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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

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

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Wednesday 25 October 2017

3 pm

Prayers—read by the Lord Bishop of Salisbury.

Oaths and Affirmations

3.06 pm

Lord Macdonald of River Glaven took the solemn affirmation, and signed an undertaking to abide by the Code of Conduct.

Terrorism: Perpetrator Creed

Question

3.07 pm

Asked by ***Baroness Afshar***

To ask Her Majesty's Government what assessment they have made of the impact of official announcements relating to terrorism focussing on the perpetrator's creed rather than the crime committed; and whether any such assessment has informed their practice in such cases.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Government have not made assessments of the impact of official announcements after attacks.

Baroness Afshar (CB): I thank the Minister for her helpful reply. Given that at the moment terrorists are defined by their religion, does that not create an atmosphere in which the label "Muslim" becomes a badge of honour for criminals such as Khalid Masood, who attacked Parliament? He converted to Islam a few months before his attack. He already had a long track record of misdeeds—in fact he converted in prison—and knew nothing about Islam. However, attacking Parliament in the name of Islam made him a hero and made him feel like a martyr, rather than the criminal that he really was.

Baroness Williams of Trafford: My Lords, we do not have a policy on announcing the creed of attackers instead of the actual attack details. In fact, to this end OSCT has gone through all statements made by the Prime Minister, the Home Secretary and the Security Minister where we have found reference to attacks and not one mentions the attackers' backgrounds, except possibly by inference when they are named.

Lord Morgan (Lab): My Lords, confusion is caused by the use by the Government not of the term "terrorism", which has an intelligible meaning, but of the term "radicalism", which has almost no meaning at all, as in the Government's Prevent strategy. Should not this be changed?

Baroness Williams of Trafford: The term "radicalism" actually has a lot of meaning in the sense of the approach towards terrorist activity beyond that which is extremism. I do not think the term "radicalisation", a term that is used all over the world, is going to be changed.

Lord Pearson of Rannoch (UKIP): My Lords, going further than that, since nowadays most terrorists are Islamists—

Noble Lords: No!

Lord Pearson of Rannoch: Why do the Government, the BBC and so on regularly describe them as "Asian men"? Is this not insulting to all the Asian men in the world who are not even Muslims, let alone Islamists?

Baroness Williams of Trafford: I do not know which part of that question I should disagree with first. It is not the case that all terrorists are Islamists; we have had some examples recently of far-right terrorism. And to describe someone as Asian would be entirely inaccurate: just because you are a Muslim, that does not mean you are Asian.

Baroness Hussein-Ece (LD): My Lords, according to more in-depth research than we just heard about, psychiatrists and others who have interviewed so-called jihadists in prison cells and on battlefields all agree that faith, Islamic or otherwise, is not the key driver for what these people have done. Does the noble Baroness agree with those who know something about this: that terrorists want to legitimise their criminality and violence and that it is quite wrong that the rest of society should help or validate them? These are not people of any faith.

Baroness Williams of Trafford: As ever, the noble Baroness makes sensible points in this regard. Faith is certainly not the key driver or the initial driver. As she says, it can be a hook on which to justify the actions of a very few people.

The Lord Bishop of Coventry: My Lords, the difficulty for those of us on the ground, Muslim and Christian, who are trying to work at good community relations is that reportage of these crimes against humanity in the media can fuel hate crime against Muslim people and destroy the trust that we are trying to build in our communities. Does the Minister agree that we need to develop language that learns some lessons from the man who witnessed the Leytonstone Tube attack in 2015, who said: "You ain't no Muslim, bruv"—language that does not incriminate the entire Muslim community, despite their rejection of violent terrorists as not true Muslims—so that we can all stand together under the same banner of peace?

Baroness Williams of Trafford: I totally agree with the right reverend Prelate, and commend the Church, as I often do, for the work that it does to inspire community cohesion. In my previous role, I was aware of its work on projects such as Near Neighbours. The right reverend Prelate makes the point about the responsibility of the media. Of course, we will absolutely stick up for a free press, but I certainly think that, as he says, the press needs to become more religiously literate in how it reports. I loved the comment that he made about the chap on the tube—I had forgotten that—who said, "You ain't no Muslim, bro", because it symbolised

[Baroness Williams of Trafford]
what we all think: that we are standing together, Muslim, Jew, Christian, Sikh and Hindu, against the forces of evil in society.

Lord Singh of Wimbledon (CB): My Lords, does the Minister agree that, while we should deplore the linking of the evil behaviour of a few people with the whole of that religious community, it is equally important to condemn the behaviour of extremist clerics who use out-of-context religious texts to promote hatred of other communities?

Baroness Williams of Trafford: As always, the noble Lord makes a very good point. It is the responsibility of leaders in our society to lead by example, and some clerical teachings somewhat stray from that at times. As I said, the free press is something that we hold precious, but we all have a responsibility in our own way, whether as the leader of a church, a Sikh gurdwara or a mosque, to promote cohesive messages, not divisive ones.

Baroness Nicholson of Winterbourne (Con): Does the Minister consider that the results of forced migration from major religious persecution in the Middle East in particular might give rise to greater participation by the UK's judicial services in helping justice on the ground, which is so badly needed?

Baroness Williams of Trafford: Justice on the ground is badly needed, my noble friend is absolutely right. I can only concur with her views in terms of some of the migratory effects and the change in our society.

Armed Forces: Inquiries

Question

3.15 pm

Asked by ***Lord Trefgarne***

To ask Her Majesty's Government what steps they propose to take to protect members of the armed forces from repeated inquiries into the same incident.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, the Iraq Historic Allegations Team has been closed, with a vastly reduced caseload being transferred to the service police. Over 90% of the investigations into allegations from Afghanistan have been discontinued without charges being brought. Conducting ECHR-compliant investigations contemporaneously will avoid the need to achieve retrospective compliance in the future. Regarding Northern Ireland, the Government are working to ensure that the approach to addressing the past is fair, balanced and proportionate and that veterans are fully supported throughout.

Lord Trefgarne (Con): My Lords, I am grateful to my noble friend. Has not this problem been largely created by a number of costly lawyers who involve themselves in these affairs? Why does the principle of no double jeopardy not apply in the Ministry of Defence, as elsewhere?

Earl Howe: My Lords, the multitude of investigations that took place following UK operations in Iraq only arose following a definitive ruling by the court that the ECHR applies even overseas, by which time operations in Iraq had concluded. No one, least of all the Government, desires to see repeated inquiries; that is in no sense a desirable state of affairs. My original Answer shows, I hope, that we wish to minimise this as far as possible but, at the same time, the Government have a duty to obey the ruling of the courts and to ensure that criminal allegations against the Armed Forces are investigated properly.

Earl Attlee (Con): My Lords, is the Minister aware that I find it very difficult to advise a young person to consider a career in the Regular Armed Forces, because it appears that neither the chain of command nor Ministers can protect a serviceman from these types of allegations?

Earl Howe: My Lords, I am very sorry to hear my noble friend's view on that matter. As I have said, it is an issue of great regret that service personnel and veterans have been subject to repeated inquiries. As my original Answer showed, if UK troops are deployed on overseas operations in the future, we will ensure that the Armed Forces are resourced properly to investigate any allegations at that time, rather than be subject to a slew of retrospective allegations, which frankly have been very difficult to get to the bottom of.

Lord Campbell of Pittenweem (LD): My Lords, this is a sensitive issue and, if I may say so, the noble Earl has struck a very fine balance in the competing interests, but I remind him that prosecution has to be based not just on probable cause but on public interest. It is at least arguable that it is not in the public interest for people over 70 to be prosecuted in relation to events that took place a long time ago. However, the question I really want to direct to him is about public inquiries. The frequency of a public inquiry can be debilitating for individuals, but the length of one can be equally debilitating. Is it not now time to accept as a template the Leveson inquiry: always judge-led, with a clear and unambiguous remit and with a fixed timetable?

Earl Howe: My Lords, I take it that the noble Lord is referring principally to the situation that applies to veterans of the Northern Ireland campaign, and I have a lot of sympathy with what he says. However, it is the Government's policy to adhere to the Stormont House agreement of December 2014, under which some legacy institutions will be set up. Those institutions will be under a duty to ensure that our veterans are not unfairly treated or disproportionately investigated, and will reflect that 90% of deaths in the Troubles were caused by terrorists, rather than members of the Armed Forces. The next stage in that process is to consult publicly, which we will do before long.

Lord Craig of Radley (CB): My Lords, will the Government take steps to introduce statutory limitation in time to investigations of alleged crimes related to service on operations?

Earl Howe: My Lords, this proposal has been put forward by the House of Commons Defence Select Committee, and the Government have noted it. We are well aware, and recognise, that there are alternative views on how best to deal with the legacy of the past. In recognition of that, the consultation on Northern Ireland will acknowledge that there are other views on how to address the past, including that put forward by the Defence Committee. A public consultation, as I have just mentioned, would provide everybody with an interest with an opportunity to give their views on the best approach to addressing the legacy of Northern Ireland's past, in particular.

Lord Tunnicliffe (Lab): My Lords, this is part of a bigger problem—an in-theatre conduct, post-theatre investigation problem. It is about the difficult problem of the military legally vesting violence on the Queen's enemies, as opposed to criminality on the battlefield. The excoriating report of the Defence Committee on the Iraq Historic Allegations Team brought that out, as did the rather apologetic response from the MoD and questions on the subject. Will the Minister reconsider his Answer of 5 September and agree that we should have a public consultation with expert input to try to get to the bottom of this, so that we can produce a consensual answer that goes to the root of the problem, and include it in the 2020 Armed Forces Bill?

Earl Howe: As my noble friend Lady Goldie made clear on Monday, in answer to a Question from the noble and learned Lord, Lord Morris, there will be a full-scale independent review of the service justice system. That will give an opportunity for anyone to feed in their views. I therefore hope that the issues about which the noble Lord is rightly concerned can be addressed in that context.

Lord Tebbit (Con): My Lords, does my noble friend agree that there is something odd about this situation? It is many years now since any of the Northern Irish republican terrorists who murdered our friends Airey Neave, Ian Gow, Tony Berry and others, who attempted to murder the then Prime Minister, and who crippled my wife and gravely injured me since any of those sort of people have been brought to trial. When any suggestion of that is made, they wave their "get out of jail free" cards, which they were issued by former Prime Minister Blair. However, in the meantime, soldiers who were doing their duty protecting us and the citizens of Northern Ireland against those sort of terrorists are still under threat.

Earl Howe: My Lords, I have enormous sympathy with my noble friend in what he has just said. We, as a Government have looked at these issues very closely indeed. Following the 2013 critical report by Her Majesty's Inspectorate of Constabulary, the Historical Investigations Unit in Northern Ireland will be required to re-examine those cases investigated by the former Historical Enquiries Team which involved state actors. However, my right honourable friend the Defence Secretary is working with the Secretary of State for Northern Ireland to ensure that closed cases are reinvestigated, as opposed to re-examined, only where there are strong reasons for doing so, such as the availability of new evidence. The forthcoming draft Bill will set that out in detail.

House of Lords: Register of Hereditary Peers

Question

3.24 pm

Asked by ***Lord Grocott***

To ask Her Majesty's Government what is their assessment of the legislative arrangements giving rise to the Register of Hereditary Peers who wish to stand for election to the House of Lords.

Lord Young of Cookham (Con): My Lords, the House of Lords Act 1999 provides for Standing Orders of the House to make arrangements for the replacement, by elections, of hereditary Peers who are Members of this House. The Standing Orders provide for the register of hereditary Peers. Therefore, these arrangements are a matter for this House.

Lord Grocott (Lab): That was not really an Answer to the Question. I just ask the Minister to confirm that, of the 198 names on the register of those who are eligible to stand for by-elections for vacancies among hereditary Peers, just one is a woman and none is from any of the ethnic minorities. Should not those two facts alone convince us all that this system is not just ludicrous but totally indefensible? I have a very simple question for the Minister and, if he could just answer with a yes, we could move on to the next Question. Will the Government do something that will hurt no one and cost nothing—that is, back my Bill, which would scrap this whole ludicrous system?

Lord Young of Cookham: I am grateful to the noble Lord for that question. Moving on to the next Question would not help me at all, as I have to answer that one as well. As he will know, when I replied to the Second Reading debate on his Bill, I said, referring to the specific anomaly that he referred to, that as a consequence of the current arrangements we have a system that is very difficult to defend in equality terms, and that reflected the views expressed. However, I went on to say that there is an exemption from the Equality Act for this arrangement. The Equality Act 2010 provides that neither a life peerage nor a hereditary peerage, as a dignity or honour conferred by the Crown, is a public or personal office for the purposes of the Act. So Parliament specifically exempted these provisions when it passed that piece of legislation.

Lord Rennard (LD): My Lords, does the Minister accept the principle that no one Parliament should be able to bind its successors, and that therefore an understanding between two Front Benches in 1999 to continue, as a temporary arrangement, the presence of hereditary Peers via by-elections should now be brought to an end by providing time in this House and

[LORD RENNARD]
the other place for the Bill of the noble Lord, Lord Grocott, to be considered in order to end the embarrassment of these hereditary by-elections?

Lord Young of Cookham: The arrangements that the noble Lord refers to do not just date back to 1999; they were confirmed in 2010 in the Equality Act. This legislation was introduced by the Labour Government and the relevant provisions exempting peerages passed without debate and without amendment in this House in 2010. So it is not a matter of blaming the 1999 arrangement. The House recently had an opportunity to address this matter but, when the legislation went through, it declined that opportunity.

Baroness Smith of Basildon (Lab): But, my Lords, we are now in 2017. Some of my best friends are hereditary Peers, but this is not about the individuals concerned; it is about the system. Many "Blackadder" fans in your Lordships' House will remember the Dunny-on-the-Wold by-election. As Blackadder said, it was half an acre of sodden marshland in the Suffolk fens with an empty town hall, a population of three rather mangy cows, a dachshund named Colin and a small hen in its late 40s. Such rotten boroughs in real places had larger electorates than some of our hereditary Peers' by-elections and they were abolished in 1832. We all know that my noble friend Lord Grocott has a cunning plan. Is it not time for the Government to support his Bill?

Lord Young of Cookham: I say to the noble Baroness that her Government had 13 years, from 1997 to 2010, in which to address this issue but they did not do so. They had a further opportunity in 2010, when the Equality Act, to which I referred, was introduced to address it and they declined so to do. So far as the Bill of the noble Lord, Lord Grocott, is concerned, we had a good debate at Second Reading. I set out the Government's view at that point, and we look forward to its Committee stage when my noble friend the Chief Whip finds time for it. The noble Baroness said that some of her best friends were hereditary Peers; my line manager, the Deputy Chief Whip, is a hereditary Peer.

The Countess of Mar (CB): My Lords, as the last female hereditary Peer left standing, I ask the Minister whether he is aware that I support the noble Lord, Lord Grocott. We have gone on for too long with elections. We no longer know the electorate as well as we should and it is time that we called an end to them.

Lord Young of Cookham: As I said, the House will have an opportunity, when we debate the further stages of the noble Lord's Bill, to come to a conclusion. When I summed up, I indicated the views that were for and against. I think I ended up by saying that in one sense, the Bill was premature, because we were waiting for the report of the noble Lord, Lord Burns. Hopefully, that report will be in the public domain by the Committee stage.

Housing: Planning Laws

Question

3.30 pm

Asked by ***Baroness Neville-Rolfe***

To ask Her Majesty's Government, in the light of the comments by the Secretary of State for Communities and Local Government on 22 October about investment in housing, what steps they are taking to liberalise planning laws in order to make it easier for new residential properties to be built.

Lord Young of Cookham (Con): My Lords, in February, we published a housing White Paper, setting out how we intend to boost housing supply and create a more efficient housing market, including changes to the planning system to ensure we are planning for the right homes and building those homes faster. We have followed this with a further consultation, *Planning for the Right Homes in the Right Places*. Feedback from this and the White Paper will feed into a revised *National Planning Policy Framework* to be published early next year.

Baroness Neville-Rolfe (Con): My Lords, this is very welcome as far as it goes. The problems are chronic, particularly in the south, with millions more people living here than was predicted 20 years ago. Can the Government increase the supply of homes by easing planning laws and being brave enough to do so in undistinguished pockets in the green belt?

Lord Young of Cookham: I am grateful to my noble friend, and for her contribution to our debate on housing last week. She will be aware that there was a manifesto commitment to safeguard the green belt. The planning policy indicates that the green belt should be developed only where all other opportunities have been explored, such as brownfield sites and building at higher densities in urban areas. However, we go on to say that if at the end of that it is necessary, we will develop in the green belt. Some areas of green belt do not live up to their name; they are sometimes very unattractive pieces of land. We are consulting on local authorities in the White Paper; if it is necessary for them to encroach on the green belt, they should make complementary provision elsewhere to replace the amenity that has been lost.

Lord Beecham (Lab): I refer to my local government interest in the register. Apparently there are currently between 500,000 and 600,000 planning consents for houses, many granted years ago. What action will the Government take to ensure that these are used? Further, while I welcome today's announcement by the Prime Minister that the Government will not cap housing benefit in the social housing sector, and the recent announcement of £2 billion for all of 25,000 extra homes over the next four years, will they remove the cap on council borrowing for new building, and if not, why not?

Lord Young of Cookham: I welcome what the noble Lord has said about the Prime Minister's announcement on lifting the local housing allowance cap on supported housing. That is welcome. We now need to move on to an agreed model for supported housing. On planning consents, the planning system granted consent for 304,000 new homes in the year up to March this year, which is up 15%. However, the noble Lord's point is a good one. A third of new homes granted permission between 2010-11 and 2015-16 have yet to be built. That is where we need to focus. In the Autumn Statement last year, the Chancellor announced £2.3 billion of funding for housing infrastructure. That is to be focused on those sites where we have planning consent but, for infrastructure reasons, development is not taking place. We hope that will unlock sites for 100,000 homes in areas of greatest need. On raising the cap on local authority borrowing, he will see from *Hansard*, in my reply to last week's debate, that there are circumstances in which we would consider lifting the local authority borrowing restrictions.

Lord Shipley (LD): My Lords, I remind the House of my interests in the register. I do not think this should be about liberalising the planning system, but rather about making the current system work better. Is the Minister aware of the very recent study by the Royal Town Planning Institute, which shows that we need more, not less, planning for getting large sites right without the delays and compromises we see so often? Does the Minister agree with that statement because, if so, there is an issue about the resourcing of planners from planning fees?

Lord Young of Cookham: There is indeed an issue, which is why we have decided that local authorities should be allowed to raise their planning fees by 20%, as long as the proceeds are then ring-fenced and ploughed back into the planning system. We are also looking at the so-called viability assessments, which sometimes hold up the planning process. The noble Lord will know that Ministers have powers to intervene where, for whatever reason, local authorities are dilatory in coming forward with local development plans.

Baroness Gardner of Parkes (Con): My Lords, is the Minister aware that it is not only about planning but that local authorities need many more powers returned to them and more direct control over housing? Has he seen what is happening in London, where illegal letting is reaching huge proportions? I know that some people in council flats are subletting to illegal tenants without any notification, and probably without paying any tax. Councils need powers returned to them to be able to check these situations.

Lord Young of Cookham: I am grateful to my noble friend. I believe that local authorities have all the powers needed where illegal subletting is taking place, which is a clear breach of a tenancy agreement. I hope local authorities would take prompt action where they believe that social accommodation is being misused in the way that my noble friend has just outlined.

Baroness Young of Old Scone (Lab): Is the noble Lord aware that even though we all agree that additional housing is required, particularly affordable housing, half of all threats of damage or destruction to our precious and diminishing ancient woodlands are caused by housing development? In the light of the Government's commitment in the housing White Paper to improving protection for ancient woodland, what practical steps is the Minister's department taking to ensure that these much-needed houses will not be built at the expense of irreplaceable ancient woodlands and to make sure that the garden village initiative is not just a front for enclosing ancient woodlands in small zoos of concrete from which they cannot escape?

Lord Young of Cookham: I am grateful to the noble Baroness. She will know that in the housing White Paper we consulted on the irreplaceable habitats to which she has just referred. We will clarify the strong protection for ancient woodland and aged or veteran trees, which has been set out in the *National Planning Policy Framework*.

Lord Clark of Windermere (Lab): My Lords—

Noble Lords: This side!

Lord Clark of Windermere: There is nobody standing on that side, so I shall carry on. The noble Lord mentioned the green belt. As he is aware, there is a peculiarity in relation to this in national parks, where many houses are disappearing from local occupancy and being turned into holiday cottages, whereby they escape the right-to-buy legislation and get 100% tax relief not only on mortgage repayments but on all furnishings, and do not pay council tax or a community charge. Will the Minister negotiate with local authorities in these areas to see whether we can manage this a bit more sensibly and provide residences for local people?

Lord Young of Cookham: I agree with the objective that the noble Lord has outlined. I am very happy to open discussions with the Local Government Association on the specific issue that he raised to see whether there are any further measures we can introduce to meet the objectives we both share.

Middle Level Bill

Motion to Agree

3.38 pm

Moved by ***The Senior Deputy Speaker***

That this House do agree with the order made by the Commons set out in their message of 17 October.

Lord Foulkes of Cumnock (Lab): My Lords, I hope we can have a few moments to discuss this. I had thought that perhaps the Senior Deputy Speaker might have introduced this Motion to explain the basis of our consideration. As the noble Lord, Lord Young of Cookham, pointed our earlier, very often things go through on the nod—as they did in 2010 in relation to

[Lord Foulkes of Cumnock]
hereditary Peers—without Members realising fully what is happening. We ought to know what is happening with this Motion.

And we have plenty of time. As I understand it, the House will again rise before tea-time, for the third day running this week, because the Government are so ossified and petrified by Brexit that they are unable to do anything else. I thought that would wake some people up on the other side. There are a number of questions that I hope that the Senior Deputy Speaker will deal with.

First, this consideration today is the revival of a Bill that was considered at Second Reading on 29 March 2017 in the Commons. It was lost because of the general election. Will the Senior Deputy Speaker indicate whether this will create a precedent? I am sure that many Members of this House, including my noble friend Lord Grocott, would welcome the opportunity to revive Bills that have been lost one way or another. Revival of Bills is an unusual procedure that I had not heard of before. Are we creating a precedent?

Secondly, this was dealt with in the House of Commons under Standing Order 188B, which deals with the revival of Bills. Will the Senior Deputy Speaker explain which Standing Order we are dealing with it under? I presume that it is not the same Standing Order; it will be one for the House of Lords. No doubt the Clerk of the Parliaments will be able to advise him if I talk a little longer—

A noble Lord: And more slowly.

Lord Foulkes of Cumnock: Indeed, I could even take interventions to enable the Senior Deputy Speaker to say which Standing Order we are dealing with this under.

Thirdly and finally, I understand that in the House of Commons the Bill will be considered further under the procedure of an Opposed Bill Committee. How will we deal with it further? Will it come back to us after it has been dealt with by that committee? Will we deal with it separately or in some other way? We need to know.

With respect to this House, we ought to get explanations on Motions before this House more often from everyone—the Minister or the Senior Deputy Speaker, or whoever is proposing it. This House needs to know exactly what it is doing. We are here to carry out a purpose. We are here as working Peers and, unless we get explanations of exactly what the implications of what we are considering are, we may do as we have done before—as my noble friend Lord Grocott found out earlier—and do things without fully realising what we have done.

The Senior Deputy Speaker (Lord McFall of Alcluith): I thank the noble Lord for his questions. The noble Lord knows that my door is always open. Indeed, he has pressed that door on many occasions. I would have liked the opportunity to have discussed this with the noble Lord before.

Lord Foulkes of Cumnock: My Lords, I would have liked that opportunity as well, but I got notice of this being discussed today only this morning, as we all did. I had the opportunity to read Commons *Hansard* for 17 October only earlier today to find out the implications. If the noble Lord is really serious about his door being open, I have a whole list—he is going to be kept very busy.

The Senior Deputy Speaker: The noble Lord is not kidding the House, is he? He has been at my door before and we have engaged positively, and I will continue to do that.

The noble Lord asked about precedent. This is no precedent because it is a commonly used procedure.

The noble Lord asked about the Standing Order under which we would consider this, and it is Standing Order 150B of Private Standing Orders. In terms of the Opposed Bill, it will go back to the Commons and will be dealt with in the Commons as a result of that.

Given the noble Lord's real interest, maybe I should elaborate a little on this. This Motion is a Business Motion to enable this Private Bill currently in the House of Commons to resume its progress through that House. The revival process started in the House of Commons, as the Bill has not yet reached the House of Lords. The Commons Revival Motion was moved on 5 September, in the same timeframe as those for other Private Bills being revived. Unfortunately, it was objected to by an MP who wished to debate the Motion and has been blocked ever since, pending time available for a debate. The promoters were able to obtain a slot on 17 October, 10 days or so ago, to debate the Motion and the revival Bill was then agreed to.

The noble Lord is interested in what happens next. If the House agrees this Motion, a message will be sent to the Commons, the Bill will then be reintroduced in the Commons in exactly the same form as it was at the end of the last Parliament. If the Motion is not agreed to, the Bill would not be revived and the promoters would need to deposit a new Bill in November and start from scratch if they wish to continue.

I hope that that answers the noble Lord's questions.

Motion agreed.

City of London Corporation (Open Spaces) Bill

Second Reading

3.45 pm

Moved by ***The Senior Deputy Speaker***

That the Bill be now read a second time.

Bill read a second time and committed to an Unopposed Bill Committee.

Armed Forces (Flexible Working) Bill [HL]

Third Reading

3.45 pm

Relevant documents: 1st and 4th Reports from the Delegated Powers Committee

Motion

Moved by ***Earl Howe***

That the Bill do now pass.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, in moving that the Bill do now pass, I express my appreciation to all noble Lords, noble and gallant Lords and right reverend Prelates for their interest in the Bill and for their thoughtful contributions to what have been constructive debates during its passage through your Lordships' House. I am grateful for the positive engagement and support of noble Lords on the Opposition Benches and from around the House.

The Government have responded positively to the concerns of this House that the Defence Council regulations should be subject to the affirmative procedure. I know that the noble and gallant Lord, Lord Craig, and others will be disappointed with our response to his concerns about the use of the term "part-time" in the Bill. I hope that in due course he will see that his fears about people disparaging the good name and full commitment of the Armed Forces are unfounded, once people are able to apply to work part-time or have protection from being separated from their home base for prolonged periods.

Of course, encouraging the right cultural attitudes and behaviours in the Armed Forces will play an important part in ensuring the success of these measures. As I said at the outset, the Bill is designed by the services for the services, and all three remain involved in the plans to make this a success. We are immensely proud of the achievements of our Armed Forces; they work hard for us and we owe them a great deal. Flexible working will provide our brave and courageous service men and women with an opportunity for some respite from their full-time commitment when they need it most. This Bill is for them and I beg to move.

Lord Craig of Radley (CB): My Lords, when the noble Earl responded to my Amendment 3 on Report, he began with a frank and gracious apology to the House and to me for saying in his letter of 29 September that it would not be possible to remove the word "part-time" from the Long Title of the Bill. As he said, this was incorrect but given in good faith. To my embarrassment and regret, I failed, when I spoke again, to thank him for his apology—which of course I fully accept. I have spoken and written to the noble Earl to apologise for this discourtesy but would like to put the record straight.

In the same letter the noble Earl sought to allay concern by saying that the use of "part-time" was not unprecedented: it had been, he said, in previous Armed Forces legislation. So far, it has been found but once in all such Acts, going back over 60 years—and that once was in a 1955 Act, long repealed, and with a totally different meaning from contemporary usage. Both of these were weak—and, indeed, inaccurate—claims. The noble Earl would have done better to note that our objection to introducing "part-time" into the Bill was not that it would be unprecedented but that it should be there at all. The noble Earl said that he did not agree with my analysis, but a dozen speakers sympathised and agreed with the noble and gallant Lords and myself. More than 50 unwhipped Peers supported us in the Lobby.

The noble Earl said that the purpose of this novel type of flexible working was to enable individuals to take breaks from their 24/7/52 commitment to their service. Both in Grand Committee and on Report, our amendments were aimed at providing for just that, with appropriate subordinate legislation. We were being direct, not devious, as the noble Earl chided us. The Government's approach—that the individual must first commit to serving on a part-time basis before becoming eligible to apply for breaks—is far less straightforward.

The arrangements for time away are all to be set out in subordinate legislation—but, we are told, cannot be guaranteed unless individuals are formally released from full-time duty to the Crown. But are they released? They are still beholden to the Crown because they remain under the Armed Forces Act. Would the military or civil police be responsible for investigating a crime committed by an individual while on a break? As a law tutor might say to his class of students, "discuss".

I hope that the Government noted that the noble and learned Baroness, Lady Butler-Sloss, strongly suggested that phraseology other than "part-time" could be adapted for the armed services in legislation—as did the police, with detail in subordinate legislation to guarantee arrangements. However, the noble Earl said that what was intended was,

"distinctly different … and therefore the way we describe it needs to be very clear".—[*Official Report*, 11/10/17; col. 249.]

I have since seen the noble Earl's response to criticism by the Delegated Powers and Regulatory Reform Committee. He wrote:

"There is no intention at present to enable part-time service for all enlisted regulars".

"No intention at present" really does make it distinctly different from just providing compassionate flexibility. Is this the intended direction of travel? Do the Government want this primary legislation to spawn part-time service in further and wider applications than those proposed now?

A statutory door is being primed to spring open—a far cry from the assurance given by the noble Earl in that letter of 29 September in which he wrote:

"The amendments to primary legislation simply provide us with the power to make regulations to enable these particular forms of flexible working".

The Bill will enable far greater powers than that. There is no place in the Armed Forces Act 2006 for such an untrammelled, undefined, catch-all "part-time basis" phrase, unless Governments want a broad statutory power to recruit and re-muster our armed services little by little into becoming a force of part-timers. Perhaps,

[LORD CRAIG OF RADLEY]
having reviewed all that has been said during the passage of the Bill in your Lordships' House, wiser counsel will prevail in the other place. I certainly hope so.

Lord Boyce (CB): My Lords, I remain to be convinced about the need for the Bill. The services already have an ability to operate flexible working. I lament, and certainly remain dismayed by, the continued use of the expression "part-time" to characterise the nature of what the Bill entails.

I recognise the amendment on this point was defeated on Report, but it required a Government three-line Whip to defeat the many excellent arguments by protagonists in favour. It was hardly a moral victory for the Government. Since Report, the senior and junior servicepeople I have spoken to have been equally appalled. Dislike for the expression "part-time" will be felt in particular by those who have requested no geographic separation yet who continue to work full-time. They will also be called "part-time" people even though they are working full-time. How does the Minister explain that? I really believe that a mistake has been made here and I would be grateful if the Minister could confirm that the Chiefs of Staff explicitly support the use of the expression "part-time".

On a separate subject, I would be grateful if the Minister could comment on whether the ceilings for manpower numbers will take into account the provisions of the Bill. In other words, if the full scope and feasibility of flexible working for serving members of the Armed Forces is to be realised, there must presumably come a point where the current mechanism for accounting for liability—headcount—gives way to full-time equivalence.

The Bill's implementation will have to be handled very carefully if the expectations of service men and women are not to be falsely raised. As the Minister said on Report:

"We are not talking about large numbers: we expect only a modest number of our people to either work part-time or restrict their absence from their home bases".—[*Official Report*, 11/10/17; col. 250.]

In the case of the Royal Navy—which is extremely tautly manned and, constrained by the government-imposed headcount, short of people anyway—that is likely to be very modest indeed. For example, we need to bear in mind that 80% of junior ranks are in seagoing billets. It is difficult to see many applications for time away being approved. I therefore urge the Minister to ensure that the Bill is launched most carefully, and without fanfare and overpromising.

Lord West of Spithead (Lab): My Lords, I fully support all that has been said by the two noble and gallant Lords. Indeed, I cannot add anything more to the eloquence of how they put this across. The Bill is extremely worrying. I did not believe that it was necessary and I certainly do not like the phrases used. It is extraordinary; on the 167th anniversary of the Charge of the Light Brigade, perhaps Tennyson's words are rather pertinent:

"Was there a man dismay'd?
Not tho' the soldier knew
Some one had blunder'd".

That is absolutely appropriate when one looks at this legislation.

Lord Tunnicliffe (Lab): My Lords, we gathered through the debates that noble and gallant Lords were somewhat uncomfortable with the general thrust of the Bill, but for our part we accepted the Minister's assurance that the senior management of the Armed Forces was behind it. We did our duty as the Opposition, which is to look at detail, seek assurances and propose amendments to make sure that the Bill will work fairly when it becomes an Act. I thank the noble Earl and his team for their courtesy, for the time he gave us, for wisely giving us some of those assurances and for wisely accepting a couple of our amendments. I also thank my noble friend Lord Touhig, who led our side until recently, for his leadership and I acknowledge the support we received from our own back office.

Baroness Jolly (LD): My Lords, I agree with the noble Lord, Lord Tunnicliffe. I thank the Minister and his team very much for supporting the House and us in our deliberations on the Bill. We are pleased that the Government have accepted the view of the Delegated Powers and Regulatory Reform Committee on parliamentary scrutiny and on the adoption of the affirmative procedure. I worked quite closely on this with the noble Lord, Lord Touhig, and with both spads. We agreed amendments between us: so it is an example where, on occasions, opposition parties can work successfully together, and I wish the noble Lord success in whatever he is doing.

On a personal note, this is my last defence hurrah. I have now moved to health and have come back just for Third Reading. It occurred to me as I was walking into the Chamber that ever since I came into this House I have been either opposite or alongside the noble Earl in my deliberations and those of the House. I thank him very much for his courtesy and consideration; I learned an awful lot from him.

Earl Howe: My Lords, I much appreciate the remarks from the Front Benches opposite and reciprocate the warm feelings that have just been expressed by the noble Baroness, Lady Jolly.

I hope that both noble and gallant Lords who spoke will accept that I have listened with care to the arguments they put forward. The Government have taken due note of their concerns about the use of "part-time" in this legislation. We have had debates in Committee and on Report, and the matter was settled by a vote on Report. There is a convention in your Lordships' House that at Bill Do Now Pass we should not continue the debates of previous stages. Nevertheless, in so far as I have been asked questions by noble and gallant Lords and the noble Lord, Lord West, I undertake to write after the conclusion of this stage of the Bill. Let me make it clear that the service chiefs fully support this legislation. As I said in my opening remarks, the Bill is designed by the services for the services. All three remain involved in the plans to make this a success and I hope that all noble Lords will agree that that is now the imperative.

Bill passed and sent to the Commons.

Air Travel Organisers' Licensing Bill

Report

4 pm

Clause 1: Air travel organisers' licences

Amendment 1

Moved by ***Lord Rosser***

1: Clause 1, page 1, line 3, at end insert—

"( ) In subsection (1)—

(a) in paragraph (a) omit "or (1B)";

(b) in paragraph (b) omit "or (1B)".

( ) Leave out subsections (1B) and (1C)."

Lord Rosser (Lab): My Lords, in the Government's Oral Statement on Monarch Airlines of 9 October, the Secretary of State said that,

"right now our efforts are rightly focused on getting employees into new jobs and getting passengers home. After that, our effort will turn to working through any reforms necessary to ensure that passengers do not find themselves in this position again. We need to look at all the options—not just ATOL, but whether it is possible to enable airlines to wind down in an orderly manner and look after their customers themselves, without the need for the Government to step in. We will be putting a lot of effort into that in the months ahead".—[*Official Report*, 9/10/17; Commons, cols. 27-28.]

The demise of Monarch Airlines, along with the Secretary of State's Statement, has raised questions about the current UK financial protection regime generally for air travellers. The ATOL scheme is intended to ensure that those who purchase ATOL-protected flights and holidays are flown home at no extra cost if an ATOL company fails. However, the scheme does not offer that protection to customers who buy airline seats from airlines which are not within the ATOL scheme.

The Government have estimated that the proportion of Monarch Airlines passengers affected who were covered by the ATOL scheme and ATOL protection amounted to some 10% to 15%. As we know, the Government decided to step in and repatriate Monarch's passengers regardless of whether they were among the small minority who were protected by the ATOL scheme, a decision which would appear at least to raise questions about the current scheme and arrangements.

While this Bill will update existing powers to enable different and separate arrangements to be established to align with new practices, such as linked travel arrangements, there remains a gap in consumer protection for flight-only seats sold by airlines, despite—I understand, perhaps incorrectly—the industry and the CAA's previous calls for such a protection regime. The Bill does nothing to address that gap.

The amendment, whose intention has the support of ABTA, would through its proposed deletions to the 1982 Act provide an opportunity for the Government to say how they intend to review and update the existing arrangements and regulations, particularly in respect of flight-only travel under the Civil Aviation Act 1982, to ensure the protection of passengers in the event of a future airline failure—which as I understand it from the Secretary of State's Statement of 9 October is, at least in part, what the Government intend and want to do.

It is really a matter for the Government, in consultation with the industry and consumers, to determine the precise framework and model for delivering any new protection regime. The Government appear to be looking for a new arrangement which would ensure that passengers in any subsequent Monarch situation are flown home at no extra cost but at the lowest possible cost to the taxpayer and, presumably, to the airlines in particular and the travel industry in general.

A substantial proportion of the failure costs incurred in the ATOL scheme over the years has related to airline failures: Clarksons with Court Line; Laker and Arrowsmith Holidays with Laker Airways; ILG with Air Europe; XL Leisure Group with XL Airways; and now Monarch Travel Group with Monarch Airlines. These failures have also led to significant costs being incurred either by customers not protected under the ATOL scheme or by the taxpayer. Travel companies are also affected by the failure of an airline as they are liable for all aspects of a package holiday under the package travel regulations. While the exclusion of airlines from a scheme of protection means that their customers are not protected against financial loss, in practice those passengers—both British and those in other European countries such as Italy and Germany—have been repatriated at a cost to taxpayers and other industry participants. This surely adds to confusion when failure occurs, particularly around what is and what is not protected under the ATOL scheme. There is also a lack of clarity around the meaning of the ATOL-protected branding and ABTA has consistently called for it to be made much clearer that ATOL protection applies only to a particular set of holiday arrangements rather than the company as a whole.

The amendment is designed to provide the Government with the opportunity to say how they will end the area of exposure to the Government, passengers and taxpayers caused by unprotected airline seat-only sales, and to consider what a new regulatory framework might look like in the event of insolvency. In so doing, it would also enable the Government to fulfil the Secretary of State's commitment of 9 October to,

"look at all the options",

and,

"ensure passengers do not find themselves in this position again".

The Government have said they are going to consult and look at all the options as part of the process of,

"working through the reforms necessary to ensure passengers do not find themselves in this position again".

Indeed, the Government said in their 9 October Statement that they would be putting a lot of effort into this,

"in the weeks and months ahead".

More than two weeks since that Statement, have the Government made official approaches to the industry and consumers with a view to commencing consultation about the sorts of mechanisms beyond ATOL which could be implemented to address the issue and consequences to passengers of future airline insolvency? What will be the timespan of such consultation? Which organisations, companies and bodies do the Government

[Lord Rosser]
intend to consult, and who from beyond and outside the industry do they also intend to approach? Finally, by when do the Government expect to reach conclusions about the actions and changes they intend to make to deliver on the Secretary of State's promise following the demise of Monarch airlines that,

"passengers do not find themselves in this position again"?

Presumably that commitment was not made without at least some idea of the possible ways of achieving that particular goal.

We certainly cannot continue with a situation where nobody is sure whether the Government will or will not fly people back home in future at no extra cost in the event of another airline failure, and where there is also an apparent lack of clarity for many passengers and potential passengers under the existing arrangements and ATOL scheme about their rights or lack of rights and their protections or lack of protections. In moving my amendment, I express the hope that the Minister will be able to give some answers to the points and questions I have made and asked in the light of the specific commitments given by the Secretary of State on future objectives and intentions in his Statement of 9 October. I beg to move.

Baroness Randerson (LD): My Lords, I have added my name to this amendment because I felt that it raised some important issues for the Government to look at. I also felt it would be genuinely useful if the views of the Government on the progress made so far were put on record.

At the time of the failure of Monarch Airlines the Minister, in his Statement to the House, emphasised that it was the largest repatriation since D-day. But I put in contrast what the airline industry said in my discussions with it: that Monarch was a small airline and that the problems would arise if a big airline were to fail. Of course, those I spoke to believe that their whole industry is in robust health and that Monarch is definitely not an example of its state generally. The point is that, as the noble Lord, Lord Rosser, has just said, airlines have failed before and undoubtedly, at some point in future, something like this will happen again.

We are looking here at whether the Government have set some kind of precedent by bringing everyone back, for understandable and excellent reasons. I think everyone supports the way that was done and the reasons for doing it. But the point is that if and when it happens again people will expect a similar response and, for that to be possible, there needs to be a scheme. The consumer understands that there is a need for a scheme and understands the ATOL scheme. What the Monarch passengers probably did not understand was why some of them were covered by something and others were not. In the end, the Government need to look at the new ways of working—the new ways in which travel is offered—and present a new scheme which covers them. In the days when the ATOL scheme was devised, package holidays covered a huge percentage of the market. That is very much less the case now.

It is also important to look not just at the passengers who are affected by this. One airline's failure can often adversely affect a number of package holiday operators. If one airline fails, several package holiday operators will find their business seriously affected. There is a serious knock-on effect within the industry from this and it needs to be addressed. I shall listen to the Minister's answer with interest.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Callanan) (Con): I thank the noble Lord, Lord Rosser, and the noble Baroness, Lady Randerson, for their contributions and for the constructive way that they have approached the Bill. I am extremely grateful to them and I recognise the purpose of Amendment 1—to ensure that ATOL protection covers flight-only bookings made through airlines—but the simple fact is that the proposed amendment would not achieve that aim.

4.15 pm

Let me explain further. Section 71(1B) of the Civil Aviation Act 1982 acknowledges that airline operators are already subject to separate licensing requirements. The EC regulations on airline operating licences, which include safety and financial considerations, apply across the EU and its member states. Individual member states do not have discretion to impose additional requirements. As EU airlines are already licensed to carry fare-paying passengers, requiring airlines to obtain an ATOL for flight-only sales would be inconsistent with EU law. If the aim of the noble Lord and the noble Baroness is to bring airlines within the ATOL scheme, this amendment could not achieve that because airlines are exempt. The existing position reflects the requirements of EU law, and the UK is not able to extend ATOL protection to airlines without breaching EU law. Therefore, the provision to exempt airlines from ATOL would need to be retained in secondary legislation, even if this amendment were successful and Section 71(1B) were removed from the Civil Aviation Act 1982.

Alternatively, if the aim is to legislate against consumer detriment caused by potential future airline failures, I do not think that this Bill is the appropriate vehicle to achieve that. The current modernisations for the ATOL scheme in this Bill are, as we have discussed in separate conversations, driven by innovations in the way that holidays are sold by the travel market. They will also ensure that the scheme is aligned with the updated EU package travel directive 2015. The Government have followed the recognised process of reviewing, proposing, consulting and revising. Nevertheless, now and going forward, we shall give full consideration to how the Monarch failure happened and to what can be done to guard against that kind of issue happening again. We need to look at all the options, not just ATOL, but at whether it is possible to enable airlines to wind down in an orderly manner and look after their customers themselves without the need for the Government to step in. These are complex topics, and it is right that we explore them fully before legislating.

These and other topics will be explored in the forthcoming Green Paper on consumer protection to be issued as part of our aviation strategy, and I invite noble Lords to share their views in that process. The noble Lord, Lord Rosser, asked about the timescale. The Government's initial consultation setting out the elements of the aviation strategy closed last Friday,

but he should not worry because we are coming on to the separate bits as well. We are now considering the responses and developing proposals. The final strategy will be published in 2018 and in the coming months we will seek views on consumer protection in the first paper. By following our tried-and-tested procedure of review, impact assessment and consultation, we feel confident that we can produce a robust proposal.

In summary, if the concern is that consumers who buy flight-only sales will not be protected should their airline go bust, the ATOL scheme does not extend to that type of sale. This amendment could not change the existing position for flight-only sales for the reasons I have just set out. However, we are reviewing consumer protection in the aviation sector as a whole through our aviation strategy, and it will take on board the lessons learned from Monarch, which is entirely consistent with the statements I made then. Therefore, I hope that the views I have given the noble Lord will allow him to withdraw the amendment.

Lord Rosser: My Lords, I thank the Minister for his response and the noble Baroness, Lady Randerson, for her helpful contribution to the debate.

I think I made it fairly clear—and the Minister accepted it—that in moving the amendment the principal objective was to try to get some more information from the Government about how they intend to progress the consultation. I do not intend to ask the Minister further questions as we are on Report, but those in the industry and, one assumes, consumer organisations will take considerable interest in what he said and, perhaps, in what he did not say in his response. There was a very clear, specific commitment by the Secretary of State—which I do not doubt the Government will seek to adhere to—that they would work through any reforms necessary to ensure that airline passengers do not find themselves in this position again of being stranded.

It is presumably incumbent on a Government making that kind of specific commitment to get the consultation under way as quickly as possible, to make it wide-ranging and to come to conclusions reasonably quickly. After all, if we get another incident like Monarch, and changes have not been made to the procedures and arrangements which ensure that passengers do not find themselves in that position, a number of organisations within the industry and consumer organisations, as well as us, will be asking the Government why they did not act earlier and more quickly.

I mean it when I say I am sure it is the Government's intention to seek to resolve this issue, and I do not doubt that it is their intention to seek to consult widely or to seek to deliver on the very specific commitments given by the Secretary of State in the Statement of 9 October. However, I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 2

Moved by ***Baroness Randerson***

2: After Clause 2, insert the following new Clause—

"Ensuring transparency of consumer protections

(1) Section 71 of the Civil Aviation Act 1982 (regulation of provision of accommodation in aircraft) is amended as follows.

(2) After subsection (1D) insert—

"(1E) The Secretary of State must, within the period of 12 months beginning with the day on which the Air Travel Organisers' Licensing Act 2017 is passed, make regulations to ensure that consumers are informed of their protections when purchasing flights, package holidays and linked travel arrangements.

(1F) Such regulations must provide that before the sale of any flight, package holiday or linked travel arrangement is completed, the retailer must make the consumer aware of what protections, if any, apply to their purchase in the event that the retailer, or the provider of the flights or accommodation, ceases trading.

(1G) In this section—

(a) "retailer" means a provider of flights or overnight accommodation, either directly or as a third party;

(b) "protection" means any scheme available to the consumer in the case that the retailer ceases trading;

(c) schemes referred to in paragraph (b) may result from the retailer or providers holding a licence under this section, the consumer completing the purchase with a credit card, or any other means that the retailer is aware of.""

Baroness Randerson: My Lords, I have taken the opportunity in this amendment to press the Minister further on the information to be supplied to consumers. The key question is how "linked travel arrangements" would work in practice. I believe the EU directive refers to facilitating a purchase and am interested in the definition of how one website might facilitate a purchase of something from another website. For example, is advertising facilitation or does there have to be a closer link? If there does, how does that get translated into information on the screen that is clear to consumers? My interest is in consumers being able to know the difference.

In the last few days I have done a significant amount of research of a very practical nature. I have been on a lot of websites and booked notional holidays aplenty. My inbox is now of course alive with the reaction of the internet to my searches, and I shall definitely regret this research in due time. I have been trying to tie down those offers I receive online to what would be called a linked travel arrangement: flights here being offered possibly with a hotel there, and the two being financially dependent on each other in one way or another, rather than just a chance advert. There are adverts that come into your inbox because Google knows what you are doing. I have gone on to an airline website, and Google knows I have done that, so it sends an advert telling me that there are wonderful offers for hotels or car hire, the usual two options—it might send you an email or it might be an advert that comes at some point on the screen. Rather disconcertingly, you can be looking for a book on a website and suddenly find you are being offered a hotel there that relates to your previous search. It happens to us all the time now. Yesterday I saw, in the middle of flight information on the screen, an advert for a hotel. Clearly, the advert for the flight had been designed to accommodate the hotel. Is that a linked travel arrangement? The point I am making is that if I cannot work it out, I dare say a lot of consumers will not be able to either.

[Baroness Randerson]

It is essential that consumers are given clear information—in large print, not small. ATOL-protected holidays are admirably and clearly stated to be so. I am seeking from the Minister information on how we might get similar wording for any future designation.

Lord Spicer (Con): What the noble Baroness is saying is very worthy, but is it not a bit academic in the light of the Government's statement yesterday that five London airports will be completely full up by the 2030s and that there is very little chance of rectifying that, despite some of us warning of this for the last four or five years?

Baroness Randerson: The Minister has already referred to the importance of an airport strategy, and the Government are working on that. As the noble Lord states, there is clearly an interrelationship between the availability of flights and the availability of package holidays.

We need clear wording akin to the words used in the ATOL protection. That phrase "ATOL protection" works because over many years the consumer has come to understand what it means, partly through government advertising, partly through the work of consumer groups and, sadly, partly through the hard lesson of the failure of holiday companies. We need similar clear wording for any new scheme, and I fear that "linked travel arrangements" is not a phrase that trips off the tongue or that will be instantly understood by the holiday-buying public.

I turn to an issue that I have raised before: the variation in protection between credit cards, debit cards and PayPal. We might want to pay for a flight by debit card because in many cases, using a credit card costs additional money—a fee for the privilege of using it. However, it is important that at the point where consumers choose how to pay, they are warned that if they pay by debit card they will not get the same protection as if they pay by credit card. It is important that we modernise the system. I am not sure that this Bill is the place to do that, but it is important that the Government take the point away and look at it.

Lord Rosser: My Lords, I add our support to the amendment moved by the noble Baroness, Lady Randerson. I do not intend to go through all the points she has so ably made, but I share her view that there seems to be a lack of clarity over the rights and protections—or lack of them—available, as the amendment says, to those,

"purchasing flights, package holidays and linked travel arrangements".

Certainly, in some adverts, to which the noble Baroness, Lady Randerson, has already referred, the situation is not made clear. So we agree with the objective of the amendment, which is designed to make much clearer for people, when booking flights, package holidays or other travel arrangements, exactly what their rights are and are not, and what protections are and are not available.

4.30 pm

Lord Callanan: Before I turn to the subject of the noble Baroness's amendment, which is about information to consumers, let me go through again the business of linked travel arrangements, which I know is causing some confusion—not least to us in the department. As I said to her when we discussed this privately, it was inserted into the directive and a lot of work is going on to work out what it actually is.

The package travel directive has broadened the scope of a package, so it is now clear that protection should apply when customers book customised combinations of travel online. As the noble Baroness outlined in her speech, it is not at all clear what a linked travel arrangement actually is. It is obvious if there is a direct advertisement on a flight website for a linked hotel and that hotel is promoted by the airline directly and is on the same web page. That, it seems to me, is an obvious linked travel arrangement. However, as we know, and as the noble Baroness has discovered in her meticulous research, on the internet, many adverts on webpages have no connection whatsoever with the originator of the webpage. They are placed by advertising companies, principally Google, among others, and the originator of the page has no idea what adverts are appearing on their page. So if you click on an associated advert, that would not necessarily be a linked travel arrangement, but how is the consumer supposed to differentiate between those two things?

Those are the issues we are grappling with at the moment: trying to come up with a definition of a linked travel arrangement and to implement it in regulations. As the noble Baroness said, the directive introduces information provisions to ensure that consumers have a good awareness of the kind of product they are buying, and we are consulting extensively with the industry to try to ensure that that is the case.

Turning to the subject of the amendment, I recognise the purpose of the proposed new clause and the need to ensure that consumers are better informed about consumer protection when they make a booking. This is well-intentioned and entirely in keeping with the Government's wish that passengers should have a robust level of protection, and that their rights should be communicated to them in a timely and clear way.

However, I do not think that this is the right approach at this time. Let me explain why. First, we need to be mindful that package holidays and linked travel arrangements often do not involve a flight. They could involve a journey by road, rail or sea, so the Civil Aviation Act 1982 is not the most appropriate place for such an obligation. The UK already has regulations in place through the package travel regulations, which cover package holidays across all modes. We are in the process of updating these regulations alongside the Bill to extend them to cover linked travel arrangements, in line with the EU package travel directive.

This brings me to my second point. The new clause would unnecessarily duplicate the new information requirements in the EU package travel directive. The directive has introduced new information provisions which are designed to improve information for consumers. This sets out the specific information that must be provided to consumers about the type of product they are buying and the corresponding level of protection. This must be provided to the consumer both before and after they buy a package or a linked travel arrangement. We have recently completed a consultation on the directive, which proposed that the information

provisions will be brought into force in 2018, through changes to the package travel regulations. We are also planning to retain the ATOL certificate alongside these new requirements to help reinforce awareness of consumer protection.

Finally, I fully accept the need to understand the lessons learnt from the Monarch failure, which I outlined earlier to the noble Lord, Lord Rosser, and to respond in the right way. We have to understand the issues that need to be addressed and whether we can make sensible changes to the laws. That is why we are undertaking an internal review, so that we can bring forward solutions that are feasible and have been assessed as being practically enforceable. As the Secretary of State said in his Statement in the other place,

"I do not want us to rush into doing something without doing the ground work properly. We need to look carefully at what has happened, learn the lessons and make any modifications necessary. I assure the House that that is what we will do".—[*Official Report*, Commons, 9/10/17; col. 40.]

It is quite possible, of course, that additional information requirements will follow from that review, but it is important that we consider the options and ensure that the steps we take are the right ones and that they both work in the UK and are compatible with EU law.

I therefore believe that an amendment to introduce legislation of this nature—however well-intentioned the noble Baroness is—is premature. So, in summary, if her concern is that the Government are not taking steps to ensure that consumers are informed about consumer protection when they book a trip, I hope she can take comfort that we are ready to make provision through the package travel regulations and the ATOL certificates to do just what she has asked for. In addition, we will of course also consider consumer awareness as we review the lessons learnt from Monarch and, as I said earlier, as we develop our aviation strategy. Therefore, in the light of the assurances I have been able to give her, I hope the noble Baroness will withdraw the amendment.

Baroness Randerson: I thank the Minister for his response. I will certainly watch carefully as the Government respond; I am sure that they are working hard on this. My concern is largely with the consumer, but it is also with travel operators, because it is important that they be able to succeed as much as possible. Consumer confidence is an essential part of that. A simple sentence on a website saying that it is a particular type of arrangement is cheap, easy to organise and involves minimal effort for the companies concerned. It is an easy way to provide additional confidence for consumers. Having said that, I am happy to withdraw the amendment.

Amendment 2 withdrawn.

European Union (Approvals) Bill

Second Reading

4.38 pm

Moved by ***Lord Prior of Brampton***

That the Bill be now read a second time.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Prior of Brampton) (Con): The purpose of this Bill is to approve four draft decisions of the Council of the European Union. All four draft decisions rely on Article 352 of the Treaty on the Functioning of the EU. This allows the EU to take action to attain the objectives set out in the EU treaties, for which there is no specific power given. This can be done only with the approval of the European Parliament and the unanimous support of all EU member states.

Before the UK can agree these draft decisions at the Council, Parliament must first give its approval. Section 8 of the European Union Act 2011 provides that a Minister may vote in favour of an Article 352 decision only where the draft decision is approved by an Act of Parliament. The measures in the Bill have already been approved in another place, and I am pleased that noble Lords will also have the opportunity to scrutinise and decide whether to approve them.

The UK is leaving the EU and, until that process has concluded, the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. This includes exercising the UK's vote in the Council of the European Union on these four draft decisions. Keeping that in mind, we are content that all four decisions are reasonable, proportionate, in keeping with our best interests and will not result in any additional financial burdens on the UK.

As I have said, Article 352 decisions must be agreed by all EU member states unanimously. When all member states are in a position to vote on the decision, the European Council will schedule a meeting of the Council of the European Union. If all member states vote to approve the draft decisions at that meeting, the European Parliament will be asked in turn to approve the draft decisions. If it does so, the decisions are adopted into EU law. All other member states, apart from the UK, have agreed the decisions. We do not believe that any of these draft decisions should be considered contentious in any way.

The first two decisions will enable two countries, the Republic of Albania and the Republic of Serbia, to be granted observer status in the EU's Fundamental Rights Agency. The Fundamental Rights Agency was set up to support the European institutions and EU member states by improving the knowledge and awareness of fundamental rights issues in the EU, with a view to ensuring respect for fundamental rights. The agency does this through the collection and analysis of information and data. It can also formulate opinions on specific topics, either on its own initiative or at the request of EU institutions. It also has a role in communicating and raising awareness of fundamental rights, but it cannot hear individual complaints.

EU accession candidate countries can be given observer status at the Fundamental Rights Agency. This allows the agency to collect and analyse fundamental rights data from those countries, but does not allow them the right to vote in decisions as part of the agency's management board. Albania was granted EU candidate status in June 2014. The UK supported the awarding of EU candidate status on the condition that Albania redoubled its reform efforts, with particular focus on justice and home affairs, especially tackling organised crime, corruption and illegal migration. The UK welcomed Albania's progress in adopting legislation

[Lord Prior of Brampton]
towards a judicial reform package in July 2016. Albania must now fully implement the judicial reform package as soon as possible so that this can underpin other reforms.

Serbia was granted EU candidate status in 2012 and accession negotiations were launched in January 2014, with the first four negotiating chapters opened during 2016. The UK continues to support Serbia on its reform path, including through funding projects in Serbia. Serbia has more work to do on anti-discrimination policies, to improve the situation of vulnerable people and to ensure freedom of expression. Observer status at the Fundamental Rights Agency should help Albania and Serbia to reform in the areas I have mentioned. Albania and Serbia should also be allowed to benefit from instances of good practice and evidence from other EU member states in relation to human rights. The Government are therefore satisfied of the need to support these two decisions.

The third and fourth decisions are necessary to implement a co-operation agreement between the EU and Canada on competition enforcement. The decisions will allow the agreement to be signed and allow conclusion of the agreement after it has been approved by the European Parliament. This competition co-operation agreement will replace an existing agreement that has been in place since 1999. It replicates and builds upon the provisions in the earlier agreement by allowing the European Commission and the Canadian Competition Bureau to exchange evidence obtained during investigations, including confidential information and personal data. The existing co-operation agreement with Canada dates from June 1999 and, at that time, the exchange of evidence between the parties was not regarded as needed. In the meantime, the bilateral co-operation between the European Commission and the Canadian Competition Bureau has become more frequent and deeper as concerns substance.

The absence of the possibility of exchanging information with the Canadian competition authority is regarded as a major impediment to effective co-operation. The proposed changes to the existing agreement will allow the European Commission and the Canadian Competition Bureau to exchange evidence which both sides have obtained in their investigations. This will, in particular, be useful in all cases where the alleged anti-competitive behaviour affects transatlantic or world markets. Many worldwide or transatlantic cartels include Canada, and, via Canada, the Commission will get a good opportunity to have access to additional information concerning these cartels.

Co-operation with third-country competition authorities is now standard practice in international competition investigations. In addition to the agreement with Canada, the European Union has concluded dedicated co-operation agreements with the US, Japan, Korea and Switzerland. The most advanced agreement is the one with Switzerland, which already contains provisions on the exchange of evidence, and the proposed update would bring the agreement with Canada to the same level as the one concluded with Switzerland.

I am sure that noble Lords will agree that the ability to share information for effective and efficient international competition enforcement is increasingly important. Access to information from other jurisdictions can be important in reaching a robust enforcement decision. Co-operation and information-sharing between jurisdictions can help ensure that enforcement bodies do not reach different decisions based on different sets of information.

The agreement contains general safeguards for the transfer of information and additional safeguards for the transfer of personal data. Personal data can be shared only with the express written consent of the person or company to which it relates. In the absence of consent, personal data can be shared only where both competition authorities are investigating the same related conduct or transaction. Furthermore, the transfer of personal data will be subject to independent oversight.

The agreement also contains safeguards for information provided by a company under the EU cartel immunity or leniency programme. This information cannot be shared without the express written consent of the individual or company that provided that information.

As I have noted, there are no financial implications for the UK from these decisions. I confirm that I do not consider that any of the Bill's provisions engage the rights set out in the European Convention on Human Rights, so no issues arise about the Bill's compatibility with those rights. It is intended that the Bill will come into force on the day of Royal Assent. For the reasons I have outlined, I commend the Bill to the House. I beg to move.

4.47 pm

Baroness Ludford (LD): My Lords, I thank the Minister for introducing this small but, I am sure, perfectly formed Bill. It is mildly bizarre that these relatively limited matters require primary legislation because of the European Union Act 2011. I was not allowed to be active in the House at that time as I was an MEP, but I imagine that the idea was to prevent big new federalist projects slipping into UK law through the European Communities Act. I am not sure that rather modest matters such as this were envisaged as needing primary legislation.

As the Minister said, Article 352 allows the EU to adopt an Act necessary for the attainment of treaty objectives when there is no specific legal basis available in the treaties. I am not the world's expert on the treaties, but I am quite surprised that there were no other specific articles in the treaties that would have allowed Serbian and Albanian accession to the Fundamental Rights Agency and competition co-operation enforcement with Canada. If the Minister has any information on why there was not—there are plenty of articles in the treaty—perhaps he could enlighten us.

Clearly, it is a good thing to enable Serbia and Albania to become observers in the Fundamental Rights Agency. This highlights the way that human rights commitments underpin European peace and development. I had some experience of those two countries in my early years in the European Parliament, when I was on the European Parliament delegation for south-east Europe, as it was then called, when the countries were all lumped together. There has been progress towards candidate status for accession to

the EU. I am sure the Minister would agree that, even with Brexit—if Brexit takes place—the UK is supportive of the accession ambitions of the western Balkan countries.

In moving the Motion on the Bill—I cannot remember whether the Minister repeated these words—the Minister in the other place, Margot James, highlighted that the mandate of the Fundamental Rights Agency is to improve knowledge and awareness of fundamental rights issues, so observer status for Serbia and Albania would help them benefit from the experience of good practice and evidence from EU member states on human rights. It is somewhat ironic that we are approving this decision to help Serbia and Albania in their progress towards accession to the EU, as we in the UK —on current plans—are moving away. It is also ironic that, in doing so, we are acknowledging the vital role that fundamental rights play in European co-operation. While we seek to leave the Fundamental Rights Agency and the EU Charter of Fundamental Rights, I would submit that those instruments are as important to the UK as they are to Serbia and Albania.

On the EU-Canada competition enforcement agreement, I have not seen any response from the Government to the question raised in the other place as to whether the UK would seek to participate in that agreement after Brexit. That might have to be preceded by the question of whether the UK will seek a competition enforcement co-operation agreement with the EU itself. As the Minister has pointed out, post Brexit, UK firms which do business in the EU 27 will be affected by this agreement. It would seem very unhelpful if the UK itself were not part of these arrangements, both between the UK and the EU and with third countries such as Canada. Could the Minister therefore let us know the state of play on those two dimensions, with the EU and regarding participation in the Canada agreement?

Could the Minister also amplify a little on what data protection safeguards are in the Canada agreement? He mentioned independent oversight. We will discuss on Monday, in Committee on the Data Protection Bill, the relevance of fundamental rights to data exchange. The Government do not plan to incorporate the Charter of Fundamental Rights, so there is an issue about the underpinning of fundamental rights on data protection in this country. That could, therefore, affect an adequacy decision by the European Commission on data transfers between the UK and the EU. Could he tell us whether, in the assessment of the Government, that matter has a relationship, as I would contend that it does, in situations such as this where data is going to be transferred, potentially between the CMA and the European Commission and then with third countries such as Canada? It seems to me that there are quite a few interlocking issues here, but particularly concentrated on the exchange and flows of data.

Is the UK going to seek an agreement with the EU on competition enforcement co-operation? Is it going to seek to participate in the EU-Canada agreement? Will a necessary prelude to both those instruments potentially mean that the UK has to secure an adequacy decision from the Commission on data transfers? I would be grateful if the Minister could answer those specific questions, either now or later. However, it will not surprise him to hear that, broadly, we on these Benches welcome the content of the Bill.

4.56 pm

Lord Mendelsohn (Lab): My Lords, I thank the Minister for his introduction to this Bill and for his affirmation that it is the Government's assessment that the fiscal impact and merits are proportionate. As has been explained, this Bill fulfils the provision in Section 8 of the European Union Act 2011, which requires Parliament to approve draft decisions made under Article 352 of the Treaty on the Functioning of the European Union. Parliamentary approval will enable the United Kingdom to vote in favour of the draft decisions. This is a short Bill with limited financial and significant legal implications, and one for which there is a consensus in favour. We on these Benches lend our support to it today.

While we remain a member of the European Union, we should of course remain committed to ensuring that we fulfil our responsibilities as a member state until the time of withdrawal, and continue to scrutinise EU matters before Parliament.

I welcome the opportunity provided by the Bill to pave the way for Albania and Serbia to become observers in the work of the EU's Fundamental Rights Agency. This is a provision afforded to nations like Albania and Serbia, which are not full EU members but have EU candidate status. We agree with the Government's assessment that gaining observer status of the Fundamental Rights Agency will assist both those countries towards potential accession to the EU, if that is their will, subject to the EU's policy of "firm but fair conditionality". Monitoring fundamental rights issues covered by the Fundamental Rights Agency will enable Albania and Serbia to adapt their domestic legislation appropriately and further embed a commitment to human rights in their national politics. This is an outcome I think we can all support. Observing the work of the Fundamental Rights Agency further marks an important step in the progression of Albania and Serbia— subject of course to the provisions that the Minister outlined in his speech—towards a deeper embrace of democracy, individual rights and anti-discrimination.

The Fundamental Rights Agency provides EU institutions and member states with independent, evidence-based advice on fundamental rights. Its mission is:

> "Helping to make fundamental rights a reality for everyone in the European Union".

Its areas of work will be familiar to many in this House and include supporting access to justice, children's rights, the integration of migrants and tackling racism, xenophobia and related intolerance or discrimination. These have remained the core values of Europe—ones which we hold dear and have been strong advocates for in Europe. It is very important that this move towards ever-greater co-operation with Albania and Serbia takes the form of participation in the Fundamental Rights Agency. While the Bill does not immediately confer observer status on Albania and Serbia, it paves the way for the EU-Albania and EU-Serbia Stabilisation and Association Councils to determine the terms of their observation, and is therefore an important step towards that outcome.

[Lord Mendelsohn]

However, I would like to ask the Minister whether the transition deal they are seeking with the EU would include membership of the Fundamental Rights Agency. Will it include a continued say in the potential accession of other countries to the EU, while we are under those arrangements? The European Commission President Jean-Claude Juncker has said there will be no further EU enlargement before the end of his term in office on 1 November 2019. However, under the Government's plans, we may at that point still be a member of various EU institutions. What are the Government's thoughts at this stage about whether, under a transitional Brexit arrangement, the UK will seek to support EU expansion to western Balkan countries?

The second aspect of this Bill is the EU-Canada competition enforcement co-operation agreement. The purpose is to give approval for the revision of the agreement of 1999. The new agreement would expand the scope of information exchange between the European Commission and the Canadian Competition Bureau for the important purpose of anti-trust and merger investigations. The proposed new agreement would strengthen the hand of regulators in ensuring fair competition, tackling anti-competitive behaviour and pushing back against monopolising activity. That is a task that demands extensive international collaboration—increasingly so as the global economy transforms. The sharing of data, evidence and other information and working closely with international partners is ever more central to an effective competition regime. International collaboration is crucial for effectively identifying and investigating anti-competitive behaviour and for preventing cartels, mergers that distort the market and other damaging business practices.

While we remain an EU member state, a better-informed European Commission also means a better-informed UK Competition and Markets Authority. However, will the Government clarify their plans to ensure continued exchange of information related to competition investigations between the UK and Canada, and between the UK and the EU, after Brexit? It does not seem at all clear what competition regime arrangements we are heading towards in either a transitional arrangement or a final agreement. Indeed, the proposed changes for which this Bill seeks approval, and which we support, none the less highlight the risk that the EU may after Brexit share information about EU-based UK companies with Canada but not with the UK. Will the Minister provide some reassurance on that point and clarify whether the exact same level of information exchange will continue unabated on day 1 after Brexit? It is vital that we avoid any cliff edges, so that our competition regime is not suddenly isolated or disadvantaged in its duties, even temporarily.

The two distinct aims of this Bill have the potential to contribute significantly in their own way towards a more prosperous and peaceful Europe. That is very clearly in our interests, whether we are a member of the EU or not. A stable, democratic south-eastern Europe and a strong, flexible international competition regime are important ambitions, and to that end this Bill marks a welcome step forward.

5.02 pm

Lord Prior of Brampton: I thank the noble Baroness, Lady Ludford, and the noble Lord, Lord Mendelsohn, for their broad support for the Bill. I suspect that the noble Baroness knows more about the history of those treaties than I do. I do not know why we require primary legislation: she may have a better guess than I do. But I am glad that she agrees with the substance of the Bill, at any rate. I note the ironies to which she referred in her speech. I more than note them, but I will resist the temptation to respond to them, if she does not mind.

Both the noble Baroness and the noble Lord raised issues about the Competition and Markets Authority post Brexit. The CMA is not a party to the agreement, so the agreement cannot simply be transitioned without amendment. Any future competition co-operation between the UK and Canada will have to be negotiated and agreed with the Government of Canada, and I suspect that the same has to be true about the relationship between the CMA and the EU post Brexit. That will have to be part of the negotiation. I of course entirely agree with the noble Lord that that will have to be negotiated during the transition period so that there is no cliff edge in that respect.

As far as data is concerned, the agreement contains general safeguards for the transfer of information and additional safeguards for the transfer of personal data. Personal data can be shared only with the express written consent of the person or company to whom it relates. I hope that that is enough on data for the noble Baroness today. If she would like me to write to her in more detail, she can let me know and I will do so, but I hope I have given her enough reassurance in that regard.

I think I have responded to the points raised by both the noble Lord and the noble Baroness. On that basis, I commend the Bill to your Lordships and ask that it has a Second Reading.

The Earl of Sandwich (CB): My Lords, I apologise for not intervening earlier, but I have a very brief question. The country called Kosovo is very dear in our hearts. It is situated between Albania and Serbia. Has the Minister's department or the Foreign Office conducted any impact assessment? There will inevitably be consequences for Kosovo, which has a special status, as the noble Lord knows, because it is not fully recognised by all members of the European Union.

Lord Prior of Brampton: I cannot answer that question today; I will write to the noble Earl. Is the question about the impact on Kosovo of Albania and Serbia joining the EU at some future point?

The Earl of Sandwich: Particularly the impact of this legislation.

Lord Prior of Brampton: I will write to the noble Earl.

The noble Lord, Lord Mendelsohn, asked what our view would be if, between now and our leaving the EU, perhaps during the transition period, the EU decided

it wanted to expand to cover, for example, Serbia, Albania and other countries. I think that our response is that we would not want to stand in the EU's way in such circumstances. I am sure that if it wanted to go ahead, it would be curmudgeonly for us to stand in its way.

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

Electricity Capacity (Amendment) Regulations 2017

Motion to Approve

5.07 pm

Moved by ***Lord Prior of Brampton***

That the draft Regulations laid before the House on 23 March be approved.

Relevant documents: 27th Report, Session 2016–17, from the Joint Committee on Statutory Instruments

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Prior of Brampton) (Con): My Lords, the draft instrument seeks to amend two secondary legislation packages for the capacity market. The powers to make this implementing secondary legislation are found in the Energy Act 2013, which, following scrutiny in the House and the other place, received Royal Assent in December 2013, with cross-party support. The five changes contained in the draft instrument are essentially technical to improve fairness, ensure the competitiveness of auctions and provide important clarifications to scheme operations. They were supported by the majority of respondents in consultation.

Before I explain the changes in detail, it may be helpful as a reminder to noble Lords if I say a few words of background about the capacity market itself. Ensuring that families and businesses across the country have secure, affordable energy supplies that they can rely on is a top priority. We are facing challenges to electricity security of supply resulting from the closure of older plant and the move towards less polluting, but more intermittent and inflexible technologies, such as solar, wind and nuclear. That is why we have the capacity market; this scheme ensures that there will be sufficient electricity capacity in Great Britain for this winter and beyond. It gives generators confidence that they will receive the revenue they need to maintain, upgrade and refurbish their existing plant, and to finance and build new plant to come on stream as and when existing assets retire. It also ensures that those who are able to shift demand for electricity away from periods of greatest scarcity, without detriment to themselves and to the wider economy, are incentivised to do so.

It does this by offering capacity providers, who are successful in competitive auctions held four years and one year ahead of delivery, a steady, predictable revenue stream on which they can base their future investments. In return for these capacity payments, providers must meet their obligations to deliver electricity or reduce demand at times of system stress or face penalties.

The capacity market is working. Fierce competition between providers in the auctions held to date meant that we obtained the required capacity at prices below the levels many had expected. That is good for consumers as it translates to lower costs on bills. The capacity market is driving investment in new, flexible capacity. The most recent four-year-ahead auction secured over 3.4 gigawatts of new-build generating capacity, including combined-cycle gas turbines, open-cycle gas turbines, small flexible engines and battery storage, as well as 1.4 gigawatts of demand-side response.

The clear message from industry and investors is that the mechanism retains their confidence and is the best available approach for ensuring our long-term security of supply. Industry and investors also stress that regulatory stability is crucial but that the scheme, operating in a rapidly changing environment, must be regularly reviewed to ensure it remains fit for purpose. The changes set out in the instrument are the latest in a series of amendments that ensure the scheme is kept relevant and workable. I will briefly expand on the amendments.

First, the instrument amends the method by which the costs of the capacity market are recouped from suppliers. It was felt the current supplier charge arrangements potentially gave an unfair advantage to embedded generators—smaller generators connected to the lower voltage distribution network—and could distort the outcome of the capacity auctions. That arises because, under current arrangements, suppliers are charged according to their share of total demand at peak times, measured by the demand they place on the transmission grid. That is their net demand. By contracting with embedded generators to run over winter peaks, some suppliers are able to reduce their net demand and therefore their share of capacity market costs, with others having to pay more. With some of the savings inevitably being passed on to the embedded generators, such arrangements unintentionally risk giving them a double payment for what is essentially only one contribution to security of supply. The instrument addresses the issue by amending the basis of the capacity market supplier charge and settlement costs levy from net to gross demand. That is a fairer way of sharing costs between suppliers: it ensures suppliers' costs reflect their overall demand and helps ensure a level playing field between different generators in the auctions.

Secondly, the instrument seeks to prevent new and refurbishing plants being overcompensated in the capacity market where they are also in receipt of aid through risk finance schemes such as the enterprise investment scheme, seed enterprise investment schemes and venture capital trusts. Currently, there is a risk of double subsidy, which would likely distort the outcome of the capacity auctions. To ensure fair competition and value for money for consumers, the instrument asserts that where a capacity provider has accessed investment through one of these risk finance schemes to fund capital expenditure, their capacity payments must be reduced until such a time as this has been off-set.

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These off-setting arrangements ensure that the total amount of aid is capped at the amount awarded in the capacity market auction.

Thirdly, the instrument seeks to remove an inconsistency in the way demand-side response capacity is de-rated relative to other capacity types. De-rating is the process by which the volume of a provider's capacity is adjusted to reflect the reliability of the technologies being used. Unlike other participants, demand-side response providers can nominate a lower amount of capacity to bid into an auction than the capacity they estimated at pre-qualification stage, but that nominated amount is not currently subject to de-rating. The instrument addresses that by ensuring that the nominated value is de-rated, thereby improving the overall reliability of the capacity that is procured. I hope noble Lords have got that.

Fourthly, the instrument clarifies the requirement that capacity market participants maintain credit cover until they have fully discharged all the requirements against which the credit cover has been lodged. In addition, the instrument puts beyond doubt that a party's credit cover will not be drawn down where a termination fee is due unless the termination fee is unpaid.

Finally, the instrument amends the name, but not the substance, of the capacity market warning—a notification that must be issued in specific circumstances under the scheme. Revision to the capacity market notice better reflects the nature of the notification and will be clearer for participants.

My department published two consultations on these changes during September and October last year. In total, 38 responses were received across the two consultations. There was significant support for the majority of the proposals raised. I look forward to hearing what noble Lords have to say about the proposed changes.

Baroness Maddock (LD): My Lords, I am grateful to the Minister for reminding us of the long hours we spent on the primary legislation with the noble Lord, Lord Grantchester, who is in his place on the Labour Front Bench. We are sadly missing a previous Member of this House, Lord Jenkin of Roding, who understood absolutely all this very complicated legislation. Because it is so complicated it is not surprising that after a period of time we need to make some adjustments to it. It would appear that most people involved in this complicated market are in favour of the adjustments the Government wish to make to the previous legislation.

However, one of the areas in which I was involved in my early days in this House was the committee that looks at secondary legislation. In those days we looked quite carefully at the way government departments deal with these matters. There are rules laid down. Given that the way we deal with secondary legislation means we cannot really change it very much, it is important that government departments stick to the rules. I know that committee has highlighted this over the years. I draw the Minister's attention to the fact that although they held consultations at the end of 2016, one of which closed in December, they did not respond to them until 22 March 2017. We will discuss another instrument in a moment and I will raise similar issues then.

I am happy to support what the Government are doing. It seems uncontroversial, but I charge the Minister, now he is in the department, with looking at the way they follow the rules on how we consult on and deal with secondary legislation.

Lord Grantchester (Lab): My Lords, I also thank the Minister for his introduction to the regulations before your Lordships' House. I agree with him that they are by and large technical in nature. I second the remark by my noble friend on the Liberal Democrat Front Bench that we miss Lord Jenkin for all the understanding he brought to the House on these quite technical matters.

We are in favour of the amendment regulations tonight because they introduce refinements, clarifications and new wording to manage the system around the operation of the capacity market. From my reading of the Explanatory Memorandum, which is excellent—I thank the Minister's department for its clarity—I commend the Minister and his team for introducing these regulations to correct the imperfections in the original instrument, which could have led to double payments and loopholes that could have been exploited to the detriment of the consumer. However, that is not to say that there is universal approval for the capacity market. There is a debate to be had regarding whether it has achieved its objectives and whether it is good value for money. While strictly speaking the capacity market is not the subject of the regulations, I nevertheless have one or two questions to put to the Minister on how it is operating.

I liken the capacity market to a quasi-insurance policy. I agree that the lights going out would be a catastrophic event with severe consequences for the Minister, his Government and the nation. The capacity market is designed to ensure that this will never happen. This winter, 2017-18, is the start of the first delivery year and the date from which payments will start, even though there have been five capacity market auctions to date. The contracts for these auctions are for either one year or four years. What is the grossed-up value of these contracts, which I understand is somewhere near the total cost of the capacity market for availability of energy sources until 2021, excepting that there are also the one-year contracts to be awarded for the next three years? Is it useful to consider this figure in assessing the value-for-money aspects of the policy against achieving its objectives? The Minister in the other place suggested that the increase in customer bills amounted to £2 per customer per year. My question to the Minister is to understand the grossed-up figure that has been paid to generators and, from that, the size of the bill to the public.

The answer to the question regarding the success of this quasi-insurance is mixed. First, there will be no blackouts—I am sure that the Minister will be able to sleep well at night—but perhaps he could give some assurances regarding the "black start" that would be needed to re-energise the network following any blackout.

Secondly, has the certainty of return from the capacity market brought forward investments, especially in new gas build? Here, the policy does not seem entirely to be working. Do the plans to which the Minister drew attention in his opening remarks finally translate into certainty of new build being on the horizon?

Thirdly, is the cost to the consumer worth while, and has it been effective? I think that I can reply on the Minister's behalf and say that to a certain extent it has already brought benefits in that the spikes in cost in marginal supplies to the grid have been reduced. Volatility has been lessened, which has already reduced net costs through bills to the consumer. Nevertheless, how likely would blackouts have been without the existence of the capacity market? That is the ultimate insurance question.

Lastly, has the capacity market brought flexibility and a diverse mix of energy sources to security of supply? On the demand-side response, the auctions are only for one-year contracts, which could hardly be described as bringing certainty. Can the Minister confirm whether there are plans to bring forward four-year auctions for DSR? Have the Government considered bringing forward the statutory review date of this policy from being four years into its operation? There could be other points along the way that are sooner than that at which some of these questions could bring forward further amendments.

Lord Prior of Brampton: My Lords, I think that I can thank both the noble Baroness and the noble Lord for supporting the regulations. They are pretty technical and complicated, but they correct perhaps inevitable imperfections in the original legislation passed in 2013.

The noble Lord, Lord Grantchester, raised a number of other more profound issues which I hope he will agree do not pertain directly to the matter in hand, but perhaps I may try to answer some of the questions that he raised. I think that his fundamental question was whether the capacity market is value for money. Using his analogy of the insurance market, the total gross premium that we have paid over the period to 2020-21 is £3.35 billion. That is the premium that we have paid to obviate the possibility of the lights going off over that period. Whether or not that is value for money, the noble Lord will have to draw his own conclusions. I think it is quite hard to assess that, except for the fact that if the lights did go off it would be a catastrophe. In the context of the British economy, that may be a premium worth paying. That is a subjective view, and he will have his own thoughts on that.

The noble Lord raised a number of other issues, to which I do not have a reply—at least, I cannot reply in the way that I would like to be able to. He asked four other questions. He answered one of them himself, fortunately, so that leaves me three other questions to address. One was: has this brought forward new investment in generation? The answer is that it has. I mentioned some in my speech. Whether it has brought forward enough is probably the question that he was asking, and he related that to the nuclear investment. I would like to think about that, if I may, and write to him afterwards. Related to that, he asked: has this brought forward new alternative capacity? I guess by that he meant wind, solar and the like. The answer has to be: yes, it has.

Lord Grantchester: I agree with a lot of what the Minister has said but nevertheless draw his attention to the fact that, as yet, onshore wind is not allowed to compete.

Lord Prior of Brampton: The noble Lord is absolutely right: because it is an intermittent source, it is not eligible for the capacity market. I will have to write to him about whether or not the capacity market itself has brought forward alternative capacity beyond that which I mentioned earlier.

Finally, he asked about the statutory review date in the primary legislation. Again, I will have to look and see when that date is and write to him.

I should also respond to the noble Baroness, Lady Maddock, who asked about how we responded to the consultation. I apologise if we did not follow the rules correctly. We will do better next time.

On the basis of that response and the letters I intend to write to the noble Lord, I commend these regulations to the House.

Motion agreed.

Electricity Supplier Obligations (Amendment and Excluded Electricity) (Amendment) Regulations 2017

Motion to Approve

5.27 pm

Moved by ***Lord Prior of Brampton***

That the draft Regulations laid before the House on 28 March be approved.

Relevant documents: 32nd Report, Session 2016–17, from the Secondary Legislation Scrutiny Committee, 27th Report, Session 2016–17, from the Joint Committee on Statutory Instruments

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Prior of Brampton) (Con): My Lords, these regulations amend the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015. They make provision for indirectly exempting eligible energy-intensive industries from part of the cost of funding the contracts for difference scheme. They aim to avoid putting these industries at a significant competitive disadvantage.

The transition to low-carbon—and the securing of our energy supplies—must be done in a way which minimises the cost to business and domestic consumers. Our industrial gas prices are internationally competitive but our industrial electricity prices have moved out of line with other European countries. The UK's industrial electricity prices for large consumers in the EU 15 were the highest after Italy's in 2016, as set out in *The Clean Growth Strategy*. This places UK electricity-intensive manufacturing industries at a competitive disadvantage and increases the risk of some deciding to relocate.

In order to meet our legally binding climate change and renewable energy targets, we have implemented a number of policies designed to incentivise generation

[Lord Prior of Brampton]
of electricity from renewable resources. The costs of these policies are recovered through obligations and levies on suppliers, which pass these additional costs on to their customers. This results in electricity bills being higher than they otherwise would have been.

The CfD scheme is such a policy. It gives greater certainty and stability of revenues to electricity generators by reducing their exposure to volatile wholesale prices. The scheme is financed through a compulsory levy on electricity suppliers, which pass the costs on to domestic and business users through their electricity bills. The levy currently stands at almost £2.52 per megawatt hour. The funding costs of the CfD can reduce the attractiveness of the UK as an investment location and increase the risk that companies will invest or even move elsewhere. This is a scenario we wish to avoid, particularly as we exit the EU.

We intend to safeguard the competitiveness of those energy-intensive industries that are exposed to the additional costs arising from the CfD by exempting them from a proportion of these costs. An exemption scheme allows for real-time changes in energy use to be taken into account and provides certainty to business. The European Commission approved our state aid proposal to exempt certain EIIs from the cost of the CfD in December 2015.

The statutory instrument before us updates and improves the 2015 regulations. It brings them into line with the terms of our state aid approval, allowing us to commence the scheme. We recognise that the exemption will redistribute the cost of financing the CfD among other electricity consumers. We estimate that this will increase annual household electricity bills by around £1 between 2018-19 and 2023-24. None the less, we have taken steps to reduce consumer bills, which are now lower than they might otherwise be. Indeed, our energy efficiency policies reduced the average household energy bill by £161 in 2016. After taking account of the cost of policies for delivering cleaner energy, supporting vulnerable households and investing in upgrading our buildings, there was a net saving of £14 on the average household energy bill in 2016. Energy efficiency is the best long-term solution for tackling fuel poverty.

Since April, 70% of the £640 million per year energy company obligation has been focused on low-income households through the affordable warmth part of the scheme. This will upgrade the energy efficiency of more than 300,000 homes per year, tackling the root cause of fuel poverty. Certain households can also get £140 off their electricity bill for winter 2017-18 under the warm home discount scheme.

These regulations amend the original 2015 regulations. These amendments are necessary to bring those regulations into line with the Commission's state aid approval. We are also making certain technical changes to the regulations to improve the administration of the scheme. The effects of the amendments include, among others: changes to eligibility; allowing new or restructured businesses to claim the benefit of the exemption; a requirement on beneficiaries to notify us, to help us ensure that they receive the exemption to the correct level and only if they are eligible; and allowing a company to apply for the exemption if it does not obtain electricity directly from a licensed electricity supplier.

The House of Lords Secondary Legislation Scrutiny Committee raised a number of points relating to consultation and timing, provision for direct competitors and the impact on consumer bills. I will summarise the main points. The policy to exempt eligible energy-intensive industries from a proportion of the costs of CfD had been subject to three previous consultations. The third consultation covered technical amendments to the regulations rather than policy changes, as the policy had already been consulted and agreed on previously. Our original intention was for these regulations to come into force at the end of February. However, some of the technical issues needed further consideration to ensure that the amended regulations achieve their aim. We involved stakeholders throughout the whole of this process.

Our original intention had been to provide relief to direct competitors—businesses which do not meet the eligibility criterion on electricity intensity but which manufacture the same product as eligible companies in the same sector. This was to create a level playing field and prevent market distortions within sectors. We submitted a state aid notification to the European Commission to address this issue. However, the Commission does not think our proposal is compatible with the relevant state aid guidelines. We are currently considering alternative options which may be open to us within the scope of these guidelines.

These draft regulations will make the necessary changes to the 2015 regulations to allow us to exempt eligible energy-intensive industries from up to 85% of the indirect costs of funding the CfD scheme. As well as providing these businesses with greater long-term certainty, the measures set out in these regulations will reduce the price differential between eligible energy-intensive industries and their international competitors, mitigating against the risk that these companies are put at a significant competitive disadvantage and might choose to move their production abroad. I commend these regulations to the House.

Baroness Maddock (LD): I am grateful to the Minister for ranging a little wider than the regulation before us. I was going to ask him about how some of this fitted in with the Government's wider policy aims, particularly on decarbonisation. I recognise that industries that are intensive users of energy find some of the decarbonising regulations quite difficult. I recognise that there is a balance to be struck, but I would be interested to know whether the department has looked carefully at or has any figures about what the balance will be on decarbonisation after this.

The Minister also replied a little to the criticisms of the Secondary Legislation Scrutiny Committee. I read with interest what it had to say because six weeks are recommended for consultation, but there were precisely five weeks, and it is rather bad practice to consult across the summer holiday period, which is what the Government did. That was pretty unfortunate. They were trying to get regulations in place by February 2017. In the end, they did not come until March, so I

think something is not working quite right in the Minister's department. He is fairly new there, so I challenge him to see whether in the next year it can have less criticism from the Secondary Legislation Scrutiny Committee when it brings forward matters such as this.

Apart from that, I recognise that the Government are trying to balance several things: how they can help industries that are intensive users, the regulations for decarbonisation and state aid rules from Europe. I recognise that that is not easy. I hope they have it right. I cannot profess to understand some of the very complicated matters in these types of regulations—I wish we had Lord Jenkin of Roding here as he would put us right if we had got it wrong. We are happy to support these regulations as far as they go. I hope we are not supporting something that we will regret in future.

Lord Grantchester (Lab): I thank the Minister again for his clear introduction to the regulations before the House tonight. As on the previous regulations, the amendments to the 2015 regulations are largely technical, although in this case it is largely as a result of receiving state aid approval which requires these amendments. The Government have also brought forward other technical amendments to clarify the 2015 regulations and to improve their workings. I am content to approve the regulations as they reduce the disadvantages to energy-intensive industries, but they give rise to many serious questions concerning the impact of the policy and the relative effect on different businesses and their competitiveness.

The main contentious issue arises from the exclusion in these regulations of the intended extension of relief to energy-intensive businesses that do not qualify as having high energy costs as specified in the order. While the European Commission was happy to approve the 2015 regulations, subject to the alterations we are debating tonight, it was not happy to include the extension the Government sought for businesses other than those specified as being energy intensive.

In the 32nd report of your Lordships' Secondary Legislation Scrutiny Committee, dated 27 April 2017, it seems the Government are happy to drop this altogether with the thought that the CFD exemption will not have a significant effect on competition within the UK after all. Can the Minister clarify what sort of businesses these are, what their response is to the change in the Government's position and what the cost is of the competitive disadvantage that they no longer consider significant? Has the assessment changed following dialogue with the commission? The Government's answer refers only to the UK. What is the competitive position of these excluded businesses internationally? On Brexit, perhaps the Minister could outline the Government's intention regarding state aid provisions that are part of EU membership once we leave. Is it the Government's intention merely to amend the regulations to include the original intention once the UK has indeed left the EU?

The Secondary Legislation Scrutiny Committee was also critical of the Government's short consultation in summer 2016—the noble Baroness, Lady Maddock, drew attention to this feature of the department as well. Perhaps the complexity of the provisions and the adjustments in the Government's response could entail further and more meaningful consultation regarding the numerous interactions between various government policies influencing renewables and the energy-intensive industries. There are also many questions around the costs of the exemptions for energy-intensive industries on other business and consumers.

One of the questions debated in the other place concerned the fall in the costs added by these regulations, from £1.80 to £1 a year on consumer bills. The Minister in the other place seemed unable to explain the significant drop. What is the grossed-up cost of this measure? Is that what has changed, or the estimates of the number of businesses in the intensive energy sector? How is the discrepancy to be explained? This highlights the complexity in analysing and understanding the impact on businesses and how they will react.

The Government have said they are developing a package of measures to support businesses to improve their energy use and efficiency. The Government are said to be revitalising the Green Deal. They are also considering the costs to the charitable sector. Could the Minister add to these statements tonight and give any indication of timescales? The Government have launched an independent review of the cost of energy, to be chaired by Professor Dieter Helm, in response to the report of your Lordships' Economic Affairs Committee. Can the Minister update the House on this?

The costs to the consumer of the various government schemes are also subject to the levy control framework. This has also come in for severe criticisms from many sides, including the National Audit Office. Once again, the Government have realised they must have a rethink and start a review. How is that review progressing?

Although the regulations today can be approved in so far as they clarify various measures the Government are undertaking, nevertheless there are huge issues around the Government's framework that demand swift resolution.

Lord Prior of Brampton: I thank the noble Baroness and the noble Lord for supporting these regulations. The noble Baroness referred to the balance in recognising that some industries are not able to compete on a level playing field if they are heavily penalised by their electricity costs and that can come into conflict with our decarbonisation policy. She is of course absolutely right that it is a very difficult balance. The steel industry is an example of a very energy-intensive industry where if we did not address this balance, we would have no industry at all. There is a balance to be had. After all, from the planet's point of view, if all we succeed in doing is moving the steel industry from here to another country, we have not improved the lot of the planet at all in the process. She is quite right to say there is a balance, and it is a balance that we are constantly trying to get right. I note the noble Baroness's criticisms—indeed, her strictures—about the way in which we conducted this consultation. I have taken them on board and I am sure the department will do so too.

[Lord Prior of Brampton]

The noble Lord, Lord Grantchester, raised the relative impact on competitors because the European Commission did not accept our argument. I think we have a serious argument here. It could be that there was a new process for making steel that was less energy-intensive and did not qualify for the exemption. That would put it at a competitive disadvantage in relation to the more energy-intensive process of making steel that did qualify, thereby achieving the reverse of what we intend to do, which is to move towards less energy-intensive methods of making steel, chemicals, glass, ceramics or, for that matter, anything else. So our argument to the Commission was a good one and we should carry on pursuing it.

The noble Lord then raised the issue of what we are going to do about the state aid provision programme post-Brexit. I can say only that that is part of the negotiations that are going on and it would not be for us to decide what to do about that post-Brexit although, depending on the trade agreements negotiated with Europe, there will be some understandings about that issue to avoid unfair competition between us and our European friends.

The noble Lord asked about the analysis behind why household bills changed from £1.80 to £1. The update from £1.80 to £1 was mainly because we reduced our estimate of the volume of electricity consumed by eligible energy-intensive industries. We have also updated our estimates of CfD policy costs and volumes of electricity sales to households and other consumers. I have to say I am just reading out my brief; I do not know whether or not it answers the question. I gather that it does. Excellent.

I believe the independent review by Dieter Helm is out tomorrow. I stress that it is an independent review, not a government one. I do not know what is in it but I think there will be lots that is of interest to the noble Lord when he reads it. If I have missed out any of the questions raised, I will write to noble Lords later. On that basis, I commend the draft regulations to the House.

Motion agreed.

House adjourned at 5.47 pm.