private investors to assess whether it is credible and whether it will produce a proper return but keep to its core principles of staying as an investor in green ideas and businesses. Clearly, investors will not invest in it unless they are assured that it will remain a green investment bank that does what it says on the tin. There is enormous private sector appetite looking for investments of this type, so the Government should press ahead and not rely on taxpayers' money to support it.

With respect, I disagree with the noble Lord, Lord O'Neill. Surely the whole purpose of this is to encourage foreign direct investment into the United Kingdom. Will the Minister assure us that foreign investors will be encouraged to take a stake in the Green Investment Bank? This country has done exceptionally well in FDI. I think that we are second in the world after the United States. We have sent a very clear message to overseas investors that this is a great country to invest in, for all sorts of reasons. Let us hope that the GIB continues this path.

Lord Stoneham of Droxford (LD): My Lords, I am reluctant to take too much of the time of the House given the excellent speech of my noble friend Lord Teverson, but I want to thank the Minister for coming forward with her amendments because, as she knows, I was very concerned at the slight lack of detail in the amendment initially put forward. I accept that the efforts to ensure that Parliament will have oversight over the process of sale and its mechanisms are important.

[Lord Stoneham of Droxford]

On this side of the House, we accept that it is perfectly right and proper that this organisation is going to be privatised and that it is important to get private capital in. If we were judging where we are, we would probably say that this is being done a little too quickly. Given the success of the bank so far, it would have been right to ensure that the state gets its fair share of the proceeds once the bank has a bit more of a track record. The fact is, though, that the Government are going to do this. We also accept that if we do not do it, the Green Investment Bank will run out of funds and resources—so clearly it has to be done.

4.15 pm

Ideally, we would like to see the Government retaining a minority shareholding, not least so that they can get some future benefit but also to give them some oversight as the bank goes forward. However, the amendments as they stand give us no guarantee of that. Similarly, although it is the intention of the current board, the chair and the Government that the objectives and mission of the bank will be retained, unless Amendment 70ZA is accepted there is no guarantee that we can get some surety going forward. That is why we have tabled this amendment.

We are very proud of being associated with the setting up of the Green Investment Bank. We think that it is timely and has huge potential. The expertise working within it now is a world-beater, and we want to support that. But we want to see the mission and objectives enshrined, and we want to see some oversight over whether or not the ownership could go overseas. It would also make sense for the Government, despite their wish to get quick money for themselves, to retain some shareholding so that they could retain some value for the future.

Lord Mendelsohn: My Lords, I thank the Minister for coming forward with these amendments. I was very grateful that she withdrew the very brief initial amendment in Grand Committee after a very useful debate and has come back with a much more considered position. We support the amendments that she has proposed. However, we on this side have added our name to the amendment from the noble Lord, Lord Teverson, which carries on some of the discussions that we have had ever since this issue was mooted about the right way forward. We had a very useful and wide-ranging debate in Committee on issues relating to the conduct of the sale, along with other matters.

It is very important to note that we are where we are. There is no additional money coming in from the Government with the sort of force needed to keep this moving. The decision has been made to privatise the bank, so the question is what the best way is in which we can go forward with all the Government's issues regarding value for money and other sorts of things while, crucially, keeping to the mission that we had. It was that desire to ensure that we had something that kept the mission going and allowed for the greatest flexibility that was the progenitor of this amendment from the noble Lord, Lord Teverson, with which we strongly agree.

One has to be realistic about the Green Investment Bank. It is indeed an outstanding success and is ably chaired by the noble Lord, Lord Smith of Kelvin, but it is an unusual asset to sell. The noble Lord, Lord Leigh, is one of London's great corporate financiers; I declare an interest as a relative twig compared to the tree that is the noble Lord. This is not a business that makes money. It made £100,000 last time and has a run rate of about £30 million, which is paid for by the department. Now that it has a fund, its run rate is probably about £20 million. It is a portfolio sale so one has to be realistic about what assets are being sold and who the likely purchaser is, as opposed to just investors investing in the funds.

We have to ensure a smooth transition to the private sector, which will allow the Green Investment Bank to continue its task. In this, the most crucial element is how we maintain its mission and free it into the private sector, released from some of the state aid constraints and the ONS restrictions. Those two things should not get confused. They are entirely separate; you can lose one and keep the other, and vice versa. The structure that the noble Lord, Lord Teverson, has come up with is outstanding and he has put a lot of work into it. My team thinks that it is immaculate, and those people they have spoken to who have done jobs like this in a private sector context think that it works immaculately, so it has our absolute support.

In this instance, the Government can achieve the Green Investment Bank's original policy objectives without having to put any further money into it, although it was welcome to hear that the Government will put in some additional money on the basis that it will be privatised. It is also true that the Government have not yet decided what level of shareholding they want or how long they want to hold it. They have sent bankers into the market to see what potential purchasers and acquirers want and will design the transaction structure accordingly. This is what the Government mean when they say that they cannot prejudice the bank's status and why they cannot establish any meaningful commitments or undertakings. In our view and in most people's view, whether the Government keep a minority stake is irrelevant as regards whether they have any powers. Minority stakes have very little powers; indeed, the stake the Government will hold is no more than the protections that the UK in general affords, which I happen to think are the best minority protections in the world. But it has no special duties.

Lord Barker of Battle: On that point of whether the Government should retain a stake, it is important, for example, in management buyouts, where the management may only have a small stake but nevertheless is shown to have a financial interest in the ongoing success of the institution. A lot of people—particularly foreign investors coming into the UK—would see that point; a small, although not controlling, stake in the GIB going forward would be a clear signal that the financial interests of the Government were aligned with those of other investors.

Lord Mendelsohn: I thank the noble Lord for that unusual intervention. He is absolutely right—it is important that management is retained and incentivised,

and that will happen. The bank may or may not make an appeal for anyone to come in as an investor, and as the bank goes forward it will be fairly irrelevant. There will have to be some provision as to how you will acquire the full amount and what price you pay for it. Given that it is a portfolio, it has to be established how much the Government want back from the money they have supplied, and that will be calculated. The merits of whether you have such a stake seem fairly minimal, if not irrelevant.

Apart from all that, I feel strongly, in keeping with the interventions we have had, that we should try to cherish this fantastic instrument we have created and find a way to maintain its mission. The noble Lord, Lord Teverson, has done that and has the support of a number of people who have examined his amendment in detail, and here we have a win-win. It gives greenness a degree of certainty; it does not affect the sale or the price; there is no risk that the bank will fall on the Government's balance sheet; and the Government have complete flexibility as to what they sell, be it 51%, 76% or even 100%—they can cash in on the rest if they so choose at another time, or can do other things.

The mission is worth protecting and the organisation is worth backing. In this amendment, both have been achieved. It broadens the mission of the Green Investment Bank to areas currently excluded by state aid rules and avoids some of the problems of trying to be, in a sense, half pregnant. Therefore, rather than a recipe for conflict, controversy and confrontation, it provides clarity and greater flexibility to deliver a sale. The amendment is a perfect example of something which achieves all the objectives everyone is looking for, and we strongly support it.

Baroness Neville-Rolfe: I am very grateful to the noble Lord, Lord Smith, for being here this evening and, on behalf of us all, for the work he has done in getting the GIB off the ground so successfully. It has reached a break-even position from a standing start in two and a half years, which is an amazing track record, and his speech demonstrated the opportunities and the green intent of the GIB very well.

I am also delighted to welcome my noble friend Lord Barker of Battle to the debate and to our discussions. He brings such huge knowledge of environmental matters to our Benches. I was glad that he mentioned the climate change conference in Paris, because it underlines the importance of capital for green business, and I am in complete agreement with him about the potential for new areas of investment once the GIB is privatised. It was also very good to hear from my noble friend Lord Framlingham. I agree that if the GIB is not green, it is nothing. It is a brand and can blossom.

I am very grateful to the noble Lord, Lord Teverson, for his courtesy, for the discussions we have had and for the support he expressed today for GIB privatisation; and to the noble Lord, Lord Mendelsohn. With other noble Lords, they have tabled Amendment 70ZA, which would place a special share in the control of a third party—a newly established charitable company—which would have the power to block changes to the GIB's articles of association. I fully understand and appreciate the intent behind this amendment, which is to ensure that the GIB can have a successful future in the private sector while seeking to enshrine its green purpose.

I place on record my thanks to noble Lords opposite for the very helpful discussions which they have already referenced. We are all working to the same purpose: to ensure that the GIB has a successful future. I commend the noble Lords for the way they have probed and tested the Government. I do not believe that anyone wants to remove the "Green" from the GIB. I certainly do not, nor do the noble Lords opposite and, most importantly, nor does the GIB itself. As I said in my opening remarks, the Government would not repeal this legislation unless it were necessary, but necessary it is. The challenge we face—this is where, unfortunately, the Government and noble Lords opposite are not aligned—is whether it is possible to lock down that green mission in a way that does not constitute public sector control.

I would like to propose a way forward, because I understand and share the frustrations on this issue. However, it remains the case that, if the Government exercise significant control over the corporate policy of an organisation—for example, by holding a lock over its objects—it would be deemed to be part of the public sector. It is not the form of control that is important, but the effect. Legislation, regulation, contractual agreements: all can have the same effect. The noble Lord, Lord Teverson, understands this very well and I am grateful to him for the hours he has put into trying to find a solution to this problem, although I do not entirely share his confidence that his proposals would work. We need to provide investors with certainty on the important issue of classification. In reply to my noble friend Lord Barker, we have made it clear that we intend to sell a majority stake. Decisions on the size will depend on the outcome of discussions with potential investors, some of whom might value the Government's continued involvement. However, it is important to be clear that, under corporate law, retaining a minority stake would not afford the Government a special right to exercise control over the company.

The noble Lord, Lord O'Neill, asked about Britishness. I completely understand his concern. The GIB, which is based in Scotland, contains top class UK experts on green and climate change issues. As my noble friend Lord Leigh of Hurley said, foreign investors could take a stake, but it is the UK's Green Investment Bank and has invested in every region in the UK, although it has already had some overseas investors in particular projects.

As I said, I would like to propose a way forward. The amendment is well reasoned and merits close scrutiny; I commend the amount of work that has gone into developing it. I know that the noble Lord, Lord Teverson, brings experience of a similar structure through his role as a trustee of Regen SW. I invite him and his colleagues to work with the Government in testing further his proposal for a charitable company structure, and exploring with our advisers in the coming weeks whether it might be a feasible structure for the GIB. In considering this, we will have to look at whether such a structure would not only allow the GIB to be classified to the private sector, but to attract

[Baroness Neville-Rolfe]
private investment and, most importantly, private investors with the capacity to fund its future business plan, which is what we all want.

As I said, we want to work with noble Lords. The fly in the ointment is that Parliament's mandating this structure in statute might be deemed control—Parliament and the Government are equivalent in the eyes of the statisticians. Therefore, we are keen to keep talking and looking for a workable option, but I am afraid that I cannot support the noble Lords' amendment.

On the basis of the shared purpose that has been so well articulated today, and of the commitments I have made to the House, I hope that noble Lords feel able not to press their amendment and will agree to work with the Government over the coming weeks and look at the proposal in more detail.

4.30 pm

Lord Stevenson of Balmacara (Lab): I hesitate to interrupt the Minister but can she be very clear about exactly what she is offering? The offer of talks is obviously welcome and we would like to engage in those, but is she saying that following the talks there will be an amendment that we can discuss at Third Reading?

Baroness Neville-Rolfe: My Lords, I can promise talks and I can promise that, if we find a way through that meets the concerns about classification that have been identified, we will be very happy to think about how that can be implemented, whether in the Bill or elsewhere. The work might take some weeks but clearly we will be happy to continue with those talks.

Lord Stevenson of Balmacara: I am sorry to press the noble Baroness but she has to be very clear about this. She needs to say to the House that she will accept an amendment being brought back in one of two cases: either we have an agreed position with her, in which case the Government can bring it forward; or, if that agreement is not forthcoming, we will be permitted to come back with an amendment. Obviously the rules are very tight, and I am looking very closely at the clerk to make sure that this is sufficient for us to be able to continue the debate.

Lord Teverson: While we are going into a sort of dialogue, and without drawing matters to a conclusion at this moment, the only way I can see of moving forward effectively is if Third Reading is postponed to get this matter right. It would be quite difficult to proceed if we did not postpone Third Reading, and I should be interested to know whether that is in the Minister's remit as far as this discussion is concerned.

Baroness Neville-Rolfe: My Lords, I do not think I can go any further. Of course, I can assert that if we can find something on which we agree, we can bring that back, but I do not think I can commit to anything by Third Reading and, if there is an issue on this aspect, the noble Lord will have to test the opinion of the House.

Baroness Burt of Solihull (LD): Perhaps I may ask the noble Baroness a question. We are struggling with where in the legislation these amendments might come. If we do not press this amendment now and Third Reading goes ahead, at what stage could further provisions which had been agreed by all the parties be legislated for?

Baroness Neville-Rolfe: My Lords, I do not think I can make a promise. Of course, the Bill is unusual in having been introduced in this House and it will be discussed further. Obviously we would have to work together to find something satisfactory. I say that in an optimistic frame of mind but I do not want to promise to deliver something that I am not able to deliver in the event.

Amendment 69 agreed.

Amendment 70

Moved by ***Baroness Neville-Rolfe***

70: After Clause 25, insert the following new Clause—

"UK Green Investment Bank: transitional provision

(1) The Secretary of State may not make regulations under section 29appointing the day on which section (Disposal of Crown's shares in UK Green Investment Bank company) comes into force unless the Secretary of State has—

(a) decided to make a disposal of shares held by the Crown in a UK Green Investment Bank company, and

(b) laid before Parliament a report on the proposed disposal (or, if more than one, on each of them) which states—

(i) the kind of disposal intended,

(ii) the expected time-scale for the disposal, and

(iii) the Secretary of State's objectives for the disposal.

(2) In this section "UK Green Investment Bank company" means—

(a) the public company limited by shares incorporated on 15 May 2012 with the company number SC424067 and with the name UK Green Investment Bank plc, or

(b) a company that is or at any time has been in the same group as that company."

(3) For the purposes of subsection (2) a company is to be regarded as being in the same "group" as another company, if, for the purposes of section 1161(5) of the Companies Act 2006, the company is a group undertaking in relation to that other company."

Amendment 70 agreed.

Amendment 70ZA

Moved by ***Lord Teverson***

70ZA: After Clause 25, insert the following new Clause—

"Objectives of UK Green Investment Bank

(1) Prior to a sale of shares of a UK Green Investment Bank Company (as defined in section (UK Green Investment Bank: transitional provision)(2)) the Secretary of State shall—

(a) ensure that the objects of the UK Green Investment Bank Company contained in its articles of association ("the Objectives") shall be—

(i) the reduction of greenhouse gas emissions;

(ii) the advancement of efficiency in the use of natural resources;

(iii) the protection or enhancement of the natural environment;

(iv) the protection or enhancement of biodiversity;

(v) the promotion of environmental sustainability;

(b) ensure the articles of association of the UK Green Investment Bank Company require its directors to act and review their actions against the Objectives;

(c) create a special share; and

(d) establish a company limited by guarantee registered with the Charity Commission ("the Charitable Company") that will own the special share.

(2) Any amendment to the Objectives shall require the consent of the Charitable Company, as holder of the special share.

(3) The special share shall—

(a) have no income or capital rights;

(b) have no voting rights except on a vote to amend the Objectives and on a vote to alter the rights of the special share.

(4) The rights of the special share shall be deemed altered by the issue of any other special share of the same class.

(5) The Charitable Company that will own the special share shall—

(a) have three members, none of which shall be public bodies;

(b) have as initial members legal persons appointed by the Committee on Climate Change established under the Climate Change Act 2008;

(c) provide that if any member ceases to be a member the remaining members shall nominate the replacement member;

(d) provide that the members will be required to act unanimously in exercising the rights attached to the special share.

(6) For the avoidance of doubt, the Committee on Climate Change shall play no role in the conduct of the Charitable Company or its members following the initial appointment of those members prior to the sale of UK Green Investment Bank company shares by the Secretary of State."

Lord Teverson: My Lords, I thank everyone who has contributed to this debate. I shall be very brief. We seem to have come to a point where we have a solution to everybody's problem. The Minister has worked very hard, and I really appreciate that, but she was not able to say exactly why this amendment does not fit what we are trying to fix. I have gone through it all, and other people who know far more about the ONS than I do have gone through it all, and it works.

We have come to a point at which we need the GIB to be successful. We need to move it through to privatisation and we need to remove the shackles that it has at the moment. But, exactly as the noble Lord, Lord Barker of Battle, said, we need UK plc to have this body there for the green infrastructure for the long term. The only way we can do that is by using the method that we put forward in this amendment and have discussed in this debate. It is the successful way forward. On that basis, I would like to test the opinion of the House.

4.36 pm

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4.51 pm

Amendment 70ZB not moved.

Amendment 70ZC

Moved by ***Lord Mendelsohn***

70ZC: After Clause 25, insert the following new Clause—

"Market rent only: conditions and triggers

(1) The Pubs Code shall require pub-owning businesses to offer a market rent only option to tied pub tenants which fall within the definition in section 70(1)(a) of the Small Business, Enterprise and Employment Act 2015 in the following circumstances—

(a) in connection with the renewal of any of the pub arrangements;

(b) in connection with a rent assessment or assessment of money payable by the tenant in lieu of rent;

(c) in connection with a significant increase in the price at which any product or service which is subject to a product or service tie is supplied to the tied pub tenant where the increase was not reasonably foreseeable—

(i) when the tenancy or licence was granted, or

(ii) if there has been an assessment of the kind specified in paragraph (b), when the last assessment was concluded;

(d) after a trigger event has occured.

(2) A "trigger event", in relation to a tied pub tenant, means an event which—

(a) is beyond the control of the tied pub tenant,

(b) was not reasonably foreseeable,

(c) has a significant impact on the level of trade that could reasonably be expected to be achieved at the tied pub, and

(d) is of a description specified in the Pubs Code."

Lord Mendelsohn: My Lords, these amendments are concerned with matters related to pubs. It is regrettable that we had to table them because we had a very productive discussion and came to quite an effective conclusion during the passage of the Small Business, Enterprise and Employment Act 2015. Given the consultations, we had not anticipated that we would have to return to this issue, but unfortunately we have. First, I pay tribute to the Minister, who has always been constructive and has helped us to try to address some of the problems that have arisen. In many ways, the amendments are the result of problems which became apparent during the consultation. Some feared that there was a conspiracy. I will not refer to the other option explicitly—but it is more the other option than a conspiracy. I hope that during today's proceedings we will be able to resolve the problems.

Some technical matters which are material to getting the situation right still need to be sorted out. Certainly the response deadline for the consultation with the pub industry has been difficult, not least because this is the busiest time of year for publicans, given that 25% of their trade is through the Christmas period. This is not an easy thing for them to assimilate at this point. Further, a consultation in two parts for provisions which may interlink is difficult to respond to until such time as the second part is available. That lies behind part of our argument as to why they should be taken together and the deadline extended. As I say, there are also some technical matters to which we should give further consideration, and we hope that the Government will look at them.

One of those is the reference to a wholesale price list. There is not really a national wholesale price list. Many brewers will not produce a wholesale price list at all, citing competition reasons. A price list comes from a trade body and is made up of merely outline prices, but it is artificial in terms of the open and free market. No free trader pays the prices outlined; only tied tenants pay anything near the prices shown, and sometimes but not always with varying degrees of discount. There is no such provision. Part of this is because, as always with government, sometimes the people who prepared the detail of a Bill have been moved on by the time it has gone through. I have one question for the Minister on these matters: would the Government consider in the future having at least one of the civil servants who had been involved in a Bill remain to see through all the consultations on the secondary instruments? That would be useful.

The fundamental foundation for the consultation paper should have been that there would be a form of parallel rent assessment for new and existing tied tenants, and that existing tied tenants would have various opportunities to consider a market rent only option—the bare minimum and simplest event being the periodic rent review, which in most cases is every five years. The announcement that the PRA would be done away with altogether, along with the proposal for additional conditions to be placed on the MRO opportunity at rent review—it would come into play only when a higher rent had been proposed by the pub-owning businesses—looked to many like a suspicious neutering of all the positive steps that the primary legislation had provided. These were merely errors in framing, rather than a desire to reverse the legislation.

The PRA was initially proposed by tenant and consumer groups as simply an informative tool, enabling a tenant to have a meaningful comparison of the tied and free-of-tie terms on offer. Should the tied tenant consider the tied terms demanded by their pub-owning businesses to be leaving them worse off than if they were free of tie, they could remedy the situation by taking a market rent only option, severing their product and service ties, and paying a market rent. For that reason, PRA and MRO are closely co-dependent, one providing necessary information and the other providing remedy if required. The original draft small business Bill proposed no MRO option, leaving a remedy void. Therefore, the PRA proposed by the Government was to be both an informative tool and a remedy, allowing for a third party potentially to determine a tied rent but leaving the tied product and service ties intact.

The combination of the MRO being voted in, following the events in another place on 18 November 2014, and the realisation that conducting a PRA calculation would throw up problems for the adjudicator potentially controlling the market and saddled with the task of valuing what is called SCOFA—special commercial or financial advantages on offer by pub-owning businesses, some of which might be difficult to quantify—led to

[LORD MENDELSOHN]
the conclusion that the MRO could be the remedy. By eliminating the PRA, the consultation proposal failed to recognise that PRA is necessary to consider whether the MRO remedy should be taken.

We have got to a position where the Government, in bringing together these things, tried to ensure that the process was simplified, so they have absorbed the PRA process in the MRO process. Following discussions that we and stakeholders have had, we believe that we have probably reached a satisfactory position and that Amendment 70ZD is catered for, subject to confirmation from the Minister that the Government will consult, in the secondary consultation paper, on a mechanism that ensures that a tenant who requests an MRO offer under the terms of the Act would also have the option of accepting a rent review proposal and initiating a rent assessment at the same time. The latter ensures that the tenant has a meaningful comparison of the tied and free-of-tie terms on offer when considering taking the MRO option.

The wording of Amendment 70ZC may be familiar to noble Lords. This is because it would reinstate the MRO opportunities and triggers in the Small Business, Enterprise and Employment Act 2015, debated earlier this year. I will briefly outline the chain of events that led us to table the amendment. The small business Bill introduced the original MRO package and the conditions under which it would be offered. A tenant would have the right to request MRO: at rent renewal or at lease renewal; in connection with a significant increase in the price at which any product or service subject to a product or service tie was applied to the tied pub tenant, where the increase was not reasonably foreseeable; or after a trigger event occurred that,

"is beyond the control of the tied pub tenant … was not reasonably foreseeable … has a significant impact on the level of trade that could reasonably be expected to be achieved at the tied pub",

or,

"is of a description specified in the Pubs Code".

However, the consultation indicated otherwise. It proposed that, to meet the right balance, the tenant will gain the right to request an MRO offer following receipt of a rent review proposal, but only if the rent proposed by the pubco is higher than the existing rent the tenant pays. Rents that rise in line with inflation would not trigger the MRO, so in effect a pubco could sidestep the legislation by maintaining rent—very possibly at an unfair level. The tenant would be worse off as their rent increases year on year, in line with inflation. How does triggering an MRO only at a rent increase provide a balance, as stated in the consultation? Will the Minister confirm that, if rents were to rise as a result of inflation, this would fail to trigger an MRO? What other opportunities does the tenant then have for an MRO and how likely is it to happen? We are keen to gauge a sense of why there has been a significant policy change when it was firmly understood that tenants push for a rent review to trigger an MRO as a bare minimum.

5 pm

We are optimistic that the Government may consider accepting our amendment, which reinforces what was previously agreed. If so, I understand that the consultation would have to be reissued, which we do not think is a major concern, except as regards the timing. The Government have been very keen to hit the May deadline. However, I suspect that getting this right would not extend the deadline too much further, especially as the second consultation has not been issued to everyone at this stage. The debate over MRO is a serious concern which could affect the livelihoods of hundreds of publicans, so we are keen to get this right. We are led to believe that the conditions as outlined in the consultation would mean that in practice it would be very difficult for a tenant to qualify for MRO. We have had some discussions outside the Chamber, for which we are grateful, but we have identified that small rises already take place, so the ability to game this situation is very evident. Earlier, I discussed with the Minister the rent rises identified in the financial documents presented to the City by pubcos, which demonstrate that this is not a particularly fair introduction of a different term that was never raised or mentioned previously. Therefore, we are keen to reinstate the previous purposes and ensure that we knock out the idea that the relevant measure has to be taken after a rent increase. This is reflected in our amendment. This is a fundamental and important principle, and one which makes a huge difference to tenants.

We have tabled Amendment 70ZE to deal with some of the issues relating to pubcos gaming the situation since the passing of the Small Business, Enterprise and Employment Act 2015 and the establishment of the code. Some comments have been made publicly to frustrate people choosing an MRO option either by bringing forward terms or by placing the arrangements in what some have called a holding tank. We are keen for the Government to adopt these measures so that we can ensure that no one takes advantage of their situation or continues to take advantage of any potential loopholes, as that frustrates the will of Parliament and the sensible and equitable arrangements that were brought forward after discussions in this place. I beg to move.

Lord Hodgson of Astley Abbotts (Con): My Lords, those of us who sat through long—some may say interminable—debates on this topic in not one but two Bills will be familiar with the details of the situation. I do not propose to replough the ground, except just to state for the record that I was until two years ago a non-executive director of one of the pubcos affected by the code. Given that familiarity, I hope that the noble Lord, Lord Mendelsohn, will forgive me if I describe the amendments essentially as either unfair, ineffective or superfluous.

I accept that that is a rather uncompromising beginning. However, there is a point on which we are all agreed—namely, that we wish to keep pubs open. They are an important and historical part of the country's social fabric. But how do we achieve this against a background of increasing pressure on the pub sector from a variety of sources which I have described before: availability of low-priced alcohol in the supermarkets; changes in people's leisure patterns; and more restrictive licensing laws, which have led to much lower returns and lower profitability in the sector as a whole?

Underlying the comments of the noble Lord, Lord Mendelsohn, and, I dare say, those of the noble Lord,

Lord Snape—I will not predict what he will say, but I have an idea—is a belief that in reality profitability in the sector is not low, there is a hidden pot of gold in the cupboard, and that, if only one could get one's hands on the key, everything would be well. However, I fear that no such pot exists. What is needed in my view is something much more prosaic—a reasonable equality of arms so that landlords can plan future developments against a reasonably certain background and tenants can be protected against the impact of sudden, unexpected shocks. That is what I understood we had arrived at with the Small Business, Enterprise and Employment Act. Every tenant could opt for the market rent only option, which gave them complete freedom, but if they decided to remain tied and any of a series of adverse events—called "trigger events" in the legislation—happened subsequently, they would be able to revisit their decision to remain tied.

In my view, Amendment 70ZC upsets this delicate balance because, as the noble Lord, Lord Mendelsohn, said, at every rent review, even when the rents are remaining the same or maybe even declining, there has to be an option to re-examine and exercise the MRO option. What sort of business can plan confidently on a basis which will mean that every five years, or possibly more frequently, the terms of trade could change so dramatically? This will make no contribution to keeping pubs open.

Amendment 70ZD revives the parallel rent assessment. It is important that we examine the background to the PRA. The PRA came about to help the "no worse off" principle, which we have all accepted, but this preceded the MRO option. Therefore, the arrival of the latter made PRAs redundant. It is clear that parallel rent assessments present valuers with huge challenges, as the Royal Institution of Chartered Surveyors has made clear. This is because of the rather unattractively named SCORFA—special commercial or financial advantages—under which pubcos can offer their tenants additional special advantages, such as support and training; marketing and menu support; or discounts on the Sky subscription or on wi-fi. Putting a value on those is exceptionally difficult. Even more importantly, every tied tenant has recourse to the adjudicator established under the Small Business, Enterprise and Employment Act if they feel that their rent is unfair.

Finally, Amendment 70ZE seeks to insert a clause headed, "Report on pub company avoidance". This is entirely duplicative of what is already provided for in the Small Business, Enterprise and Employment Act. Noble Lords may not be familiar with the Act but Section 46 ensures that the Secretary of State must produce a report on the Pubs Code in general. Sections 53 and 54 give a power to the adjudicator to investigate non-compliance and produce investigation reports on any potential breaches of the legislation. Section 62 requires annual reporting by the adjudicator. Section 65 requires the review of the adjudicator's functions, and guidance by the Secretary of State on a regular basis. Finally, Section 69 gives the Secretary of State the power to determine which pubs are in scope of the legislation. Therefore, Amendment 70ZE adds nothing to the sum of human knowledge or to the prosperity of the industry other than causing some more forms to be filled in and some more duplicative work to be undertaken.

To conclude, the pubs sector is in a delicate financial condition for all sorts of reasons—societal and economic—that are outside its control. After extensive debate, we reached a modus vivendi. Nobody on either side of the argument was ecstatic about it but that is probably in the nature of a negotiated settlement. In my view, we need to go through the consultation process on the code and get the adjudicator up and running. After some practical experience, it may be necessary to revisit the balance now established, but to do so now, before the ink is even dry on the original settlement, cannot improve the sector's health, confidence or prosperity. So I very much hope that my noble friend will reject these amendments.

Lord Snape (Lab): My Lords, I am grateful to the noble Lord, Lord Hodgson, for telling your Lordships what would be in my speech. I had no idea he was so perceptive. He might have had the idea that I would disagree with pretty much everything he said, as I am sure he would acknowledge I have done at every stage of the Bill. To listen to the noble Lord, one would think that the employers' side—the pubcos—are a group of eminently reasonable people who are anxious only that their tenants enjoy a decent living. Without going back to my own experiences, which I related at an earlier stage of the Bill, such a figment of the imagination should be treated as exactly that.

The amendments we are discussing are perfectly reasonable. As we keep saying, apparently to no avail, they would reinforce what we thought was agreed in the other place before the last general election, and during discussions in your Lordships' House since. Even if the noble Lord, Lord Hodgson, disagrees, it appears perfectly reasonable for MRO to be offered on a fixed timescale and not just in the event of a rent increase. There are lots of ways the pubcos can get round the proposals if they remain as they are in the Bill. Indeed, they are planning to do so already. The chief executive of Enterprise Inns, Simon Townsend, has already said publicly what they intend to do. Given that these matters have been debated ad nauseam, both at previous hearings and in Committee, I do not propose to repeat what was said but I ask the Minister to reflect on whether the pubcos are already planning ways around the proposals in the legislation. They are certainly adamant in their opposition to my noble friend's amendments.

For example, can the noble Lord, Lord Hodgson, assure us that there have been no instances of pub companies gaming or intending to game the Pubs Code by selling pubs to avoid the 500-pub threshold? Can he assure the House that such conduct is not taking place or that the pubcos are not manipulating rents at present, and preparing what they describe as a holding tank for certain pubs that they would wish to see outwith this legislation? I would be delighted to give way to him if he can, but of course he cannot because the pubcos are, as ever, planning to evade the legislation in any way they can. My noble friend's amendments are perfectly reasonable, as they would put into the Bill the promises the Government made before the last general election and which, if the legislation is passed as it stands, will not be kept. Indeed, a lot of pub tenants will be in the same invidious position that—

Lord Hodgson of Astley Abbotts: My Lords—

Lord Snape: I will give way in a second if the noble Lord can control himself while I finish this sentence. Tenants would be put in the same position they were in prior to the passing of that legislation in the other place before the last general election.

Lord Hodgson of Astley Abbotts: I am grateful to the noble Lord. He knows, of course, that I cannot speak for every single pubco in the country. It would be exceptionally foolish to do that. But if the noble Lord reads the small business Act, which contains the powers with which the adjudicator is set up, he will see that it has the power to investigate potential breaches of legislation. So this is not just about waiting until the horse bolts; it can be tackled in advance. There is a great deal of power already there, which I do not think the noble Lord's remarks give full weight to.

5.15 pm

Lord Snape: Again, both of us have to stand by our remarks, but I reinforce mine by quoting the statement made by Enterprise Inns' chief executive on 17 November 2015:

"Where publicans who are currently on tied agreements transfer to the MRO model, the sites will be managed by our commercial property team, but will only be transferred to our commercial property estate on a permanent basis if they meet our strict quality criteria, in order that the underlying quality of the estate is not compromised. Sites that fail to meet the quality criteria, and where we believe that the MRO outcome is unattractive"—

to the pubco, of course, not to the tenant—

"will be run as commercial properties until such time as an opportunity arises to generate optimal returns through conversion to an alternative model".

Nothing the pubcos could say as far as this legislation is concerned can really be believed. The only real protection for tenants and for pubco employees lies in the acceptance of these amendments. If the Government are not prepared to accept them and to stand by the promises and pledges made continuously over the 10 or 11 months since the House of Commons passed the relevant amendment, I urge my noble friends on the Front Bench to test the will of the House and to see that these eminently reasonable proposals are implemented.

Baroness Wheatcroft (Con): My Lords, the background to this short debate is that pubs around the country are closing at an unprecedented rate. There are many communities in which the pub is the hub. The one thing we can be clear about is that these amendments will not do anything to halt that trend and may—indeed, almost certainly will—exacerbate it.

On the detail, I bow to the knowledge of my noble friend Lord Hodgson of Astley Abbotts. However, on the first amendment, it seems quite wrong to try to make such a change when a consultation process is already under way on the related secondary legislation. Surely we should allow that process to go through before attempting to change the situation. Equally, the pub adjudicator, the result of very recent legislation, has not been seen at work in practice. As my noble friend Lord Hodgson pointed out, the pub adjudicator has great power to intervene when there are complaints. Again, surely we should allow that situation to at least be tested before trying to change the legislation.

Lord Stoneham of Droxford: My Lords, I think we established in Committee that the current, ongoing consultation has departed from the objective of the enterprise Bill we were looking at in January, which was to introduce the PRA, the parallel rent assessment. The Minister told us in Committee that there were two reasons for this change. One was the cost to the sector of £600,000, and the second was about trying to do away with complexity. However, there was also the slight suggestion as the discussion developed that there had been some oversight here, and I would just like it clarified that this was intentional and that the Government have gone back on the previous legislation.

My former colleague, the noble Baroness, Lady Wheatcroft, said that we should continue the consultation now it has started, but the consultation started on a basis which the legislation did not provide for. The intention of the legislation we looked at in January was to have a parallel rent assessment, which was part of the further protection for tenants in this whole process. I would like some confirmation on that, but we remain sympathetic to this amendment because it basically restores what we agreed in January.

Baroness Neville-Rolfe: My Lords, I thank the noble Lord, Lord Mendelsohn, for his amendments, and the noble Lord, Lord Snape, for bringing his knowledge of the industry to our debates yet again. I also thank my noble friend Lord Hodgson for his contribution. As always, his knowledge of the pub industry is helpful to our consideration, and I am grateful for his considered analysis of the amendments. My noble friend Lady Wheatcroft was right to say that consultations are ongoing—lively ones, I understand—and that we should allow them to continue, although I will discuss that in a bit more detail.

I used to contemplate the subject of pubs with great enthusiasm, reflecting a very positive consumer experience over many years—with four sons and a husband who likes a pint—but I understand the feeling on the House on this issue, so I will try to explain where I think matters stand and then address in turn the amendments on market rent only, on parallel rent assessment and on gaming the system by company avoidance. Pubs were never part of the Bill, and I, at any rate, was taken aback by the turn of events ahead of our debate in Committee. I have attempted to do what I can to engage with noble Lords about their concerns and get us back on track, and I am very grateful to the noble Lord, Lord Mendelsohn, for his courteous words.

My first point is that we will shortly be issuing a second consultation, which will complement and clarify the one issued on 29 October, which had such a poor reception from the Committee. The Government have listened to concerns about the timing of the consultation. We cannot withdraw part 1 and reissue the consultation as one document without delaying the whole package beyond the May deadline, which many stakeholders want to meet. Therefore, to meet the concerns expressed, we instead intend to extend the deadline for responses

to the first consultation well into the new year. This will give stakeholders more time to look at our proposals in the round and respond to them as a whole. The Government have asked open questions in the consultation document, will ask more in the second consultation document and will carefully consider the material received from all respondents. The results will inform the content of the regulations, which of course will have to be debated in both Houses of Parliament, as we agreed earlier, on the affirmative resolution procedure.

Amendment 70ZC relates to MRO conditions and triggers. I listened carefully in Committee to the noble Lord, Lord Whitty, who I think cannot be here today, and the noble Lords, Lord Snape, Lord Berkeley and Lord Mendelsohn, and have of course heard what has been said today. The Government have heard the strength of feeling from noble Lords and stakeholders in response to our proposal in paragraph 8.12 of the first consultation and draft Regulation 15(b) that the tenant will have access to the MRO option only if the rent review proposal shows an increase in the rent that they are currently paying under the tenancy agreement. This proposal was based on an assumption that the amount payable would be expected to rise at each rent review and so MRO could be triggered in most cases. The Government intended this to be a proportionate intervention—there has never been any expectation on the Government's part that it could or should defeat the statutory duty to introduce the right to MRO at rent assessment.

Since the publication of the first part of the consultation, we have been told that the effect of existing rent indexing arrangements and current trends in rent settlement figures would be to limit significantly the number of times tenants would, on the basis proposed, be able to exercise the MRO option at the time of their rent assessment. This was never the Government's intention. We would be greatly concerned if it were to be the practical effect of our draft regulations. The Government believe that it is important to ensure maximum clarity on this issue and to obtain evidence of any and all unintended consequences. We will therefore take the opportunity of the second consultation to ask for consultees' views on what would be the effect of removing from the draft Pubs Code the condition that there must be a proposal for an increase in the rent at rent assessment before a tenant may exercise the MRO option.

We also note the concerns regarding other MRO option triggers, the concerns of the noble Lord, Lord Mendelsohn, about the definition of price lists and other points. Again, there will be questions in the second part of the consultation that seek stakeholders' views and allow those issues to be properly considered. It may be worth reflecting on the fact that allowing the current consultation to proceed alongside the first one, rather than passing the amendment today, would avoid the situation where the Pubs Code rests on two separate pieces of primary legislation, one of which would not become law until after the Pubs Code is intended to be in place—which could of course create legal uncertainties. I would also say that, protest apart, Amendment 70ZC is unnecessary, as existing powers in the SBEE Act 2015 permit the change in wording, should that be the outcome of the consultation.

I turn to the second amendment in this group and the issue of the relationship between the parallel rent assessment and the market rent only option. The noble Lord, Lord Mendelsohn, was kind enough to suggest that he thought that we had made progress in that area, and I hope that we can find a way through. The first part of our consultation on the draft Pubs Code set out that we would not be providing for a separate PRA process within the code. It may be helpful for me to explain the Government's logic.

Before the market rent only option was put in the legislation last November, the PRA was the Government's key remedy for delivering the principle that tied tenants should be no worse off than free-of-tie tenants. At this time, the supporters of the MRO option, the Fair Deal for Your Local campaign and its constituent groups, were opposed to this approach—understandably, given that they supported MRO as the key remedy for unfairness. They and stakeholders from all sides have also provided detailed comments on the operation of MRO that the Government have taken on board in drafting the regulations setting out the MRO option.

For example, the Save the Pub group wrote to the Government last year, and I think it would be helpful to read a brief excerpt. It said:

"A parallel rent assessment has been proposed which I believe all parties to this dispute have agreed, for different reasons, is unworkable. The tenant organisations have highlighted that, whilst a useful informative tool in the right hands, the method is time consuming and complex and should only be used in conjunction with the MRO option as a mechanism to calculate which agreement (tied or free of tie) would deliver the most likely sustainable/profitable future for the tenant".

I could not have put it better. Similar feedback on the potential complexity of PRA was received from pub companies and their representatives.

So when the Government made a commitment, on Report in the Lords on 9 March, to include PRA in the Pubs Code, we went on to say:

"I am always keen to minimise bureaucracy, and as I said earlier it is our intention to streamline and integrate the two processes as far as possible, but we need to do the detailed work and process mapping to understand where and how the processes dovetail. This will benefit from further formal consultation, which will inform how we set this out in secondary legislation".—[*Official Report*, 9/3/15; col. 464.]

It is this streamlining and integration that the Government have undertaken to inform their draft proposals in the consultation so that, as was suggested to us at the time, the PRA can be used in conjunction with the MRO option.

We therefore propose that the MRO process should allow the tied tenant to use the MRO offer to make an informed choice between two options—a tied rent figure and a parallel free-of-tie figure. These would both be subject to independent third-party scrutiny and based on evidence prescribed in the Pubs Code. I understand that at least some tenant representatives see no need for a parallel rent assessment as a separate remedy for the no-worse-off principle, as this amendment could require. I can also say today that engagement will continue throughout the consultation period with all sides of the debate. Indeed, Small Business Minister Anna Soubry will continue discussions tomorrow in round-table meetings with tenant groups and pub companies.

[Baroness Neville-Rolfe]

The hope is that, under our consultation proposals, the Pubs Code regulations can deliver PRA as part of the MRO process. Our intention is—and we are consulting on this—that the regulations will ensure tenants are provided with a detailed comparison of a tied rent in parallel to a free-of-tie rent, which will deliver the no-worse-off principle. If there are concerns that, in incorporating the key elements of PRA in the MRO procedure, the Government have made the process too "time consuming and complex", the Government need to hear this through the consultation. If there are views that there is not enough information being required of pub-owning businesses and that PRA needs to be implemented in another way, the Government wish to hear that, too, again through the consultation. To give all sides time to study the proposals, the Government have decided to extend the consultation deadline to after the busy Christmas period.

5.30 pm

Finally, I turn to Amendment 70ZE. In introducing legislation of this type, it is right that the Government seek to anticipate any attempts to avoid its effects by those to whom the legislation is intended to apply. This is why, for example, in defining a "pub-owning business" in Section 69 of the Act, there is a power to enable persons who are group undertakings in relation to a pub-owning business to be considered part of that business. This ensures that a pub-owning business cannot avoid the Pubs Code by distributing its tied pub estate to its subsidiaries so that no single part has more than 500 tied pubs.

There are provisions in the legislation that are relevant to the amendment in that they permit reporting by the adjudicator to the Secretary of State of potential avoidance activity and permit the Secretary of State to respond. Section 62 places the adjudicator under a duty to report annually on his or her activities in the previous year. However, noble Lords opposite have made a good point in presenting this amendment. I thank them for having raised this issue in a way that seeks to be constructive and to work with the grain of existing legislation. Therefore, having reviewed the amendment and considered its effect, the Government recognise that it provides a helpful process to accompany existing provisions to ensure that government and the adjudicator can ensure that the Pubs Code remains effective. Therefore, partly in the interests of good will, I confirm that Amendment 70ZE will be accepted.

The noble Lord, Lord Mendelsohn, advocated continuity in the civil servants dealing with Bills and implementing regulations. We will, especially after recent events, take great care to ensure continuity on implementation and follow-up. I cannot fully answer for the movements of individual civil servants, but the noble Lord will know from our meeting that a key civil servant involved in the original pub provisions has now joined the pub implementation team.

I thank noble Lords who have contributed to this debate within the House and outside it. I hope I have been able to reassure noble Lords that the Government are listening to their concerns and the concerns of stakeholders. We are extending the length of the first consultation to the middle of January to give sufficient time for responses. We are aligning both parts of the consultation to the same deadline so that both consultations can be considered together, and we are continuing to engage with stakeholders. I am confident that this will mean that, when the consultations runs their course and the final regulations come before this House, we will reflect on a package that will provide a Pubs Code that is effective and delivers the intention of the underpinning legislation coming in by May 2016.

Lord Mendelsohn: My Lords, I thank my noble friend Lord Snape for his excellent intervention, and I thank the noble Lord, Lord Stoneham, who made the key point that we have departed from the original. I also thank the noble Lord, Lord Hodgson, for his intervention. Describing our amendments as unfair, ineffective or superfluous is the greatest compliment he has paid us during the passage of the provisions. The noble Baroness, Lady Wheatcroft, made a point about the condition of the pub industry. It is in a slightly different place from where it was. Consumer pressures about taste, issues about supermarkets and other matters still exist but—having monitored this quite carefully and read a number of companies' plans and, in the last instance, the September report and presentation of Enterprise Inns—I am very encouraged by the future that some are starting to develop for the industry and the way they are responding, not just to some of the consumer changes but now to the certainty about regulation.

I shall make one observation to the noble Lord, Lord Hodgson, although I have to caveat that under FCA rules I should not give this advice: it may well be worth a flutter to back some pub companies fairly soon.

The noble Baroness, Lady Wheatcroft, helped to make the point we are making, which is that there is no point in changing legislation when consultation is going through. That is a very fair point. This is rather like a deal: we have agreed the heads of terms and now we are negotiating contracts, but if the contracts are substantially different from the heads of terms, you have to go back to the heads of terms. That is the position that we are in. That is part of the design. We are not hoping to change legislation. We specifically drafted these amendments to reinforce what came out of the previous Bill, to make the point in the context of the consultation that these changes should not be made.

I am very grateful, as ever, to the Minister, who has done a terrific job on this. She was presented with quite a difficult task just prior to the Grand Committee sitting on this. The return of a particular official is a very welcome addition to resolve some of these matters.

On Amendment 70ZD, the Minister made the key point that the PRA should simply be the provision of two rent assessments under tied and free-of-tie circumstances, which is exactly the assurance everyone was looking for. I am extremely grateful that she has taken the view that Amendment 70ZE is consistent with the previous provisions and adds some small or minor elements which give some more force.

On Amendment 70ZC, we are very clear that it was not the Government's intention to cause these difficulties and that they are somewhat caught with the consultation

already being out, but we feel that these matters were discussed and agreed. These are a material variation of the terms and provide the basis to stop MRO having any real force. The evidence was not just whether stakeholders were spoken to. The evidence is publicly available and the documentation has been presented. I am now familiar with the company reports and presentations. Given that it is consultation, we feel that this is a central issue. It is key to the MRO option being available. It will restore tenants' confidence that this process is going in the right direction. It is important that it follows what we agreed in Grand Committee—that we provide a proper option for MRO that cannot be gamed and that intentions that were agreed on are properly reinforced. It is with deep regret that I wish to test the opinion of the House.

5.37 pm

Division on Amendment 70ZC

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5.50 pm

Amendment 70ZD not moved.

Amendment 70ZE

Moved by ***Lord Mendelsohn***

70ZE: After Clause 25, insert the following new Clause—

"Report on pub company avoidance

(1) The Pubs Code Adjudicator shall have a duty to report to the Secretary of State on cases of pub-owning businesses engaging in unfair business practices in order to avoid the provisions in Part 4 of the Small Business, Enterprise and Employment Act 2015, to the detriment of the tenant.

(2) A report under subsection (1) shall make recommendations on—

(a) actions to be taken to prevent pub-owning businesses from engaging in unfair business practices in order to avoid the provision in Part 4 of the 2015 Act; and

(b) provisions of redress for any affected pub tenant

(3) The Secretary of State shall issue a statement within three months of receiving any report under subsection (1) outlining what action he or she intends to take to protect the tenant, and if none is to be taken, the reasoning for that decision."

Amendment 70ZE agreed.

Amendment 70ZF not moved.

Clause 26: Restriction on public sector exit payments

Amendment 70ZG

Moved by ***Baroness Hayter of Kentish Town***

70ZG: Clause 26, page 44, line 26, at end insert—

"( ) Regulations shall make provision to require prescribed public sector authorities to consider, prior to making a public sector exit payment—

(a) whether the payment being paid is appropriate; and

(b) whether the payment would provide value for money."

Baroness Hayter of Kentish Town (Lab): My Lords, in moving Amendment 70ZG, which stands in my name and that of my noble friend Lord Mendelsohn,

I will speak to the other amendments in the group, which deal with the unintended consequences of the Government's rush to cap high exit payments.

We are not against what the Government said that they wanted to do. The words in the Conservative Party manifesto were:

"We will end taxpayer-funded six-figure payoffs for the best paid public sector workers".

Best paid? No, the Bill will affect those with long service rather than with the highest pay. It does not just curtail payments to the "best paid" public servants but to some who earn only £25,000, despite the impact assessment having suggested that the cap would save in the "low hundreds of millions" over five years—which sort of anticipated that only small numbers would be caught. We now know that over 20,000 could be affected in the Civil Service and many more in arm's-length bodies.

We have heard, I am sure like other noble Lords in this House, from some long-standing public servants, most in their mid to late 50s, with up to 30 years' service behind them, who face possible unemployment but have specialist skills—such as Magnox engineers or librarians—or are in areas of high employment, who are unlikely to find equivalent work again but who will lose what they had reasonable expectation of being paid should cutbacks happen.

We have had strong representations from local government, which will be cutting expenditure by merging back-office functions or reducing departments, but whose ability to manage such restructuring will be hampered by not being able to negotiate with staff in a way that best meets the organisation's interests and the individual's need to retain a reasonable income to pay the mortgage or support a family.

What is more, if the £95,000 figure is not uprated, it will gradually affect more and more grades until, presumably, finally even Foreign Office cleaners will included. Although we have not retabled our amendment on this, we ask the Government to consider re-evaluating it annually, perhaps using the same uprating as for public sector pensions. Similarly, we ask the Minister to open discussions with relevant stakeholders on technical considerations, such as whether the cap will include other means by which an individual can access an unreduced pension—such as on compassionate grounds.

I will add one other point. Since this provision was first mooted, housing associations have been classified as public bodies by the ONS. It would therefore be helpful if the Minister could confirm the position of housing associations as affected by Clause 26. Given the Government's commitment to bring forward measures to deregulate housing associations, with the aim of returning them to the private sector in the future, can the Minister clarify whether the Government plan to add housing associations to the list of exempted bodies?

This group of amendments aims to achieve four things, each recognising that the Government themselves acknowledge that there will be hard—or inappropriate—cases caught by the cap, in that Clause 153C empowers Ministers to make exemptions. These amendments spell out where and how such discretion might be exercised. First, Amendment 70ZG aims to help local authorities and other public services, be they housing associations—if they are to be included—Magnox, or whatever, by requiring that any guidance on the waiver should include the ability to get "value for money", thus enabling management to take the best decisions in voluntary redundancy to fit its objectives.

Secondly, we want any public body caught by the cap, not just local government, to have the ability to exercise a waiver, albeit with the approval of its governing body, much as for local authorities as set out in the draft statutory instrument. Under the Bill, only Ministers or the Scottish Government could agree a waiver, although the draft statutory instrument extends this to the Welsh Assembly and local authorities. However, we think that this needs to be for all relevant bodies, which otherwise will have no ability to exercise a waiver on the cap. These might be a fire and rescue authority, Magnox, the Forestry Commission, schools—where relevant governing bodies have their own decision-making powers—as well as all the others, which may not even realise that they are about to be caught by this provision. Hence Amendment 73A.

Thirdly, as set out in Amendments 70C and 70D, tabled by my noble friend Lady Donaghy, those earning below £27,000 or with long service should not be caught by the cap. After all, only the combination of their age together with their length of service, rather than high pay, includes them under the cap. We do not believe that that was the Government's original intention. What is more, in January this year Priti Patel said that,

"those earning less than £27,000 will be exempted to protect the very small number of low earning, long-serving public servants".

That undertaking has not been kept. Let us take the example of a librarian with a career-average salary of perhaps £25,000 who has worked for 34 years with a council when its library closes and is made redundant at 55. It is a bit late to start a new career and there are not a lot of private libraries around. Similar examples include a 52 year-old tax investigator who has worked for 25 years, a 50 year-old health and safety officer with 20 years' experience, or a 56 year-old school inspector after 16 years with Ofsted. Were these really the people the Government wanted to catch under the exit cap?

A 58 year-old Whitehall civil servant wrote to me to say that he has given 28 years of public service but now finds that he cannot take his department's early exit offer as his full package would be over £95,000. Someone else wrote to me who has worked in the electricity supply industry for 35 years, mostly on shift, often over Christmas and New Year's Eve, generating safe nuclear power. His ability to end his shift working because of his failing health is now in doubt because the cap would reduce what he could take to replace his income.

Therefore, having a disregard for those earning below £27,000 or setting a maximum number of years of service for the calculation would not undermine the purpose of the provision. Certainly there should be an exemption for those close to retirement who have been working with some expectations and who need time to adjust to a tougher regime. While the Minister has written that this whole clause will not be introduced

[Baroness Hayter of Kentish Town]
until late 2016, that is still very soon for someone in their late 50s to be able to make alternative provision for their retirement.

Fourthly, and perhaps most importantly, we must exclude what are known as "strain payments" from the cap, which especially affect long-serving public servants. These are actuarial adjustments, made by the employer to the pension scheme, to compensate the scheme for the early pension taken by the person leaving the service. These strain costs are not paid to the individual, and are therefore qualitatively different from other payments included in the cap. Where a pensions strain compensation cost is paid, the individual will only experience the benefit over a number of years as they gradually draw their pension. Even then, the impact on their pension is not great. For example, if their employer paid £10,000 as strain compensation, the individual would get only about £500 in additional pension but would have lost £10,000 from their exit payment.

6 pm

As strain costs are correlated to length of time in the pension scheme, those with the longest service will be most likely to be caught by the cap. Hence, a middle-ranking officer who has dedicated her working life to public service is more likely to breach the cap than a high-ranking one with only a few years in the public sector. For example, the pension strain cost for someone with 30 years' service and earning £39,000 a year would mean that they would be caught by the cap when added to the statutory redundancy, effectively reducing their statutory redundancy which they had every right to expect. The buyout of early pension reduction means that even employees earning £27,000 who leave after long service will be affected. I do not believe that that is what the Government originally intended.

Schedule 4 shows that the pension regulations will have to be amended. This breaches the 25-year guarantee of no more meddling with the public sector pension scheme made by Danny Alexander, then a Minister, on behalf of the Government just four years ago. If the Government want to achieve their objective of stopping six-figure payments to the highest paid, rather than to the longest serving—who will actually be caught—then Amendment 70B, which removes early access to pension from the calculation of the exit payment, is the easiest way to achieve this. It is fair, it would prevent long-serving, lower-earning workers being caught and it would not discriminate against older workers. I beg to move.

Baroness Donaghy (Lab): My Lords, in supporting my noble friend Lady Hayter and speaking to the two amendments in my name, I want to give the Government the opportunity to keep their word and to give peace of mind to thousands of public service workers who will be affected if Clause 26 is enacted. The consultation period for this clause was brief and took place in the height of the summer vacation. The Delegated Powers and Regulatory Reform Committee was extremely critical of all aspects of this clause and the Minister's assurance that any future changes will be subject to affirmative procedure in no way mitigates the overwhelming centralising powers which the Government are giving themselves.

The first promise was that the exit cap would not apply to the lower paid. As my noble friend Lady Hayter said, the then Treasury Minister, Priti Patel, said in January 2015:

"Crucially"—

I repeat, "crucially"—

"those earning less than £27,000 will be exempted to protect the very small number of low earning, long-serving public servants".

What has happened to this exemption? The purpose of Amendment 70C is to ensure that the figure, and the promise, is contained in the Bill.

The second promise appeared in the Conservative election manifesto, which said:

"We will end taxpayer-funded six-figure payoffs for the best paid public sector workers".

The key phrase here is "best paid": not low paid or averagely paid. The fact that this clause proposes to include those on very moderate pay, but with long service, shows that the manifesto statement was misleading. This is why exempting the pension strain payments is so vitally important to these workers, who will not receive a pension lump sum if they are made redundant after long years of service. This is why I support Amendment 70ZG and why I tabled Amendment 70D about long service.

The third promise to public sector workers—made after difficult negotiations on changes to public sector pensions—was that the new pension schemes would be a settled issue for 25 years. There is a statement by the then Cabinet Office Minister, now the noble Lord, Lord Maude of Horsham, to that effect. Suddenly, a few months later, over 100 pension schemes, affecting thousands of workers, will be forced to change their rules. People have made life plans on the basis of agreed entitlements. The anguish and stress on the lower paid caused by this clause could be prevented if the Government honoured their promise.

Finally, it is important that the Government are clear about when this clause might be enacted. The headline news is that the clause is intended to control excessive payments at the top end for the "best paid" public service workers. Not many would take issue with this, but the reality is that long-serving, lower-paid workers would also be affected, despite assurances to the contrary. This is a highly centralist measure giving this Government, and future ones, the right to overturn national agreements and increase uncertainty for public service workers who already face redundancy and reorganisation. It is still not too late for the Government to keep their promises.

Lord Stoneham of Droxford: My Lords, I said in Committee that there are a number of aspects the Government should be looking at. One was that they should retain some flexibility for dealing with special cases, particularly where value for money was involved. Given all the reforms in the public sector that will be required in the next few years, to miss out on the opportunity to compensate people who will be involved in those, and hit them with caps when they are seeking to co-operate, is not progress in any respect. We pointed out in Committee, as the noble Baroness, Lady Donaghy,

did this evening, that these measures are not just aimed at people in the public sector on high pay. They are aimed at quite low earners who, because of long service, could reach the proposed cap. That is unfair. We have also heard that pension arrangements struck only quite recently are being further undermined by imposing this inflexible cap. For these reasons, we hope the Government will show some flexibility on these amendments, to give them the capacity to respond to the injustice they are creating through a commitment they made at the general election without really realising the unintended consequences.

Baroness Neville-Rolfe: My Lords, I am grateful to the noble Baronesses, Lady Hayter and Lady Donaghy, for their amendments and their comments. I will begin by setting out why it is important to cap the highest exit payments in the public sector. The Government have taken a range of difficult decisions on public sector pay. Measures to restrain pay growth in the public sector have not been easy or popular, but they have worked. The OBR estimates that the resulting savings will protect the equivalent of 200,000 public sector jobs in this Parliament. The cap is a smaller measure, but it is being taken in the same spirit and for the same reasons. It will not have any impact on the large majority of public sector workers. It is focused on the highest payouts and will affect only the top 5% in value of all exit payments made in the public sector. In those limited cases where the cap will bite on middle-earners with long service, I hope to show why this measure is a fair and proportionate course of action. It will still allow such public sector workers to receive payments of up to £95,000 and retire with guaranteed and index-linked defined benefit pensions, which are likely to be far more generous than those received by counterparts in similar roles in the private sector.

Amendment 70ZG is concerned with appropriateness and value for money, but it is not necessary or desirable. There is already a fundamental duty on the public sector to ensure that exit payments are value for money and that they are made in the most appropriate manner. This is a principle that will run through my comments.

Furthermore, along with fairness and proportionality, appropriateness and value for money will be the starting points for the guidance that this clause and the draft regulations mandate. The guidance, which will be binding, will set out when a decision-maker should exercise the power to relax the restrictions imposed by the cap and in what circumstances. The guidance will do more than simply restate two well-established principles; it will set out how the principles should be applied in practice. This will ensure that proper scrutiny is given to exit payments and that employers act with discipline and proportionality. The draft guidance will be consulted on and will be published alongside the regulations when they are considered by this House. Accordingly, the Government agree with the spirit of the amendment but believe that this clause goes further. It allows for clear and detailed guidance on the policy and will set out how the underlying principles should be applied.

Turning to Amendment 73A, the potential inappropriate use of settlement agreements and exit payments more widely is precisely why our clause requires approval by a Minister of the Crown, rather than the employer, when relaxing the cap. Ministerial or full council approval means that the power will be exercised objectively and only in exceptional circumstances, set down in guidance, to prevent circumvention and misuse. The power will be discretionary to allow for unique and novel situations. Regulations, as opposed to guidance, stipulating what such situations would be would limit flexibility. The multifaceted consideration that would be needed would not lend itself to the structure and prescriptive nature of regulations.

Amendment 70B, on pensions, was discussed both at Second Reading and in some detail in Committee. I appreciate that any discussion of pensions raises concerns and that good pensions are an important part of public sector remuneration. However, the proposal should be put in context. The Government are a strong supporter of public sector pensions. As has been said, strong new defined benefit pension schemes for public sector workers, protected by a 25-year guarantee, were introduced in the last Parliament—and this at a time when most private sector employers have said that defined benefit schemes are unaffordable and are moving away from them.

The noble Baroness, Lady Hayter, asked about the 25-year guarantee. This measure addresses exit payments, not entitlements to pay or pensions. The cap has no impact on an individual's accrued pension and does not change the protected elements of the 25-year guarantee. A small minority of public sector workers to whom the cap applies will still be eligible for substantial taxpayer-funded increases in their pension entitlement.

There are fundamental reasons why an exclusion of employer-funded pension top-ups would not be desirable, and I should start by being clear that the issue we are debating concerns not retirement but redundancy. Any earned pension that has been accrued is untouched. The pension lump sum that is often paid as part of a public sector pension is outside the cap and does not count towards it. Instead, the pension costs that we are discussing are additional top-ups funded by employers when individuals depart early. The top-up payments, which provide an income stream from the day you leave, can greatly increase the value of pension payments above the level that has been earned through years of service.

In Committee, the noble Baroness gave several examples of public servants who might be caught by the cap. We have looked at these examples using assumptions, including of likely earnings. Of course, I accept that in the world of pensions different assumptions can always be made but, using our assumptions, we have found the following.

In the example of a librarian on £25,000 with 34 years' service, we have found that an additional £95,000 pension top-up from the employer would in fact be enough to allow that person to retire on an unreduced pension at the age of 52. The same is true of the noble Baroness's examples of a prison warder, whom we have assumed earns £28,000, retiring at 52 with 25 years' service, and a school inspector, whom we have assumed earns £70,000, leaving at 56 with 16 years' experience. In those cases, only if an additional redundancy lump sum were received on top of the pension strain payment could the cap be breached

[Baroness Neville-Rolfe]
at all. In the cases of the prison warder and the school inspector, the additional cash redundancy payment would have to be more than £37,000 and £50,000 respectively before the cap could be breached.

6.15 pm

For the other examples the noble Baroness quoted in Committee, the cap would indeed limit the value of the pension top-up to £95,000, but I would like to demonstrate that the effects of this should not be disproportionate. On our assumptions, a 50 year-old health and safety inspector with 20 years' service on £50,000 a year would receive a pension of £12,000 a year, rather than the £12,500 they would have got before the cap. A 52 year-old tax inspector with 25 years' service earning £60,000 a year would have a pension of £17,500 a year instead of £19,000.

Of course, pension top-ups do not just go to public sector workers on moderate salaries. Very senior staff on very high salaries can receive huge benefits in this way, and some of these payments have led to a great deal of public concern. The Government made it clear in their manifesto that they wish to end such six-figure payouts in the public sector, but the noble Baroness's amendment would prevent us doing this. Within the wider context I have set out, I therefore do not believe that limiting the generosity of employer-funded top-ups is a disproportionate measure or that it will have disproportionate effects.

Turning to Amendment 70C, capping exit payments will mean that some public servants receive less than they otherwise would have. I understand that this is the difficulty but, as I said, every pound saved by curbing the largest exit payments is a pound freed up to be directed to front-line services.

I have given some detail on those who may be caught by the cap, and it is clear that those earning below the figure of £27,000 referred to in the amendment of the noble Baroness, Lady Donaghy, will not be caught, except in very unusual circumstances. This would generally require very long service, a large pension top-up and a lump-sum redundancy payment on top. Be that as it may, a £95,000 exit payment for such a person would represent nearly four times their annual earnings. Such a generous package would rarely be available to someone on that level of earnings in the wider economy. To set things in context, £95,000 is more than six times the maximum statutory redundancy lump sum available.

Priti Patel's statement was of course made in January, during the previous Parliament, and the proposal for the cap set out in our consultation since the election did not include any lower earnings floor. Response to the consultation confirmed the Government's intention to proceed without a lower earnings floor. While a significant number of consultation responses expressed concern about the potential impact of the cap, only a very small number argued that this should be addressed by putting in a lower earnings limit.

I fully accept that we need to strike a balance here. We need to ensure that government action is proportionate and that exit payments continue to provide employees with the support they need until they find another job. My view is that a cap of £95,000 allows for a good level of support, whatever an individual's previous earnings. Also, as I have discussed, these clauses give a power to relax or waive the cap in exceptional circumstances. This can include cases where the application of the cap would cause hardship. While I do not accept that those exiting with a payment of £95,000 will generally be subject to hardship, it is important to be clear that this power exists and can be used where needed.

The noble Baroness, Lady Hayter, also raised the issue of exits on compassionate grounds. These are not as clearly defined a concept as exits related to redundancy or ill health, as I am sure she will agree. They will generally involve a large degree of employer discretion. Therefore, the Government do not believe it would be right to grant a blanket exemption from the cap for exits on compassionate grounds, as this could be open to abuse. However, the waiver powers I have set out could clearly be used in such circumstances. Finally, I make it clear to the House that any exit payments related to ill health and attributable injury are entirely outside the scope of the cap.

It seems to me that similar arguments apply to Amendment 70D. The Government do not believe it would be right to impose a blanket exemption based simply on a definition of long service. Exit payments are determined by reference to both salary and length of service. There may be instances where individuals with very long service on more modest salaries could be affected by the cap. I hope I have shown here that the effects will not be disproportionate. However, there will also be individuals with long service on very high salaries. Under current rules, they can receive payments far in excess of £95,000. We committed in our manifesto to end six-figure exit payments and do not believe that it is right for them to continue. We have all seen cases reported in the news that are hard to justify: such as the NHS Trust Development Authority recently awarding a pay-off of more than £400,000 to a chief executive, which Unite rightly described as "outrageous". This is a proportionate measure. The Government are showing flexibility through the waiver for exceptional circumstances. I have undertaken today to consult on our guidance, alongside the regulations.

Finally, on the issue of timing, consultation will start shortly after Royal Assent and we expect to see the regulations before this House in late summer.

I hope the noble Baronesses will decide on reflection to withdraw their amendments this evening.

Baroness Hayter of Kentish Town: I had anticipated some clarification on housing associations. I thought that had been arranged, but we will put it to one side.

Baroness Neville-Rolfe: I am extremely sorry if that was the noble Baroness's expectation. I will write to her, but I do not have the information that is needed.

Baroness Hayter of Kentish Town: I thought that our relevant teams had coped with that. I think the answer the Minister is going to give will be very acceptable, but maybe we will get it in writing.

We have one voice between two tonight—we are sharing it. But on behalf of us both, I thank the Minister, particularly for the work she did on the examples I gave in Committee.

I hope I heard her wrongly when she said that, as a result of this, someone's pension would be reduced "only" from £12,500 to £12,000 and from £19,000 to £17,000. If those are the figures, I think that that makes the case. For someone earning £12,500, to lose £500 a year is an enormous amount. Maybe not to thee and me, Minister, but for people on those sorts of earnings trying to hold together a family, changing their pension from £12,500 to £12,000 is serious. That, basically, is what we were trying to get at in our swathe of amendments, one way or another. If it is £19,000 to £17,000—although I may have got that wrong—that will have a very serious impact.

The other problem is that the Minister said that £95,000 is a lot of money, but they will perhaps never see £10,000 of that because it is a compensation paid to the pension scheme. So they cannot go off and use that money to live on while trying to retrain or move or find another job; it is an actuarial payment that never comes near their bank account. That is why Amendment 70B, which we will maybe have to come back to later, is so serious. This is not a sum of money they can use to buy themselves an annuity to help train or move or anything else—it is money they never see. I am really sorry that the Government have not responded to that.

If it is right that 5% would be caught, a lot of these waivers are going to go to the Minister. Well, I hope the Minister has more than seven days in her diary per week, because there are going to be a lot of applications for waiver. We are talking about schools and all sorts of small organisations.

The Government are making a mistake on this, not in their intention but in their approach. Luckily, the Bill has another House to go to yet, and I hope that further thought can be given to it because I really do not think that this measure is right or was the intention. It is not fair to take away some people's anticipated income.

I will say only one other thing on the point that the noble Lord, Lord Stoneham, made. If local authorities are not allowed a bit of wriggle room, they will find all the 58 year-olds still there and all the youngsters going. That may not be the best way to merge departments or to get the best restructuring. Again, it seems to me a rather short-term view.

I hope the Government will take further thought on this but, for the moment, I beg leave to withdraw the amendment.

Amendment 70ZG withdrawn.

Amendment 70A not moved.

Amendment 70AA

Moved by ***Lord Low of Dalston***

70AA: Clause 26, page 44, line 29, at end insert "except in the case of exit payments for potential claims under Part IVA of the Employment Rights Act 1996 (protected disclosures)"

Lord Low of Dalston (CB): My Lords, I wish to speak to Amendments 70AA and 70AB. The noble Lord, Lord Wills, will speak to Amendment 73B, which is also in this group.

Amendment 70AA would remove whistleblowing settlements from the cap on exit payments and Amendment 70AB would exempt cases of discrimination, harassment and victimisation. We are all becoming increasingly aware these days that whistleblowing is in the public interest. Often, it is only as a result of the public-spirited action of a whistleblower that things like fraud and scandalous malpractice come to light, which shock us all when they do. Capping settlements in respect of whistleblowing cases could easily act as a deterrent to people blowing the whistle and, often, putting their livelihood and reputation at risk. That is why I have tabled Amendment 70AA, which seeks to remove from the cap settlements in Public Interest Disclosure Act cases.

A second concern is that capping settlements where there is no limit on the level of damages that may be obtained at tribunal can only operate as an incentive to go to tribunal. In Committee, the Minister sought to reassure us by saying that tribunal awards would not be capped. We had an interesting exchange, in which I was concerned to insist that that did not address the point about settlements, and the Minister kindly agreed to write to me about this. Reflecting on our exchange, I sought to clarify my position by saying that the Minister's reassurance not only fails to address the point about settlements, but it strongly reinforces my argument that capping settlements while the amount a tribunal can award remains uncapped provides a clear incentive to people to take their cases to tribunal, rather than settle. That entails costly and contentious litigation which is in neither the employer's nor the public's interest.

In her letter, the Minister repeated that indicative regulations provide that any award directed by a court is outside the scope of the cap on exit payments. New Section 153C(1) of the Small Business, Enterprise and Employment Act 2015, which would be inserted by Clause 26 of the Bill, provides a power to "relax any restriction" of the cap in appropriate circumstances. Unlike court-directed payments, however, which involve a clear finding in respect of the claim, settlement agreements are generally made before any such finding is made. Therefore, the Minister said, if settlement agreements relating to potential whistleblowing claims were outside the scope of the cap, "I am concerned that it could encourage people to make spurious claims of public interest disclosure simply in order to avoid the effect of the cap". Furthermore, she said that the Treasury would be issuing guidance on the exercising of the power to relax the restrictions imposed by the cap. It is envisaged that the guidance will make it clear that where payments relating to potential whistleblowing claims are correct, the power to exempt exit payments from the cap could be exercised.

On the risk of spurious whistleblowing claims, I suggest that the introduction of the public interest test will help to mitigate this risk as it will give the employer a good argument to resist such claims during settlement negotiations. Employers will also have legal advice. This will enable them to assess the merit of a claim and make it easier for them to resist such an attempt to get round the cap. I therefore think, particularly on account of the tendency for a settlement cap to incentivise people to take their case to a tribunal, that we should seek to remove from the cap settlements in Public Interest Disclosure Act cases, as Amendment 70AA would do.

6.30 pm

Amendment 70AB would exclude payments relating to claims of unlawful discrimination, harassment and victimisation under the Equality Act 2010 from the proposed public sector exit cap. The exception would apply both to payments awarded by an employment tribunal following litigation and to payments under terms of settlement agreed by the parties during litigation. Although the Minister has given assurances that tribunal awards will not be capped, and indicative regulations may provide for this, it would nevertheless be best if we could have it spelt out in the Bill.

The Government propose to exclude from the cap exit payments following litigation in respect of unfair dismissal and breach of contract claims, but not discrimination claims. The exclusion from the cap of tribunal awards for certain types of claim but not others will create a significant incentive for claimants to add excluded claims to their case and so pursue the case to determination by tribunal. Thus, under the current proposals, claimants alleging discrimination might be encouraged also to seek an award for unfair dismissal or breach of contract to avoid the cap. The Government's rationale for distinguishing between tribunal awards and settlements is that excluding from the cap payments under settlements could create a loophole, allowing unscrupulous parties to bypass the cap altogether by bringing unmeritorious claims concerning excluded matters. In my submission, a more effective way of ensuring such loopholes are not created and exploited is through the existing system, whereby high-level public sector litigation settlements require Treasury approval. This is required for severance payments by public bodies before they are offered. Proposed payments will be thoroughly scrutinised. Stricter limits are placed on those who seek retrospective approval of severance payments on a case-by-case basis. This scrutiny is designed to provide assurance that public sector payments arising under litigation settlements are merited and deliver value for money. The risk of the proposed approach is that it will disincentivise settlement of disputes by the parties to litigation, instead encouraging claimants to pursue their claims to secure a tribunal award. This is likely to increase pressure on increasingly scarce judicial resources and discourage the early settlement of claims.

The Government's proposed approach of not excluding discrimination awards and settlement payments from the cap fails to recognise the practical realities of employment litigation. Factually connected multiple claims are often made in the same case. The proposals are likely to make it more difficult to achieve settlement in high-value multiple claims in circumstances where some claims are covered by the exit payments cap and some are not. The correct approach is to exclude all payments in respect of discrimination legislation, both tribunal awards and settlements, from the public sector exit payments cap, while ensuring that the existing robust safeguards in place through the Treasury approval process operate effectively to deter unmeritorious claims and encourage settlement where this is merited, and offer value for taxpayers' money. That can be achieved in the legislation, as proposed by Amendment 70AB.

These are complex matters. We have a couple of amendments which drive in broadly the same direction, but there are some differences in detail. For instance, Amendment 70AA relates only to settlements, but Amendment 70AB covers both settlements and tribunal awards. There may therefore be merit in a consolidated approach. Perhaps the Minister would be willing to meet us before Third Reading to explore this approach and, I hope, reach agreement on a common way forward. If she is, I am sure that neither the noble Lord, Lord Wills, nor I would feel it necessary to press our amendments to a vote.

Lord Wills (Lab): My Lords, I support the amendments, which have been so persuasively argued for by the noble Lord, Lord Low. I want to speak particularly to Amendments 70AA and 73B, to which I have added my name.

It is clearly right that there should be rigorous controls on the use of taxpayers' money for exit payments, but the Minister will be aware of widespread concerns across the House about unintended consequences of this legislation in discouraging whistleblowers and the resulting potentially damaging impact on public services. We have discussed this issue many times in your Lordships' House, and I do not want to rehearse at great length arguments on the merits of whistleblowers, save to say that I support what the noble Lord, Lord Low, has just said. We have seen the value of whistleblowing in both the public sector and the private sector over and again—Volkswagen might have been very well served by a whistleblower some years ago, which might have saved it and millions of motorists great grief. We have seen the advantages of whistleblowing in the National Health Service and throughout the public sector. I hope that the Minister will agree that it is very important that, in moving forward with this legislation, which broadly I welcome, that there are not unintended consequences of the sort that the noble Lord, Lord Low, has just described in discouraging genuine whistleblowers from coming forward.

We have heard already that this legislation, which applies a uniform cap of £95,000 across all settlement agreements for employment disputes, does not take into account the uncapped damages that can be awarded for very good reasons under the Public Interest Disclosure Act. It is common ground that the public interest is best served by creating an environment which encourages genuine whistleblowers to come forward with their information and to do so in a timely way. Such whistleblowers usually take considerable personal risks in doing so and many of them do not work again in their chosen industry or profession after making a public interest disclosure. It is crucial that there is robust legal protection for such courageous individuals. Uncapped damages at employment tribunals are an important part of such protection—for example, encouraging those with high earnings in professions which are often of great public concern to come forward. It is important that such people do so, as they often possess potentially the most important information.

In view of the Government's frequently stated concerns to protect whistleblowers, it is hard to believe that they intended the cap in this Bill to damage these public policy aims, but that could still happen. As the noble

Lord, Lord Low, has just set out, a blanket cap might encourage the parties to be less flexible in their negotiations, to be more aggressive and litigious. At the very least, there is potential for confusion, given that the level of the cap in this legislation does not match the current employment protection legislation, in particular claims under the Public Interest Disclosure Act.

The Minister has suggested that the Government will deal with this issue by the Treasury issuing guidance, which—I quote from the noble Baroness's letter to the noble Lord, Lord Low, of 17 November—will,

"make clear that where payments relating to potential whistleblowing claims are correct then the power to exempt exit payments could be exercised".

It is not clear what this might mean in practice. For example, what does "correct" mean? What is the significance of the words suggesting that the power "could be exercised" instead of "would be exercised"? It is important that the Minister clarifies the position on this as the Government have a propensity, despite all their fine words, for incoherence in the way that they provide adequate protection for whistleblowers.

The Minister may recall, for example, our exchanges during the passage of the small business Bill about extending whistleblowing protection towards job applicants. The Government eventually recognised the need to do this for NHS workers as a result of the Francis report—this was most welcome—but they then refused to implement such protections for anyone else. Then the Government produced no reason why such protection should not be available to workers in, for example, social care, the City of London or the construction industry, where informal blacklisting is just as likely and the public interest in disclosure is potentially just as important as in the NHS.

At the time the Minister claimed,

"there is work to be done to get this right and it will take time, beyond this Parliament, to reach a suitable solution".—[*Official Report*, 26/1/15; col. GC 10.]

Time has passed and there is a new Parliament, so will the Minister take this opportunity to reassure your Lordships' House that the Government have been addressing this anomaly? If they have not done anything yet, can she reassure me that she will at least ask one of her officials—assuming that there are any left after the Autumn Statement—to consult about how best to address this anomaly, including potentially talking to the whistleblowing charity, Public Concern at Work, and write to me at some point—say, before the Summer Recess—about the progress she has made?

As we have heard, Amendment 73B contains provision to tackle continuing concerns about so-called gagging clauses and the need to ensure that, if a whistleblower and an employer enter into negotiations to end the employment relationship, any unresolved or outstanding public interest concerns at the centre of the dispute are passed on to a relevant regulator or law enforcement body. As noble Lords are aware, the Public Interest Disclosure Act provides a defence against gagging practices by making any clause in an agreement void if it would prevent a protected disclosure being made. This means that an employer would not be able to rely on a confidentiality clause within the settlement agreement either to prevent a relevant concern being raised by a whistleblower or to threaten monetary penalties for a breach of a provision in the settlement agreement. The Government have in the past relied on this to resist previous attempts to tackle these so-called gagging clauses. However, the law is not the problem; the problem is the evidence of a widespread perception that confidentiality clauses contained within settlement agreements gag individuals from escalating their concerns with a regulatory or law enforcement body.

The National Audit Office researched public sector whistleblowing settlement agreements and looked at 50 agreements. It concluded that none of them would breach the Public Interest Disclosure Act but, when they interviewed the whistleblowers who were party to those agreements, it was found that they were under the impression that they were so gagged by the agreement. This is due to the opaque wording of many of the confidentiality clauses within the settlement agreements considered in the research.

The amendment deals with this problem in two ways: first, through ensuring that a worker in this difficult situation has access to legal advice so that they are fully aware of the defence provided by the law and so preventing the erroneous perception to take hold that these individuals are gagged when they sign a settlement agreement. The second part of the solution is to create a referral system within regulations relating to the cap to ensure that incidents of wrongdoing, malpractice or health and safety danger are sent to the relevant regulatory body so that the signing of a settlement agreement does not prevent the concerns being raised and the public interest being pursued.

These amendments represent an opportunity for the Minister to reassure the public that the Government are determined to do everything possible to protect and encourage genuine whistleblowers by removing the confusion and incoherence that this legislation risks creating and by tackling a long-established obstacle to the transparency that is so critical to the effective and safe delivery of public services. I hope the Minister will seize this opportunity with enthusiasm and accept the amendments; or, at the very least, as the noble Lord, Lord Low, said, agree to meet him, me and my noble friend Lady Hayter to discuss a possible coming together of minds on this before Third Reading. I certainly would not wish to press this to a vote either.

6.45 pm

Lord Stoneham of Droxford: My Lords, I have a specific point for the Minister. These two amendments raise important issues and I am broadly supportive of them. In Committee, the Minister said that, where a whistleblower successfully brings a case to an industrial tribunal, the cap will not apply to the award made. That relates to the point raised by the noble Lord, Lord Low, that if you have the cap lifted only for tribunal cases and awards, it will encourage that process rather than a settlement, which would be quicker, probably cheaper and simpler. I therefore again put to the Minister the point made by the noble Lord, Lord Low: can we have a mechanism that does not confine this only to employment tribunal awards? Will it apply to tribunal conciliation settlements? More importantly, it would be helpful if it could apply to general settlements

[LORD STONEHAM OF DROXFORD]
in cases where whistleblowers are particularly vulnerable. As the noble Lord, Lord Wills, said, often in public cases these people do not work in the sectors in which they have made their sacrifice.

Baroness Hayter of Kentish Town: My Lords, the case for the amendments has been made by both my noble friend Lord Wills and the noble Lord, Lord Low. I merely re-emphasise that undermining everyone's desire to outlaw discrimination or to encourage whistleblowing in the public interest—which is good for patients, consumers and fellow workers—by including any compensatory payment in the cap would be yet another unintended consequence of this clause.

The point raised by the noble Lord, Lord Stoneham—and, in a way, by Amendment 70A, although not formally moved—is the general worry that a court-approved or ordered settlement would be exempted. We support what the Government are trying to do elsewhere to get early settlements, including by ACAS, but we are worried that unless those sorts of settlements are excluded there will be a perverse incentive to go to tribunal or court because, otherwise, the settlement could disappear under the cap. This could be for unfair dismissal, harassment or victimisation in addition to discrimination and whistleblowing.

If the Minister agrees to discussions on this issue and how we can support what the Government are trying to do elsewhere—which is to achieve settlements before going to court and not at the court gate—it would be very helpful.

Baroness Neville-Rolfe: My Lords, I am grateful to the noble Lords, Lord Low and Lord Wills, for their careful scrutiny and for these amendments. I say from the outset that this clause is not intended to disincentivise employers from entering into appropriate settlement agreements, nor is it intended to limit the payments that are available to aggrieved individuals in whistleblowing or discrimination claims.

I agree with the points around the importance of these matters made by the noble Baroness, Lady Hayter, and the noble Lord, Lord Stoneham. However, I repeat the point I made in my letter to the noble Lord, Lord Low, that there is an important difference between payments that have been directed by a tribunal and payments made under a settlement agreement. If a claim is successfully brought to tribunal, there is a clear finding of fault. I make clear today that payments directed by a court or any tribunal will not be within the scope of the cap. The draft regulations will be specific on that point, and we do not need to put it into the Bill.

However, in the case of a settlement agreement, this is of course only a potential claim and we will not know whether it in fact has merit. As the noble Lord, Lord Low, has said, guidance on relaxing the cap will clarify that these are the kind of circumstances in which it may sometimes be appropriate to make settlement payments above the level of the cap. The Treasury guidance on relaxation of the cap will make it clear that such payments should be made only after appropriate scrutiny. Otherwise, if we were to exempt certain categories of claim from the cap as proposed in the amendment, we would actually create a loophole that could encourage some people to make unmeritorious claims in order to avoid the effect of the cap. This could lead to payments in excess of the cap being made in cases where that is clearly not appropriate. I stand by the point. I have said that the draft regulations will exclude all tribunal-directed payments from the scope of the cap.

We have no desire to encourage claims to proceed to tribunal where settlement is more appropriate. It seems to me that, if some types of settlement on the grounds of whistleblowing or under the Equality Act were excluded, that would complicate employment law proceedings in just the way that the noble Lord, Lord Low, described. I fear that, if we were to proceed as proposed, we might discredit genuine claims by whistleblowers and of unlawful discrimination by association with a legal loophole, so our clauses include such payments within the scope of the cap but allow for the restrictions to be relaxed in appropriate cases.

Amendment 70AA raises the important topic of whistleblowing. The Government take this issue extremely seriously.

Lord Wills: I appreciate that the issue cannot be given greater clarity at the moment, but if she can, will the Minister say a little more about how she would describe "appropriate cases" and who will be the judge of those?

Baroness Neville-Rolfe: Perhaps I may pick that up at the end and deal now with the point on whistleblowing, which we take very seriously.

People who take the bold step of disclosing malpractice in the public interest play an important role in bringing wrongdoing to light. It is essential that they are protected from suffering detriment at the hands of their employers. As the noble Lord, Lord Wills, said, they often take considerable personal risk. The legal framework to protect whistleblowers has been substantially strengthened over the past year, partly due to the great work of the noble Lord and of the charity Public Concern at Work. I am sure I speak on behalf of many in the House when I say how grateful I am for those efforts.

Amendment 73B also concerns whistleblowing and has three components. The key point is that a settlement agreement cannot prevent an employee making a public interest disclosure. The Employment Rights Act 1996 provides that any agreement that seeks to do so will be void, so a whistleblower signing a settlement agreement remains completely free to report the wrongdoing to the relevant body. The issue can be properly investigated without the need for a regulatory referral system as proposed in the amendment.

The time is late. I am entirely happy to meet noble Lords, along with officials from the Treasury and BIS, to talk about some of the points raised, including, for example, an update on the progress of the Francis report changes, although I think they need to settle in, as I indicated earlier. On the point about "appropriate cases", this is an important issue for the guidance and we will consult on it in parallel with the draft secondary legislation next year. Noble Lords will have the opportunity to see it in advance of the regulations being considered.

That is the long way round of saying that the meeting that I have just accepted should take place should do so. However, I cannot accept the amendment. If the noble Lord wants to press it, he will have to test the opinion of the House but, as I say, I am happy to have a meeting to see whether we can take things forward, particularly on the guidance and the implementing regulations.

Lord Low of Dalston: I apologise to noble Lords for that hiatus. In my naivety about procedure, I rather thought the noble Baroness, Lady Hayter, was going to reply. I am grateful to the Minister for her response, and to the noble Lords, Lord Wills and Lord Stoneham, who have both spoken. The Minister has graciously agreed to the meeting that we have asked for, so in those circumstances it would be churlish to press any of these amendments to a vote. We look forward to taking up the offer made by the Minister, who also suggested that she might bring the Treasury along, which would certainly be helpful. One does not always say that bringing the Treasury along would be helpful, but on this occasion one hopes it might be. Since a good deal of my briefing on this issue has come from the Equality and Human Rights Commission, I hope the Minister will agree that it might be helpful to bring a representative along to provide that particular expertise. With that, I am happy to withdraw the amendment.

Amendment 70AA withdrawn.

The Deputy Speaker (Baroness Stedman-Scott) (Con): My Lords, in calling Amendment 70AB, I must tell noble Lords that there is a printing error in the Marshalled List. The word "award" should be followed by the word "or".

Amendment 70AB not moved.

Amendment 70B

Moved by ***Baroness Hayter of Kentish Town***

70B: Clause 26, page 45, leave out lines 5 to 7

Baroness Hayter of Kentish Town: My Lords, I spoke to this amendment when addressing an earlier group. It is the amendment that would leave out from the exit cap the "strain payments", if you like: compensatory payments made by an employer to a pension scheme which do not go to the person leaving the service. I beg to move the amendment at this point, and I wish to test the opinion of the House.

6.57 pm

Division on Amendment 70B

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Amendment 70B disagreed.

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7.08 pm

Amendments 70C and 70D not moved.

Amendment 71

Moved by ***Baroness Neville-Rolfe***

71: Clause 26, page 46, line 34, leave out "to which subsection (5) applies" and insert "under section 153A"

Baroness Neville-Rolfe: My Lords, these amendments address the recommendations of the Delegated Powers and Regulatory Reform Committee relating to Clause 26. The effect would be to make all regulations made under the clause subject to the affirmative resolution procedure. We have seen the committee's report and I take the opportunity to thank the committee for its detailed scrutiny. We are happy to accept the recommendations, to which these amendments give effect. I commend them to the House.

Baroness Hayter of Kentish Town: My Lords, as we moved them in Committee, I do not think the Minister will be very surprised to know that we are delighted with these amendments.

Amendment 71 agreed.

Amendments 72 and 73

Moved by ***Baroness Neville-Rolfe***

72: Clause 26, page 46, line 39, leave out from beginning to end of line 7 on page 47

73: Clause 26, page 47, leave out lines 9 to 11

Amendments 72 and 73 agreed.

Amendments 73A and 73B not moved.

Clause 29: Commencement

Amendment 74

Moved by ***Baroness Neville-Rolfe***

74: Clause 29, page 49, line 16, at end insert—

"( ) section (UK Green Investment Bank: transitional provision) (UK Green Investment Bank: transitional provision);"

Amendment 74 agreed.

Clause 30: Extent

Amendments 75 and 76

Moved by ***Baroness Neville-Rolfe***

75: Clause 30, page 50, line 4, at end insert "(except paragraphs A1 and 11E of Schedule 1)"

76: Clause 30, page 50, line 11, at end insert—

"( ) Paragraphs A1 and 11E of Schedule 1 (establishment of Small Business Commissioner as corporation sole and provisions about the application of the seal etc) extend to England and Wales and Northern Ireland."

Amendments 75 and 76 agreed.

7.11 pm

Sitting suspended.

Junior Doctors Contract

Statement

7.19 pm

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, with the leave of the House, I shall now repeat a Statement made earlier today by my right honourable friend the Secretary of State for Health in the other place. The Statement is as follows:

"With permission, Mr Speaker, I would like to update the House on the junior doctors' strike. Earlier this month, the union representing doctors, the BMA, balloted for industrial action over contract reform. Because the first strike is tomorrow, I wish to update the House on contingency plans being made.

Following last week's spending review, no one can be in any doubt about this Government's commitment to the NHS, but additional resources have to be matched with even safer services for patients. That is why, on the back of mounting academic evidence that mortality rates are higher at weekends than in the week, we made a manifesto commitment to deliver truly seven-day hospital services for urgent and emergency care.

However, it is important to note that seven-day services are not just about junior doctor contract reform. The Academy of Medical Royal Colleges noted that,

'the weekend effect is very likely attributable to deficiencies in care processes linked to the absence of skilled and empowered senior staff in a system which is not configured to provide full diagnostic and support services 7 days a week'.

So our plans will support the many junior doctors who already work weekends with better consultant cover at weekends, seven-day diagnostics and other support services and the ability to discharge at weekends into other parts of the NHS and the social care system.

But reforming both the consultants' and junior doctors' contracts is a key part of the mix because the current contracts have the unintended consequence of making it too hard for hospitals to roster urgent and emergency care evenly across seven days. Our plans are deliberately intended to be good for doctors. They will see more generous rates for weekend work than those offered to police officers, fire officers and pilots. They protect pay for all junior doctors working within their legal contracted hours, compensating for a reduction in anti-social hours with a basic pay rise averaging 11%. They reduce the maximum hours a doctor can work in any one week from 91 to 72 and stop altogether the practice of asking doctors to work five nights in a row. Most of all, they will improve the experience of doctors working over the weekend by making it easier for them to deliver the care they would like to be able to deliver to their patients.

Our preference has always been a negotiated solution but, as the House knows, the BMA has refused to enter negotiations since June. However, last week I agreed for officials to meet it under the auspices of the ACAS conciliation service. I am pleased to report to the House that, after working through the weekend, discussions led to a potential agreement early this afternoon between the BMA leadership and the Government. This agreement would allow a time-limited period during which negotiations can take place, and during which the BMA agrees to suspend strike action and the Government agree not to proceed unilaterally with implementing a new contract. This agreement is now sitting with the BMA junior doctors' executive committee, which will decide later today if it is able to support it.

However, it is important for the House to know that right now strikes are still planned to start at 8 am, so I will now turn to the contingency planning we have undertaken. The Government's first responsibility is to keep their citizens safe. This particularly applies to those needing care in our hospitals, so we are making every effort to minimise any harm or risks caused by the strike. I have chaired three contingency planning meetings to date and will continue to chair further such meetings for the duration of any strikes.

NHS England is collating feedback from all trusts but currently we estimate that the planned action will mean that up to 20,000 patients may have vital operations cancelled, including approximately 1,500 cataract operations, 900 skin lesion removals, 630 hip and knee operations, 400 spine operations, 250 gall bladder removals and nearly 300 tonsil and grommet operations.

NHS England has also written to all trusts asking for detailed information on the impact of the strikes planned for 8 and 16 December, which will involve the withdrawal of not just elective care but urgent and emergency care. We are giving particular emphasis to the staffing at major trauma centres and are drawing up a list of trusts where we have concerns about patient safety. All trusts will have to cancel considerable quantities of elective care in order to free up consultant capacity and beds. So far the BMA has not been willing to provide assurances that it will ask its members to provide urgent and emergency cover in areas where patients may be at risk, and we will continue to press for such assurances.

It is regrettable that this strike was called even before the BMA had seen the Government's offer, and the whole House will be hoping that the strike is called off so that talks can resume. But whether or not there is a strike, providing safe services for patients will remain the priority of this Government as we work towards our long-term ambition to make NHS care the safest and highest-quality in the world. I commend this Statement to the House".

My Lords, that concludes the Statement.

7.24 pm

Lord Hunt of Kings Heath (Lab): My Lords, I am very grateful to the Minister for repeating the Statement. My understanding is that since the Statement was read in the other place, progress has been made in the ACAS talks. Perhaps the Minister will update the House in response to my comments. I very much welcome the outcome of those ACAS discussions.

The Minister knows that the dispute has been very damaging to workforce morale. He also knows that many junior doctors have already voted with their feet, or are planning to over the coming months. What action is his department taking to stop the brain drain of our brightest medics to countries such as Australia and New Zealand? It is clear that the past few months have been very bruising to junior doctors and it is vital that this is turned around so that they come back to a positive view of working in our National Health Service. I hope that the progress that has been made this evening will mark a change in tone and approach on behalf of the Government.

No one disagrees that if you go to hospital in an emergency on a Sunday you should get the same treatment as you would on a Tuesday. But the Health Secretary has repeatedly failed to make the case for why reforming the junior doctors contract is essential to that aim. My honourable friend Mrs Heidi Alexander has made a genuine offer to the Health Secretary to work with him on a cross-party basis to do everything possible to eradicate the so-called weekend effect and to support any necessary reforms

[Lord Hunt of Kings Heath]
to achieve that aim. But in return, the Health Secretary needs to be absolutely clear about what needs to change in order to deliver that.

As many studies have concluded, there needs to be much more research into why there is a weekend effect so that we can make sure we focus efforts on the actual problem. We hope that the Health Secretary will commit to commissioning new independent research into how reforming staffing arrangements at the weekend might help improve the quality of weekend services. Will the Minister say what other steps are being taken to ensure that we have consistent seven-day services, including making sure that social care is available outside the working week?

We welcome the fact that the Health Secretary finally agreed to ACAS talks last week and I very much welcome the news from those talks tonight. Nobody wants patients to suffer and let us hope that we can put the whole sorry saga behind us.

Baroness Walmsley (LD): My Lords, I, too, thank the Minister for repeating the Statement. I, too, understand that the junior doctors have now agreed to call off tomorrow's strike. Will the Government therefore apologise to the 4,000 patients whose treatments tomorrow will have been delayed by this going right up to the wire and the Government being so reluctant to go to ACAS for negotiation?

I understand that more detailed negotiations will now take place. Will the Government be entering those negotiations without prejudice and with the well-being of patients—and the well-being of doctors, upon which the well-being of patients depends—in their minds as they negotiate? Will they take very seriously the concerns that have been put to them by conscientious junior doctors, who work very hard for us?

I, too, have some scepticism about the data in relation to the so-called weekend effect. I echo the call of the noble Lord, Lord Hunt, for some independent research into the causes of the less good outcomes that undoubtedly occur in some places—to what degree, we do not know. I am quite sure that the junior doctors and their contract are not the only cause of any such weekend effect.

Lord Prior of Brampton: My Lords, first, I am very pleased to confirm to the House that in the past few minutes the BMA and the Government have reached an agreement, which will allow time for negotiations to take place. The BMA has agreed to suspend industrial action, including that planned for tomorrow, and the Government have agreed not to proceed unilaterally with implementing the new contract. By any standards, that is very good news.

The noble Lord referred to the brain drain. The best thing we can do in the short term is to sort out the contractual dispute with the junior doctors. That is absolutely fundamental to restoring morale among doctors. There is a feeling among some junior doctors that they are not properly valued. This goes way beyond some of the issues being discussed on the contract. It is about their training and a lot of other issues that bear on this.

There have been, I think, two studies published in the BMJ now about the weekend effect, along with studies in other parts of the world as well, such as the US. There is no doubt that there is a weekend effect. It is to do with lack of senior cover at the weekends, diagnostics and all those kinds of issues. This is a broad issue, which can be addressed only if we have a seven-day service. It is certainly not just about junior doctors.

We do not have much time but I will say this about the Secretary of State: patient safety is his motif. If he wishes to be remembered for anything, it is patient safety. That is why he agreed to go to ACAS when the BMA suggested it. He was absolutely right to do so and I congratulate both the BMA and the Secretary of State for coming to this agreement just in time.

7.31 pm

Lord Patel (CB): My Lords, I am not allowed by the rules to make any statement but only to ask a question, which is a pity because I wanted to make some comments about what the Minister just said. We will leave for another day the discussion of this mounting academic evidence that mortality rates are higher. They might be, but we need to investigate the cause-and-effect scenario. Leaving that aside, the Statement says:

> "So our plans will support the many junior doctors who already work weekends with better consultant cover at weekends, seven-day diagnostics and other support services, and the ability to discharge at weekends into other parts of the NHS and the social care system".

Is the Minister able to update us on whether we will have another Statement related to this or whether there are plans in process to deliver all that the Statement says?

Lord Prior of Brampton: There is a recognition that the weekend effect is caused by many factors. It is certainly not just the ability of trusts to roster junior doctors at weekends but the absence of senior cover and the fact that much diagnostic capacity is not available at weekends. Of course, you also have to be able to discharge patients at weekends, which means that social care has to be working as well. To have a truly seven-day NHS requires a lot more people and resources to be available than just junior doctors.

Lord Lansley (Con): My Lords, my noble friend the Minister's repetition of the Statement and what he was able to say additionally in response to noble Lords was very welcome. Does he agree that going back more than 20 years, to when the new deal for junior doctors was first brought in and we supported them on their concerns about Modernising Medical Careers, we on these Benches have never been lacking in support for junior doctors? We understand that when one is on the ward in a hospital at the weekend, very often the doctor who you see is a junior doctor. The point is that it is in the best interests of junior doctors and patients for seven-day working to be introduced, with proper

rostering, rather than discriminating between Monday to Friday and the weekend as if they were different parts of what is in truth the same service. If we get it right, as my noble friend says, it should be possible to achieve such an agreement without bringing any detriment to junior doctors as a consequence, but rather by supporting them in the work that they have to do.

Lord Prior of Brampton: I thank my noble friend for those comments. One of the issues often raised by junior doctors is that they do not always feel properly supported at weekends. I think that having more seniors available at weekends—and late at night, for that matter—will be welcomed by junior doctors. There is also sometimes a misunderstanding in the public mind, as junior doctors can actually be quite senior doctors. A medical registrar is, by most standards, a senior doctor so junior doctors are not just people who have recently finished their training.

Lord Tugendhat (Con): My Lords, does the Minister agree that during the build-up to this strike, which has now happily been called off, a great burden was put on to the shoulders of the NHS management? It is often much maligned and compared unfavourably with the doctors and nurses and other medical staff but, once again, the management staff have shown their ability to rise to the challenge. I hope that the Minister might feel it appropriate to give them a word of praise.

Lord Prior of Brampton: I am delighted to do that, having been the chairman of an NHS trust for 12 years myself and knowing that my noble friend was chairman of the Imperial NHS trust and that the noble Lord, Lord Hunt, who is opposite, was chairman of the Heart of England NHS Foundation Trust. Given the pressure and stresses on management and the complexity of its day-to-day role, I think that no other organisation is as challenging as a large acute hospital. Managers have to do their work in the full glare of publicity as well and it is extremely difficult, so I certainly join my noble friend in paying tribute to the extraordinary work that many of them do in the NHS.

Baroness Masham of Ilton (CB): My Lords, the Statement says that the Government's ambition is,

"to make NHS care the safest and highest quality in the world".

How is this to be achieved without enough high-quality doctors? Do the Government agree that, regarding the teams—the therapists and nurses, as well as the doctors—we need hard-working but contented staff?

Lord Prior of Brampton: The noble Baroness is absolutely right that the biggest asset in the NHS is the people who work in it. That is not just doctors and nurses but therapists, allied health professionals and all those people such as porters, caterers and the like. We have an extraordinary workforce, which, sadly, we often take for granted. I am always struck by the results of the NHS staff survey, which are nothing like as good as one would expect to see in many other businesses, so I agree entirely with the noble Baroness.

The North Sea under Pressure (EUC Report)

Motion to Take Note

7.37 pm

Moved by ***Baroness Scott of Needham Market***

That this House takes note of the Report from the European Union Committee *The North Sea under pressure: is regional marine co-operation the answer?* (10th Report, Session 2014–15, HL Paper 137).

Baroness Scott of Needham Market (LD): My Lords, I am very grateful for the opportunity to debate this report this evening. It is fair to say that while regional marine co-operation in the North Sea is not the snappiest of subjects, the inquiry that led to this report was truly a worthwhile endeavour.

As your Lordships may know, the remit of what was then Sub-Committee D, which I chair, includes agriculture, fisheries, the environment, energy and climate change. Unlike the House of Commons Select Committees, one of the strengths of Select Committees in your Lordships' House is the cross-cutting nature of our inquiries and reports. The report before your Lordships this evening is one such example, because the governance of the North Sea covers topics as diverse as reform of the fisheries policy, cross-border energy installations and the effect of persistent organic pollutants on seabirds.

I am grateful to the members of Sub-Committee D at that time who took part in the inquiry, many of whom were rotated off because of the new procedural rules. I am also pleased to see current members of the energy and environment sub-committee here this evening. As is often the case with inquiries, they lead you into places that you never quite expected at the outset, so we learned rather more about the Dogger Bank and radial and meshed energy grids than we thought possible. I extend my thanks to our specialist advisers, Dr Irene McMaster and Mr Rodney Anderson, the clerk, Patrick Milner, and our policy analyst, Alistair Dillon. Before going any further, I declare an interest as a member of the board of the Harwich Haven Authority, which is a trust board.

Before I go on to speak about the report itself, I would like to mention my concerns about the timing of the debate this evening. The reports produced by Select Committees of your Lordships' House are widely read as they offer authoritative, well-researched and thoughtful contributions to whatever topics they look at. A great deal of effort is expended and they are usually very well received, far beyond this Chamber. It is therefore a great personal disappointment that we are here this evening debating a report that was published more than eight months ago and for which we took the evidence a year ago. Timely debate can be critical for the overall impact of an inquiry's conclusions and recommendations. This is far too long to wait to debate a report here in your Lordships' House, and I regret to say that this is not an isolated case. I would underline the need for the Government and the usual channels to take note of various resolutions of the House which call for regular debates of Select Committee reports in prime time.

[Baroness Scott of Needham Market]

The Government's official response to our report came two months late and, when it came, it was sadly dismissive in tone. A letter from George Eustice MP, Minister for the Marine Environment, explained that the response was delayed by a "circumstance" outside the Government's control. I would appreciate it if the Minister could elaborate on what that particular circumstance was.

The North Sea is one of the most industrialised seas in the world and is under enormous pressure. My committee found that attempts to manage the competing pressures in a strategic manner are embryonic and unpredictable. We are expecting more and more from this single natural resource, both economically and environmentally. These objectives should not be mutually exclusive, but delivering them in harmony requires effort to co-operate—between countries, between sectors, within sectors and on the rules that govern the sea. Whereas it is now common practice to manage a river by taking into account the whole system from source to mouth and including its surrounding area, rather than through each local authority managing its own part separately, we still manage the North Sea by administrative or national boundaries. We found this segmented approach to be unsustainable.

In our evidence, we found that the need to co-operate was universally acknowledged but that the main stumbling block is lack of political leadership. This is where we believe government has to step up to the plate. If it fails to give such leadership and to co-ordinate and co-operate effectively, we risk failing to take advantage of the opportunities offered by the North Sea and risk its long-term sustainability. My committee concluded that no existing body or mechanism has a sufficiently broad remit to facilitate the political co-operation required to make the necessary step change in managing the North Sea basin. We argued for the re-establishment of the North Sea Ministerial Conference. Our main recommendation to the Government was that they should convene this ministerial conference in an effort to deliver the urgently required political and strategic vision that will sustain the North Sea for generations to come. It was bitterly disappointing that the Government's response to the report dismissed the recommendation, arguing that the previous North Sea Ministerial Conference came to an end because,

"all the significant discussions and legal developments were taking place in other fora".

I would be grateful if the Minister could explain which other fora exist for this work, because in all our evidence, with the single exception of that for energy, we were unable to identify any.

We also concluded that English local authorities must be more engaged in North Sea co-operation and recommended that the Government work with English local authorities to identify and, most importantly, address barriers to their participation. This is currently minimal for English local authorities compared to those in Scotland and from other North Sea countries. Once again, the Government dismissed our recommendation. I would be grateful if the Minister could explain whether he believes it is important for local authorities to engage with the North Sea Commission and why the Government will not work with the LGA and local authorities to facilitate this.

My committee found that although a lot of data are collected around the North Sea, by academic researchers and industries alike, very few of them are shared. We were concerned about a duplication of effort and that the best and most cost-effective use is simply not being made of those data. Having most of the data in one place would allow researchers and planners alike to develop a much clearer understanding of the sea and to plan for its future. It is telling that we were unable to source a single map depicting all the seabed uses of the North Sea. Commitment to a single database would allow resources to be allocated accordingly. It could become a one-stop shop, covering the costs not only of data collation but of quality assurance, which we heard can be expensive.

We called for greater progress on electricity interconnection. The North Sea has enormous potential to provide cross-border energy supply. This could be hugely important to every business and consumer if it can reduce costs by delivering energy more efficiently. Encouragingly, the European Commission has expressed its active support for greater energy co-operation around the North Sea and has committed to the development of an action plan. We heard that currently offshore wind farms are connected to national grids individually and that national grids are then linked independently through interconnectors. We recommend a pilot project creating a more "meshed" approach, which would integrate both offshore wind farms and interconnectors. We heard that there are technical obstacles to this measure, but they are mostly of a regulatory nature, relating to trading options, cost allocations and so on. We understand that the Government are already working to overcome these through their involvement in the North Seas Countries' Offshore Grid Initiative. Could the Minister update us on that work?

The report was well received in other North Sea states, including Germany and the Netherlands, and a number of stakeholders have submitted their own responses, making helpful suggestions on how to take the issues forward. These include the East of England Energy Group and the Institute of Marine Engineering, Science and Technology's joint Marine Special Interest Group. They told us told us that our recommendations, if implemented, could,

"start a process of unmatched international co-operation in the management of the North Sea".

The North Sea Commission's Assen Declaration with the Conference of Peripheral Maritime Regions of Europe followed up our key recommendation by calling for the Dutch presidency of the European Council, starting in the new year, to develop a North Sea agenda. Similarly, the European Commission's response was positive and receptive to our message that increased regional co-operation is the key to harnessing the full potential of the North Sea.

To use the opening words of the report:

"Often out of sight and out of mind, the North Sea is the lifeblood of more than 60 million people who live on or near its shores".

The North Sea is a shared resource and plays an important part in the lives of many of us, whether we are mindful of it or not. Regional co-operation enormously enhances the possibilities open to North Sea countries and industries and can bring significant benefits for the environment. We should not lose sight of this approach. I beg to move.

7.47 pm

Lord Hunt of Chesterton (Lab): My Lords, I commend the EU Committee on its report and this debate, which cover many aspects of the North Sea environment. I begin by endorsing the remarks of the noble Baroness, Lady Scott, about data exchange. I had many experiences of this in the Met Office, dealing with meteorological data. The situation was very poor 20 years ago, but it has improved progressively. I know that the interagency committee is dealing with data, and that is a very important point.

The North Sea plays a critical role in the life of all north European countries, including the UK. The coast and the different regions of the seas are extraordinarily precious environments, many of which have special qualities. Weather, oceanography, ecology, shipping and fishing all have traditional interests in the North Sea, and these are now joined in the 20th and 21st centuries by new interests relating to pollution and its dispersal. There are new kinds of pollution, mainly associated with radioactivity, which is a source of great concern to other countries around the North Sea. This radioactivity comes largely from the UK and France, although there is some from Germany.

The other modern feature of the environment of the North Sea this century, of course, is wind and wave power. There are also the geological resources: the extraction of gravel is a long-standing activity, and the idea of using the rocks under the North Sea as a repository of carbon dioxide was thought to be a central part of this Government's environmental policy. That was until last Wednesday, when it stopped being part of their policy with a £1 billion cut in the money allocated to it, to the consternation of the Shells and the BPs and of other countries. Maybe the Minister will have something to say on that.

The other feature is that there is a strong tradition in the UK of the scientific study of the North Sea. I was delighted to find that the Venerable Bede, no less, discovered in the eighth century the changing times of the tides by using his contacts in the abbeys around the coast. Of course, we also have world-class governmental and institutional laboratories, including those of universities. As stated in the report, there is a plenitude of data and those institutions make their contribution.

I declare an interest as president of ACOPS, now the Advisory Committee on Protection of the Sea, founded by Lord Callaghan and later presided over by my noble friend Lord Clinton-Davis. It has been successfully pressing for strong environmental regulation at international organisations, in London at the International Maritime Organisation and through the London dumping convention. Every year, there is an ACOPS survey of marine pollution sponsored by the Maritime and Coastguard Agency. Those who, like me, are old enough may recall holidays in the 1950s on the beaches when they were covered with tar. It was such conventions that prevented the spreading of tar from ships, which is an enormous boon. That came about, so the myth says, from the Callaghan family holiday in Wales at the time. He was an instigator of the founding of the organisation.

Another feature is that beaches are cleaner as a result of better sewerage systems, some of which, it must be said, followed privatisation of the water companies in the UK, and coal is no longer found on northern beaches. However, sadly, most visitors to the beaches that I know have experienced long-term deterioration of the biodiversity of flora and fauna. One sees fewer sea anemones, shrimps and crabs in the rock pools—except, as my daughter tells me, plastic crabs, so that children have something to play with.

However, the main complaint about the marine environment is not the aesthetic aspect of the coast but the reduction in fishing, which is different in various parts of the North Sea. There are signs that it is returning, but there has been a devastating impact.

The report begins with a very useful review of marine biodiversity and its degradation, but it is surprising that it does not include the strong recommendation that government laboratories and other institutional laboratories should be strengthened. A Minister recently revealed to the House of Lords Science and Technology Committee that he was surprised that it was so important to maintain government laboratories, as opposed to privatised ones. He said that the reason was that foreign countries have more confidence if that work is done in governmental laboratories. The laboratory of CEFAS and the Scottish Association for Marine Science laboratory in Oban are examples of that, and I hope the Government will assert that their work will continue.

The report rightly emphasises the need for collaboration between UK and European laboratories and to relate better scientific knowledge to the marine business environment and local authorities. The Government state in their response to the report, which rather disappointed the noble Baroness, that one of the most important measures being taken is the establishment of marine protected areas. I hope the Minister will tell us how many marine protected areas there are. I read document after document from Defra, but I never get an answer. All I know is that there is one, Lundy Island. I have been asking everyone where there is another marine protected area in operation, but I cannot get a positive answer. If the Minister's colleagues here can give us an answer, that will be fantastic, because nobody else knows. There is a challenge.

What progress is expected in the establishment of marine protected areas? I know that it is difficult, because there is the big question of what happens to a Spanish ship when it gets to Lundy, for example. Sometimes you meet Spanish chaps in the pubs opposite Lundy—I know a little bit about that area. I would like to hear as much as the Minister can provide us with. What is the timetable for the expected so-called rollout of marine protected areas? As we all know, the country that has been most successful in that regard is New Zealand. Lobsters went into the marine protected areas there, were not caught, crept out and then the fishermen caught them on the outside. Fine: it works.

[Lord Hunt of Chesterton]

I understand that the problem is with implementation because of lack of agreement on fishing rights between different countries. The EC is apparently working to resolve that impasse; what is the timetable? The government response to the report shows the critical role of the EC. Are the negotiations the role of Defra, and which other government departments are involved?

Another scientific challenge raised in the report is the effect of wind turbine farms. Your Lordships may not realise that the Danish Government's meteorological agency has been studying in detail the effect on Denmark's climate of all the very large wind farms off Denmark. In fact, because wind turbines take force out of the wind—drag, as we would call it—that changes the airflow over the land, which has some effect on agriculture. It is a phenomenon seen in the United States, where huge wind farms in Texas have a significant impact on the rainfall downwind. That is a factor that needs to be considered. There are also reports on disturbances to the seabed by wind turbines because of the connecting cables and the frequent movement of maintenance ships. These disturbances can affect the sea bottom ecology and fishing. I would be interested to know the current position.

To return to the remark I made at the beginning, another challenge that causes great concern to the countries around the North Sea is the spreading of radioactive materials from nuclear processing. I personally believe that nuclear power is essential to the UK and France as a form of low-carbon energy, but it is very important that we ensure that radioactive materials are treated better. If they are dispersing, that should be openly known. Those issues are regularly considered by the International Atomic Energy Agency, but are they are also discussed by the EC groups dealing with the North Sea environment?

7.57 pm

Lord Greaves (LD): My Lords, it is a great pleasure to speak to the Motion and the report introduced by my noble friend Lady Scott of Needham Market. I congratulate her and the whole committee on a high-quality report. It has gone into the subject of the North Sea basin as a whole in great depth and breadth, covered a number of disciplines and asked some very pertinent questions of the Government—not all of which the Government have satisfactorily answered.

Reading the report took me back to many happy hours—days and nights, I think—spent in this Chamber on the Marine and Coastal Access Bill, as it then was. We were breaking new ground in a number of areas, particularly marine planning. There had not really been a marine planning regime before that Act came into force. It is interesting, reading the report, to see how far it has got—perhaps not as far as we had hoped. It also took me back to large amounts of time I spent when I was much younger taking holidays on the Yorkshire coast, on the North Sea coast, particularly at Filey—but perhaps that is for another day.

One theme that comes through the report is the fundamental need for co-operation between countries and communities and what I suppose people might call stakeholders—the users of the North Sea—all around the North Sea basin. This is one area where the report is particularly critical; it points out that the only existing cross-border body is the North Sea Commission, which is formed of local authorities. For funding reasons, English local authorities along the North Sea coast have withdrawn from that body, which is surely not a good thing. Far be it from me, as a member of a local authority responsible for overseeing the finances of that local authority, to criticise councils when they find that their present financial circumstances are such that they really have to cut back on everything except the most essential things. If they have to choose between serious cuts in social care, for example, or cutting rural bus services or closing libraries and being a member of a European, North Sea-wide body, it is not difficult to see why they make the decision that they do. But surely it is not good. The summary of the report says:

"There are also substantial regulatory tensions. Different countries around the North Sea, for example, take different approaches to defining the environmental quality of their parts of the basin".

They suggest that the European Commission should "improve guidance", and so on. It goes on to say:

"As the responsibility for the marine environment lies at a local, an EU and an international level, we urge the UK Government to work with English local authorities to identify and address barriers to their co-operation with other authorities around the North Sea".

The response from the Government to the committee, which as my noble friend said took them rather a long time to produce, is very unsatisfactory. It says:

"The Government believes that it is for each local authority to determine whether or not the costs associated with membership of the North Sea Commission or any other forum represents value for money and adds value to existing structures through which local authorities can collaborate on economic development such as LEPs".

That is a very unsatisfactory response, because local authorities might well take the view—and probably do take the view—that it would be value for money and add value to existing structures, but they do not have the money to do it. This is the kind of response that we get increasingly from this Government to local authorities across a whole series of areas—that local priorities are for local authorities. But if you do not have any money, your priorities may be the same but the level at which you can fund them goes down. They talk in a way that shows they misunderstand the issue; they talk about the coastal concordat, which was launched in England,

"in November 2013 to increase cooperation between terrestrial and marine regulators and to streamline the consenting process for coastal development".

It lists the concordat partners, which include various government departments,

"the Marine Management Organisation, the Environment Agency, Natural England and National Parks England".

Those bodies will not really be able to organise co-operation across the North Sea with partners in Holland, Denmark or Norway. It is a totally unsatisfactory answer, which suggests that it is just a brush-off from the Government.

One thing that we were very conscious about when we saw the Marine and Coastal Access Bill through your Lordships' House was that we were setting up a

new marine planning process—a new framework, to include both licensing, or development control, and a proper strategic planning of shared space through local marine plans. One of the disappointments of the marine planning system has been how long it has taken to get those plans into place. Planning is often regarded as a hindrance, but it is a positive thing; in the economic sphere it provides predictability for investment and in the environmental sphere it provides a reliable and firm framework and basis for proper ecological controls. We were very aware that it needed to be coherent and comprehensive. One innovation from the Marine and Coastal Access Act were marine conservation zones. Another disappointment is the slow progress and relatively small number of those zones that have been created. The first tranche was based on an initial series of recommendations to the Government by people who knew what they were doing—the Joint Nature Conservation Committee and Natural England—for 127 MCZs. However, the first tranche was only 27, and there is now a consultation, out since the beginning of this year, for another tranche, but the total number being looked at is only 23, which would be much less than half the number that was expected. My question for the Government is whether they think the number and extent of those zones will be sufficient to provide the coherent ecological network.

Lord Hunt of Chesterton: If I understand the noble Lord correctly, he is talking about plans, not about actual areas that are in operation. Is that correct?

Lord Greaves: The first 27 marine conservation zones are in operation; the next 23 are in tranche 2, on the drawing board.

I very much welcome the report; it was a very good read. I congratulate the committee and wish the Government would take it a bit more seriously. In particular, I wish that they were not pulling back resources for the whole area of marine regulation, planning and promotion. I have two questions. What has been the funding of the Marine Management Organisation since it was set up by the Act, and what number of staff does it have now compared with the number at the beginning? It has been subject to cuts like everybody else, and it is not surprising that things are slowing down.

8.07 pm

Lord Cameron of Dillington (CB): My Lords, like most Peers serving on EU Sub-Committee D during the preparation of this report, I am no longer on the sub-committee, or on the EU Committee. In passing, I should say that it is absurd that the quality of House of Lords committee work, arguably our greatest input to UK and EU life, should be sacrificed on the altar of Buggins's turn—but I shall say no more and start again.

Like most Peers on Sub-Committee D during the preparation of this report, I was amazed at the urgent need for action on the planning of our marine environment. Anyone who has been to sea, out of sight of land, will probably have a vision of a vast and extensive watery desert, with no sign of human activity anywhere, either on the surface or under it. Little do they know that there is a host of interweaving and sometimes contradictory activity going on; the landscape is constantly changing and getting more crowded.

For a start, our knowledge of our seas is poor; no formal map of EU marine territory exists, or even certainty about where member states' responsibilities begin or end. There are sometimes gaps and sometimes overlaps. Imagine having parts of England devoid of any planning controls or regulation; imagine the mayhem and possible environmental degradation that would soon appear—or, possibly worse still, imagine if two different authorities reckoned that they were both running the same bit of countryside. Again, I would foresee chaos.

Then there is the fact that our seas are already in a state of some disarray; many commercial fishing stocks are not assessed, and many biodiversity features and characteristics are unknown or not assessed. There is no current overview of the spatial extent of human activities. There is little co-ordination of data, which every member state is bound to produce under the marine strategic framework directive.

The reason this is so serious is because change is happening so fast. It is almost out of control and, unless we know what we have, there is no incentive to manage that change. For instance, there is change from climate change. This includes higher sea temperatures and increased acidification. We were told that in recent decades acidification has been happening 100 times faster than in the past 55 million years. Higher temperatures have resulted in the movement of species northwards by more than 1,000 kilometres. Meanwhile, 39% of assessed fish stocks in the north-east Atlantic—which includes the North Sea—are overexploited. I might add that in the Mediterranean and the Black Sea that figure is 88% of stocks, so we are quite good compared to others.

Eutrophication remains a problem, particularly at the entrance to the Baltic. Around the shores of Europe, 34% of sea birds are not in good status. Marine litter is accumulating, particularly microplastics which are building up in the food chain. I think it would be true to say that the ecological boundaries for sustainable use of our seas are currently unclear.

Meanwhile, the potential for growth in human activity, particularly in the North Sea, has never been greater. North Sea blue growth, as it is called, is a recognisable phenomenon and already represents a gross value added of at least €150 billion and employs about 850,000 people. For Norway, which is outside the EU, the direct and indirect GVA is about €50 billion, mainly based on the oil and gas industry. The oil and gas sector around the North Sea employs nearly 600,000 people. The shipping industry in the North Sea handles 648 million tonnes, with direct employment of 60,000 and a GVA of €11 billion. Shipbuilding amounts to €5 billion GVA and 64,000 jobs, and probably double those figures if marine equipment activities are included. The cruise and ferry sector promotes 10,000 jobs in the North Sea, which is about the same as the growing coastal protection sector—that is sea defences to you and me. Fisheries are in decline as overfishing of species continues, but still employ 100,000 people.

[Lord Cameron of Dillington]

Meanwhile, new industries are on the rise. The UK is leading the offshore wind growth, with our Government's 2020 target of 9 gigawatts or 3,000 turbines, twice what we have now, which they hope will rise to 30 gigawatts by 2030. Sea-based aquaculture is on the rise, as is marine mining and gravel extraction, along with the cultivation of algae and, of course, energy production from tide and waves. Possibly the biggest new disruptors of the North Sea seabed are the numerous electric cables needed to enhance the connectivity of Europe while at the same time bringing power back from the wind farms.

So noble Lords can see that there is already a lot of activity in the North Sea, and this can only increase, along with the incompatibility of some of the activities. Fishing and cables do not always work together, particularly where the dreaded beam trawling is involved. Neither do wind farms and shipping go well together—or, for that matter, gravel extraction and environmental conservation. Meanwhile, the lack of any real understanding of the cumulative impact of all this led one of our witnesses to say that,

"if you ask me whether our marine ecosystems are healthy, I would not be able to answer that question".

There is, it appears, actually quite a lot of information being collected by both the public and private sectors, but there needs to be more effort to harmonise the methodology between member states and also to analyse the cumulative effect, disentangle the replication and from there put in place international co-operation to implement an effective planning and control system. However, it goes without saying that it is only by collating and understanding the evidence that we are ever likely to promote the necessary action.

I would have to say that the North Sea Regional Advisory Council is a very good example of where international voluntary co-operation has transformed what could have been a disastrous situation vis-à-vis fisheries, but I do not believe that for the multifaceted blue growth I have been describing we can rely totally on voluntary co-operation. There are just too many parties to get around the table and too many interactivity compromises to be made. The situation is also too urgent. We desperately need some form of international planning with a degree of oversight and even compulsion.

However, we were told by our Government that their marine planning was still at an early stage. I am glad to see by their response that this is beginning to change, but any planning we do must be aligned with neighbouring member states, and this alignment should be an urgent priority of the Commission. It, too, seems to have been given a wake-up call by our report, and that is good to see as our report was targeted at Brussels and at European action. However, I do not believe that the Commission should dictate from the centre exactly what should happen and where; rather, it should drive a North Sea forum composed of all the relevant stakeholders and, above all, it must fund the forum. The successful North Sea Regional Advisory Council, which I mentioned, only just pulled through because Aberdeen County Council, of all bodies, funded it in its early days—to the eternal credit of Aberdeen and the everlasting shame of the EU.

Apart from the funding, I believe that the necessary decisions should follow the principles of polycentric government whereby, with a central driving force and firmly enforced principles from the EU, which really has to grip this one, key management decisions should be made as close as possible to the scene of the events and the actors involved.

I commend the report and suggest that both the UK Government and the EU need to grip this exciting agenda before the environment suffers—or, indeed, the blue growth itself gets cut off in its prime.

8.16 pm

Baroness Wilcox (Con): My Lords, I congratulate the noble Baroness, Lady Scott of Needham Market, and the members of the European Union Committee on a most compelling report *The North Sea under Pressure: is Regional Marine Co-operation the Answer?* The answer must be yes, but the question is, how? I will be very interested to hear the Minister's response to the committee's recommendations.

For once, my industry, the sea fishing industry, might be showing us the way. I recommend that noble Lords read paragraphs 125 to 131 of the report and the evidence of the co-operation—would you believe it?—between the European Union and fishery stakeholders that was so welcomed by the National Federation of Fishermen's Organisations and the Scottish Fishermen's Federation. That is not something I ever thought I would see written down on paper, but it goes to show that when it gets tough, everybody has to get going.

The noble Baroness, Lady Scott, and her committee,

"note the successes that have resulted from the work of the fisheries Advisory Councils and support their enhanced role in Commission-level consultations. In the light of their enhanced role, we recommend an urgent review of their funding by the Commission".

They point out that the annual grant from the Commission of €250,000 has not changed since 2007 but that a change is well overdue, given,

"the pace at which their activities are developing".

I really do not want to read out all of this report; it is a good read but not a very good stand-up event. Therefore it would be far better for me just to quote one or two things that the committee says at the end of its recommendations. It states:

"Successful future marine co-operation in the North Sea region will require strong and effective political leadership".

It goes on to say that there is no strong, effective local political leadership—that was depressing.

The report goes on to state that, sadly,

"no existing body or mechanism has a broad enough remit to facilitate the political co-operation required to make the necessary step-change in the management of the North Sea basin. We recommend therefore, that the UK Government convene a North Sea ministerial conference in order to develop a holistic approach to all economic and environmental issues affecting the North Sea. Importantly, the conference should seek to deliver the urgently required political and strategic vision which will sustain this precious resource and secure it for future generations".

These are great big statements to make and none of us knows exactly how to do it, but it is right and proper that the statements should be made. Eventually,

we will have to listen to the science. We must save our seas. The North Sea is only the first of them. Noah heard the warning and responded—and so must we if we are all to survive.

8.19 pm

Viscount Hanworth (Lab): My Lords, I emphasise the need for enhanced co-operation amongst the nations of the European Union in respect of the governance of the North Sea, which is suffering increasingly from environmental degradation. If one stands on the shores of Britain at any point other than at a busy sea port, one is likely to see an undifferentiated expanse of water stretching to the horizon that seems to be unaffected by human activity. Perhaps, if one is standing on the esplanade of a coastal town, one might see a cast-iron pipe of significant girth running out to sea, but one can easily imagine that whatever it is conveying will be widely dispersed in the vastness of the ocean.

There is no doubt that such impressions are highly misleading. The seas around the British Isles and throughout the entire region of the North Sea have been greatly affected by human activity. A map has been reproduced in the introduction to the report on the North Sea from the European Union Committee that shows the competition for space in the seas surrounding the British Isles. The area is criss-crossed by power cables, communications cables and pipes for transporting oil and gas. Large areas are dotted by oil rigs, gas rigs and wind farms. Some areas are designated as waste disposal sites, and some are licensed for the dredging of seabed sands and gravels. Other areas are set aside exclusively for fishing. The region also contains some of the busiest shipping routes in the world.

The seas can be likened to the common lands that were available to the peasants of mediaeval Europe. In the absence of property rights, the lands were available to all comers. The incentive of those who had access to the commons was to take as much as they could in the knowledge that others were bound to do likewise. The inevitable overexploitation of the common lands depleted their fertility and rendered them barren and useless. The outcome has been described as the "tragedy of the commons".

The open access to the North Sea has resulted in widespread fly tipping and waste disposal, and in the virtually unrestrained exploitation of its resources. As a result, the sea has been subject to oil pollution, to pollution by hazardous chemicals and radioactive substances and to eutrophication, which is the damaging introduction to the ecosystem of chemical nutrients, including nitrates and phosphates. These disturbances have posed a major threat to the various species and to their habitats. Fish stocks have been severely depleted by overfishing in a manner that continues to threaten their extinction. Some species have all but vanished from the North Sea.

These deleterious effects have been widely acknowledged for 50 years or more, but the efforts to protect the marine environment and to preserve its fauna have been remarkably ineffective. It has long been recognised that the North Sea requires an international system of governance comprising policy-making, political bargaining, legislation, administration and enforcement. The committee's report bears witness to the inadequacy of the present system of governance and makes numerous recommendations for its improvement.

There is now a patchwork of European policies, national policies, private initiatives and regulations on different levels that often conflict with each other. The European Union has produced more than 200 pieces of legislation that have direct repercussions on marine environmental policy and management. It is fair to say that this plethora of legislation is a consequence of the fact that the European agencies have insufficient power to effect meaningful policies for the protection of the marine environment. Instead, effective power remains at national and local levels. The EU legislation often amounts to no more than plaintive injunctions that are widely ignored. Notwithstanding the formal governance of the European Union, the tragedy of the commons is being enacted throughout the marine environment.

There is no better illustration of the conflict between national interests and those of the community as a whole than the disastrous common fisheries policy. Fish are a mobile resource. They do not remain for long in one place and they have no respect for political or national boundaries. It is difficult to establish rights of ownership over fish. Therefore, the issue of conserving fish stocks needs to be addressed not at a regional or a national level but at the level of the Community.

The common fisheries policy had its inception in the 1970s. The rules were drawn up in advance of the accession of the UK, Denmark and Ireland to the European Economic Community at the beginning of 1973. The new members had controlled what had been the richest fishing grounds in the world, and the new regulations gave all members of the community equal access to all the fishing waters. In effect, Britain ceded control of an estimated four-fifths of all the fish off western Europe.

The common fisheries policy, or CFP, establishes quotas for each of the member states, specifying the amount of each type of fish that they are allowed to catch. These quotas are determined, ostensibly, by the Ministers of the Council of the European Union on the advice of a scientific secretariat, and they make some reference to the traditional fishing rights of the nations. After the quotas have been fixed, each EU member state is responsible for policing its own, which some may be disinclined to do. Different countries distribute their quotas among their fishermen in different ways.

In practice, the advice of the scientists has been ignored frequently. The bargaining process over the allocation of quotas has invariably resulted in a total allowable catch that exceeds the scientific recommendation. The non-compliance with the rules and the quotas has been a significant problem. In several of the EU fisheries, illegal fishing accounts for one-third to one-half of all catches. Fishermen have been landing quantities far in excess of their quota, falsifying their records and conniving with the fish processing industries to conceal their malfeasance. The Spanish and the French have often been blamed for this, but the Scottish black

[Viscount Hanworth]
fish scandal revealed that during the first decade of this century Scottish fishermen had been flouting the rules on a massive scale.

One of the fundamental flaws of the common fisheries policy has been the allowance for fishermen to discard those fish in their catch that exceed the quota for their species, while continuing to pursue fish for which the quotas are unfulfilled. The discarded fish are dead when they are returned to the water. Undersized juvenile fish are commonly discarded in order to fulfil the quotas with larger and more profitable fish. The reforms of 2013 of the common fisheries policy are intended, eventually, to constrain fishermen to land everything that they catch, but it is doubted by many that this policy, which admits of many exceptions, will be enforced effectively.

The common fisheries policy has attracted vociferous criticism, both from environmentalists and from local fishing industries that have resented the constraints of the quota system while blaming their competitors for despoiling the fish stocks. The Commission has responded to these criticisms by a partial devolution of its authority to member states by establishing regional advisory councils. Some critics regard this as a retrograde step that implies a derogation of the essential central control. It may serve only to exacerbate the conflicts over rival claims to fishing rights.

The common fisheries policy has come to embody some specious injunctions that threaten further to imperil the fish stocks while seemingly being aimed at their preservation. A declared objective of the policy is to harvest the fish at the maximum sustainable rate. The maximum sustainable yield, or MSY, denotes the maximum rate at which the fish can regenerate themselves while being harvested. If the rate of harvesting exceeds the MSY, more will be taken from the sea than can be resupplied by the fish stock. The inevitable result of exceeding the MSY, even for a short while, will be an increasingly rapid diminution of the stock. To avoid this hazard, one must fish in a manner that will ensure that the MSY is never exceeded. Fishing at a lower rate will also result in a more abundant and resilient stock.

To the layman, the MSY might seem to be a felicitous concept. The term suggests a strategy that is both sustainable and that achieves a maximum economic return. In fact, it denotes a strategy that is more than likely to lead to species extinction. What is most disturbing is an allowance granted to protesting parties to permit them to take their time in meeting the target of the maximum sustainable yield if to do so more rapidly might jeopardise the social and economic sustainability of their fishing fleets. This is nonsensical. Such a recourse would guarantee the extinction of the fish stocks unless the fishing were to be severely curtailed or suspended in a timely manner.

Some would regard the contradictions and the failures of such policies as a justification for disengaging from the European Union. However, the interdependence of the member states is an inescapable fact. They occupy a common ecosystem. To advocate any kind of national independence in this domain is to deny a reality that must be confronted. There is an urgent need for active marine co-operation throughout the European Union. The report of the European Union Committee has clearly highlighted this need.

8.30 pm

Lord Grantchester (Lab): My Lords, I thank the noble Baroness, Lady Scott of Needham Market, for her introduction and explanation of the committee's report on the North Sea which is before your Lordships' House.

The committee has identified the North Sea as being under tremendous pressure from exploitation and interests from many sectors—namely, energy, food, shipping and leisure—yet it concluded that EU member states and bordering countries and authorities lacked a coherent vision or strategy for the North Sea. The report reflected that there was a need for a single authority to co-ordinate disparate activities, provide a framework for development, collect knowledge and information and provide leadership for a strategy. Better co-ordination of existing activity through co-operation could achieve a step change.

The committee provided an excellent assessment of the existing structures and concluded with 20 recommendations on the Government's approach, the EU's activities and wider international organisations. The report appears to have been well received by other EU member states and various technical bodies. However, the Government appear to lack enthusiasm for taking many of the recommendations forward, saying that many initiatives already exist and that co-ordination could lead to duplication of resources and activity. Although it is understandable that the Government should point to the European Commission as being where leadership should be provided, there is, nevertheless, much that could be achieved.

When in government, Labour recognised that there are significant pressures on the marine environment around the UK and in the North Sea in particular. Through the Marine and Coastal Access Act 2009, Labour committed the UK to establishing an ambitious, ecologically coherent and well-managed network of marine protection areas, setting up these zones around the UK. Yet after 2010 there was a lack of commitment by the coalition Government: only 28 of the recommended 127 zones have been designated. My noble friend Lord Hunt highlighted the lack of urgency shown by the Minister's department and asked whether there has been any further action beyond initiating just one zone. The noble Lord, Lord Greaves, remarked that, on further measures in that Act such as marine planning, little appears to have happened in taking forward those important areas, where the Government could have shown leadership.

In their response, the Government highlighted where they have joined in with other initiatives. Their second point was that,

"Defra has established a cross-government working group to examine opportunities for improving the efficiency and effectiveness of cumulative effects assessment".

It will develop and implement a strategic work programme to deliver improvements and create a more consistent and predictable assessment and management process. This is one area where the Government have taken

forward activity. Will the Minister expand on this point and give the House some more details? What other government departments have been involved? How often is the group meeting? Where is it concentrating its focus? When will any assessment or report be forthcoming?

The Government also point to commercial agreements being more relevant as a platform to deliver improvements and change. This also reveals a sad lack of enthusiasm to seize the initiative and grip the situation, as the noble Lord, Lord Cameron, commented. All noble Lords who spoke highlighted the plight of the North Sea. My noble friend Lord Hanworth was critical of what the EU and its member states have been able to achieve, especially regarding fisheries policies.

The committee has produced a very thoughtful and worthwhile challenge to be seized. The Government need to show that they are taking the report more seriously and showing more commitment. I look forward to the Minister's response.

8.34 pm

Lord Gardiner of Kimble (Con): My Lords, I very much welcome this debate and congratulate the noble Baroness, Lady Scott, on securing it. I also thank all committee members for their thorough report and acknowledge the work of the clerks and other staff, who, as is habitual in this House, make such a contribution to the work that we are all engaged upon.

I do not know whether this will be satisfactory for the noble Baroness, Lady Scott, but on the timing my understanding is that, because of the general election, the response was not started until the new Government were in place and policies had been decided on. The noble Baroness will perhaps be able to help me with this after the debate but I understand that the response to the report was further delayed while Scotland decided whether it wanted to be part of the Government's response or to provide its own response. Eventually, Scotland decided that it wished to make its own response, but I am afraid that I am not aware of whether the Scottish Government have in fact supplied it. That may not be as satisfactory as the noble Baroness would wish but those are the reasons that I put to her.

The committee's report considers whether the existing structures for a collaborative approach to the management of the North Sea are appropriate. This is against the background of the North Sea being one of the busiest sea areas in the world, with a diverse range of economic activities, described fully by the noble Lord, Lord Cameron of Dillington, and numerous environmental features that require protection.

Although one would not gain this impression from what noble Lords have said tonight, I say at the outset that the Government strongly support a co-ordinated approach to the management of the North Sea, particularly through co-operation with our North Sea neighbours. Indeed, we have been co-operating with our North Sea neighbours for many years—for example, through the International Maritime Organization, to which the noble Lord, Lord Hunt of Chesterton, referred, and the Ospar Convention, the Oslo and Paris conventions for the protection of the north-east Atlantic.

We also co-operate very closely with EU member states, and the Government share the committee's enthusiastic welcome for the appointment of a European Commissioner responsible for both environmental policy and maritime affairs. This EU approach has already created benefits, including guidance to member states on, for example, fishery matters to protect habitats in marine protected areas. I notice that the noble Baroness, Lady Jones of Whitchurch, is in her place. This may be an appropriate moment to mention that we had a very interesting debate on world biodiversity only last week, when some questions were asked about marine protected areas. In responding to that debate, I referred to the fact that:

"16% of UK waters are already protected in marine protected areas".

As I said in answer to the noble Baroness, Lady Jones,

"the second tranche of these is on course to be established in January 2016 and a third tranche of sites will follow".—[*Official Report*, 24/11/15; col. GC 140.]

My understanding is that more than 100 UK marine areas, as well as sites of special scientific interest with marine elements, are already protected under provisions such as the habitats and birds directive. In addition, the Government have designated 27 marine conservation zones. They consulted on a further 23 such zones earlier this year, and there is a third tranche of sites to follow, which we believe will help to complete a network of sites.

I take this opportunity also to mention the extraordinary marine protected areas within the overseas territories, which were referred to in our world biodiversity debate. A marine protected area around South Georgia and the South Sandwich Islands covers more than 1 million square kilometres, which is equivalent to four times the size of the United Kingdom. Therefore, Her Majesty's Government are particularly interested in protecting marine areas not only around our shores but internationally.

We are also acting, through Ospar, with the North Sea states to define and assess what constitutes an ecologically coherent network of marine protected areas at the regional sea scale. The UK Government support this co-operative approach to the designation of protected areas. Although final designation is a matter for each member state, the UK will continue to involve other member states in our consultation process.

We are also working with other member states to achieve good environmental status in our seas by 2020, under the marine strategy framework directive. Much of this is being processed through the EU marine strategy framework directive technical groups and through Ospar, including agreeing common indicators, data collection methodology, database management and analysis, which will assist in making cumulative impact assessments and better inform the collaborative approach that we wish to take.

In the North Sea area, Ospar also leads on the collaborative approach to taking action to address the issues identified, by pushing ahead to gather evidence that informs the development of appropriate actions that will contribute to the achievement of good environmental status. Indeed, Ospar's regional action

[Lord Gardiner of Kimble]
plan on marine litter is just one example of a successful, wide-ranging and meaningful outcome from this collaborative and co-operative approach.

I was particularly struck by what the noble Lords, Lord Hunt of Chesterton and Lord Cameron of Dillington said about litter. Those of us who enjoyed British seaside holidays in our youth remember that tar on children and dogs was always an issue. When one reads of the number of birds being found with plastic around them, one sees that this is surely something that we must address altogether.

Co-operative working is also essential for the implementation of the reformed EU common fisheries policy. The UK, including Marine Scotland, works very closely with other member states in the North Sea region; for example, to develop regional discard plans and, most importantly, for the demersal landing obligation that comes into force in January 2016. Indeed, my noble friend Lady Wilcox spoke powerfully about sea fisheries and brought, in her own way, all the experience of that great industry and its way of life to this debate. The noble Viscount, Lord Hanworth, and the noble Lords, Lord Hunt of Chesterton and Lord Cameron of Dillington, all discussed the importance of fisheries and of getting this right—that is the point that we all need to now address. The Government welcome the enhanced role of the fisheries advisory councils under the reformed common fisheries policy. This co-ordinated and collaborative approach is already benefitting the sustainability of our fish stocks and our fishing industries in the North Sea, as we all seek to achieve the objective to which the noble Viscount, Lord Hanworth, referred: maximum sustainable yield.

This year's Marine Stewardship Council's amber listing of North Sea cod is just the latest indication of stock recovery, and cod should be fished to a maximum sustainable yield in 2016. This is clearly what we have to seek to achieve: the wise and sustainable use of fish stocks around our shores.

Implementing the reformed common fisheries policy also requires us to move from a focus on single-stock annual quotas to multi-annual mixed-fishery management plans. These will enable a more strategic approach to fisheries management that takes into account the relationship between different stocks, moving us closer to an ecosystem-based management. The European Commission aims to publish its proposal for a North Sea multi-annual plan early next year.

The Government agree with the committee that data collection initiatives should not be duplicated. That is why the Government are a major sponsor of the Marine Environmental Data and Information Network, MEDIN, which is a partnership of UK public and private organisations. MEDIN is committed to improving access to marine data so that data, once collected, can be used many times.

The UK also joins in Ospar and EU initiatives to co-ordinate data collection, including monitoring programmes under the marine strategy framework directive. This is complemented by the Secretary of State's recent initiative to make virtually all the data Defra holds—at least 8,000 sets—freely available to the public over the next year, putting Britain at the forefront of the data revolution.

Co-operation can enable sea users to operate without impacting on others, and the Government agree with the committee that,

"International Maritime Organization guidance is comprehensive in its navigational safety requirements",

and that the organisation has a regulatory process in place to implement that guidance.

The Department of Energy and Climate Change continues to work with offshore energy developers, the aggregates industry, the Crown Estate and other third parties to ensure that potential conflicts can be resolved at an early stage so that respective developments can co-exist where they may overlap.

Our marine areas are vital if we are to meet our current and future energy needs. The potential benefits of cross-border energy co-operation in the North Sea are surely significant in improving security of supply and reducing the cost of integrating renewables into the UK and EU markets. The noble Baroness, Lady Scott, referred to the North Seas Countries' Offshore Grid Initiative. We will continue the work under way in that initiative to facilitate investment and trading, including identifying potentially suitable projects to test the feasibility of establishing a North Sea grid.

As the committee noted, a marine planning system is a significant element in the co-ordinated management of the North Sea. Our emerging network of marine plans will provide the principal means through which balanced decisions are taken on potential uses of the marine environment and its resources, and the benefits and impacts of human activities, informed by relevant national and transnational interests and obligations.

Our approach to marine planning in the UK is underpinned by the *UK Marine Policy Statement*, a cross-government policy framework signed up to by all four UK Administrations. This has successfully enabled consistency in marine planning by providing a high-level policy context within which national and subnational marine plans are being developed and implemented. Government departments are collaborating to support the development and implementation of marine plans, including closer integration on terrestrial and marine matters. We are making good progress on the UK network of marine plans, with two approved plans in the English North Sea and two further plans under way for the English Channel. The *National Marine Plan for Scotland* was published in March this year and marine plans for Wales and Northern Ireland are anticipated in 2016-17.

The noble Lord, Lord Greaves, and the noble Baroness, Lady Scott, referred to local authorities. UK local authorities and stakeholders from coastal communities are directly involved in shaping marine plans as they are developed. For example, 25 local and unitary authorities are regularly consulted in the development of the English North Sea plans. Where we have plans in place we are providing support to local authorities on their implementation, helping to ensure that marine plans impact on decision-making and the sustainable management of the marine area.

The noble Lord, Lord Greaves, asked about expenditure. My understanding is that, to date, the Government have invested about £8.9 million in the

development of marine plans for England, with further investment promised to complete the currently planned network of England marine plans. If I have any further information as I think about other matters, I will of course write to the noble Lord.

The Government support transboundary co-operation as set out in the EU maritime spatial planning directive, but agree with the committee that it is for member states to determine how they co-operate. The principle of cross-border co-operation on marine planning is enshrined in the UK-wide *Marine Policy Statement* and the Government will continue to co-operate with neighbouring member states to ensure that marine plans are coherent and co-ordinated.

The UK actively engages in EU fora and initiatives on maritime spatial planning to realise effective co-operation with other member states, including those with a specific interest in the North Sea—for example, on the development of consistent methodologies and the exchange of data and best practice in order to inform the development of marine plans by individual member states. It is interesting to note that a recent meeting of the Ospar Convention confirmed that there was no requirement for an Ospar sub-committee on marine planning co-operation as it would only duplicate existing well-functioning structures.

In developing our UK marine plans, we have consulted neighbouring member states in order to ensure transboundary co-ordination and coherence between plans. In developing the England east marine plans, the Marine Management Organisation consulted relevant member states and Norway, hosting a number of workshops which facilitated discussion on cross-border interests. These efforts were well received.

The UK's vision for the marine environment is for clean, healthy, safe, productive and biologically diverse oceans and seas. The regular review of the marine planning system will serve to ensure that it continues to contribute effectively to the delivery of this vision.

The noble Baroness, Lady Scott, and the noble Lord, Lord Grantchester, asked what the Government's stance is on the well-being of the North Sea. The committee recommended the establishment of another North Sea forum. I want to be clear that the Government are not convinced that an additional forum would be the best use of limited resources, given the existing level of co-operation around the North Sea that I have already outlined. I have a list of the fora that are already in place: OSPAR, which I have mentioned; the North Seas Countries' Offshore Grid Initiative; regional groupings for fishery management; the EU Maritime Spatial Planning Expert Group; the EU Integrated Maritime Planning Expert Group; various groups under the marine strategy framework directive; the coastal concordat on marine licensing—there is a great deal of existing structures. It is interesting—I did not realise this until I read into it further—that the North Sea ministerial conference was wound up because all the significant political discussions were taking place effectively elsewhere.

The Government agree that UK local authorities and regional organisations should be involved in marine management issues, and there are already structures in place to enable them to do so. It is for them to decide where they believe membership of a forum is good value for money and helps to achieve environmental protection and economic development. In England, the coastal concordat was launched in November 2013 to increase co-operation between terrestrial and marine regulators and to streamline the consenting process for coastal development. The concordat partners include several government departments and the Local Government Association.

I thank all noble Lords who have contributed to this debate. I especially thank the noble Baroness, Lady Scott, and the members of the EU Committee for bringing forward this important report. I am sorry that we do not agree with all of the report.

Lord Hunt of Chesterton: Perhaps the Minister could clarify one point. It is my understanding that a strict marine protected area is one from which you exclude fishing. The areas he was talking about were ones in which you have habitat conservation, which is a different process. Or is he saying that in something like 20% of the coastal area covered by MPAs commercial fishing and so on is excluded? That is the question. There are different definitions of MPA. In the sense of the strictest definition, there is only about one, as I understand it.

Lord Gardiner of Kimble: Given the time, I should like to write in some detail on all the areas around the United Kingdom because, in fairness to the noble Lord, I have mentioned a number of different elements of protection. So that everyone is clear, including me, it would be best to set it out in proper detail.

To conclude, this is a most valuable contribution to the outcome that we all seek, which is effective regional co-ordination for the North Sea. It is our responsibility, by working together with our neighbours, to achieve the shared objective of a clean, healthy, safe, productive and biologically diverse North Sea. In the final words of the summary, we need to do this to secure it for future generations.

8.55 pm

Baroness Scott of Needham Market: My Lords, I thank all noble Lords who have taken part in the debate and the Minister for his characteristically thoughtful response. As our report highlights, there is a major challenge in achieving the various economic development uses of the sea as encapsulated in the use of the new phrase "blue growth", and its environmental protection. We have identified that co-operation is the key to achieving that balance. The Minister set out a long list of areas of co-operation, but I would observe briefly that out of that list, many of the bodies are UK-only, many are regulatory in nature and some are really very technical. The point made in our report is that, to make progress, what is needed is political leadership, and that really does have to come from the top.

A few years ago, I was on holiday in Perthshire and we visited an old loch settlement, one that is around 2,500 years old. Among the artefacts that were found was some amber jewellery which had come from the Baltic. It is clear that for many thousands of years the North Sea has been our common cultural courtyard.

[Baroness Scott of Needham Market]
It is something we should cherish and be proud of because we do not want to be the generation that failed it.

Motion agreed.

House adjourned at 8.57 pm.

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