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PARLIAMENTARY DEBATES
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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 1 November 2017

3 pm

Prayers—read by the Lord Bishop of Leeds.

Oaths and Affirmations

3.05 pm

Lord Rogers of Riverside made the solemn affirmation, and signed an undertaking to abide by the Code of Conduct.

Overseas Development
Question

3.06 pm

Asked by ***Lord Collins of Highbury***

To ask Her Majesty's Government, further to the answer by Lord Bates on 3 July (HL Deb, col 670), whether they have concluded their consultation on changing the rules relating to overseas development assistance; and if so, what conclusions they have reached.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, we have engaged widely with NGOs across government and with international partners on how to improve ODA rules. Based on that, the International Development Secretary set out a vision for ODA reform at the DAC high-level meeting on Monday and Tuesday of this week. This vision is based on four key principles: first, to improve the responses to natural disasters and support vulnerable countries; secondly, to build peace and security; thirdly, to review multilateral organisations; and, fourthly, to make aid more effective.

Lord Collins of Highbury (Lab): I welcome the noble Lord's comments. However, the problem I have is that the Conservative Party manifesto demanded change but did not set out what that change should be. The 2016 changes took on board most of those comments but representatives at the DAC meeting this week did not agree with the Government and asked for a proper assessment of the changes that had already been made. Will the Minister and the Government work with our partners at DAC to build a consensus rather than working unilaterally, as was threatened in their manifesto?

Lord Bates: If we had worked unilaterally, we would not have achieved the advances that we did yesterday. I should make clear what those advances were. By working together we managed to increase the coefficient for peacekeeping forces from 7% to 15%. The noble Lord asked about the difference between the position that pertained earlier in the year and now. The difference is that category five hurricanes have hit the Caribbean and caused extensive, catastrophic loss to some small island communities that lack the capacity to rebuild. We consider it important that the rules must be fit for purpose, and that they were lacking in that regard. That is the reason why the Secretary of State secured an important advance so that when an island falls back under the threshold for overseas development assistance as a result of a catastrophic loss, they can be readmitted to the list. That is a major advance. Small countries and small islands welcome it and I hope the noble Lord will too.

Baroness Sheehan (LD): My Lords, as the Minister has already said, the government press release yesterday said that DAC has agreed to work to create a new mechanism to readmit countries previously eligible for ODA back on to the list of ODA-eligible countries if their income per capita falls low enough. I know that the Secretary of State is touting this as a great victory but does the Minister really believe that the income per capita of people in the British Virgin Islands, which is currently greater than in the UK, will drop to a level which will allow it to qualify for ODA any time soon? After all, the hurricanes destroyed shoddily built houses that poor people lived in, not the digitally insulated, prosperous world that those who live in the tax haven enjoy.

Lord Bates: It may not be the case in the BVI, but it certainly may well be in countries such as Anguilla which have only recently graduated from the list of least developed countries. We are talking about losses that would be equivalent to the entire GDP of the country, so it is important that we offer assistance to them. After all, the primary purpose of aid is to help people in need—people in poverty—and for the purpose of economic development. In my view, and in the view of the Secretary of State and the DAC earlier this week, all those criteria apply in this case.

Lord Forsyth of Drumlean (Con): Does my noble friend not think that the Secretary of State is to be congratulated on ensuring that money is directed where help is needed and on not being intimidated by bureaucratic rules which have resulted in people in need not being helped?

Lord Bates: My noble friend is absolutely right. This country has a proud record of providing leadership in the international community in the area of aid and assistance. It is important to put on record in the case of the Caribbean that the total assistance we provided immediately was some £62 million, of which only £5 million was ODA eligible. So the fact that it was not ODA eligible did not stop us from helping those in need, but because its purpose was obviously humanitarian and obviously going to people in need and distress, it should count.

Lord Foulkes of Cumnock (Lab): My Lords, I commend the Minister on the work that he is doing in DfID—he is an excellent Minister. As he goes around the world, he will have seen the excellent work being done by the European Union in its assistance programme, particularly in countries where DfID does not operate. Is not that assistance in grave danger of being undermined if we withdraw from the European Union?

Lord Bates: It is not a question of if we withdraw: we are withdrawing from the European Union. The point is that our contribution to European Union development funds across all headings is £1.2 billion or £1.3 billion and that, if that money comes back to the UK, it will be used for the poorest people in the world. The only difference is that we will choose where it goes. We may well choose to continue to work with our partners in the European Development Fund, for example, which sets a terrific example of assisting in development around the world and is quite effective. However, that will happen if we choose to do so, as it will be our choice.

Lord McConnell of Glenscorrodale (Lab): My Lords, on that point, can the Minister confirm that the Government's plans for a transition period immediately following the date of Brexit would include our contributions to those European development funds that are so vital in so many parts of the world?

Lord Bates: As the noble Lord knows, those contributions are germane because they are very much part of the exit negotiations. We make a substantial contribution and our European colleagues are keen to retain a close relationship with the UK in respect of these things. We therefore want to work closely with them on these matters to see whether that is possible. At the moment, the EDF, to which I referred, is available only to member states, so there would also have to be changes on their side for us to continue.

Lord Cormack (Con): My Lords, is not the unfortunate logic of the noble Baroness who spoke from the Liberal Benches that in your anxiety to deprive the rich, you are prepared to further impoverish the poor?

Lord Bates: You could construe it in that way, but another, perhaps a little more generous interpretation, would be to look at the case of the BVI. Its population is about 28,000. We follow GNI limits, which are $12,754 for graduating. One billionaire can make a profound distortion to the noted wealth of that country. In the BVI there are some very poor and needy people who lack the resources to rebuild their communities. We are committed to them not only because they are overseas territories but because of our humanitarian commitment.

Lord West of Spithead (Lab): My Lords, our Armed Forces have a great tradition of helping around the world when there are catastrophes. We used to be able to do this easily because we had decent-sized Armed Forces. Now they are very small, does the Minister not believe that the defence budget should get recompensed when we give this aid in all parts of the world?

Lord Bates: That was very much one of the points that we made—we said that we wanted to see that coefficient increase. The military response in the Caribbean was absolutely essential and critical. HMS "Ocean" was there and 2,000 troops helped with the rebuilding process and the reconnection of power lines. They were a great tribute to, and played a great part in, the Government's humanitarian effort.

South East Coast Ambulance Service

Question

3.15 pm

Asked by ***Baroness Smith of Basildon***

To ask Her Majesty's Government how many 999 calls were made to the South East Coast Ambulance Service on 23 September to which no ambulance was sent; and what was the average waiting time for ambulance attendance on that day in that area.

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, we do not centrally collect that level of information on ambulance trust activity. However, the latest available data published by NHS England shows that in August 2017 the South East Coast Ambulance Service received 68,855 emergency calls, 52,832 of which received a face-to-face response from the service. The median response time for emergency category A calls—that is, the most serious— during that month was 8.7 minutes.

Baroness Smith of Basildon (Lab): My Lords, that does not really answer my Question. I could have picked any day to ask about but I specifically chose 23 September because on that day Bognor Regis Town Football Club called 999 six times and eventually, after almost three hours, had to take an injured player in considerable pain to hospital by car. That is not an isolated incident. This service is in special measures. A recent report exposed a toxic atmosphere, a culture of bullying and a fear of speaking out. The CQC confirmed that the service is inadequate. The noble Lord quoted figures at me but what is really important is that the response rate for 999 calls is getting worse. Only 50.8% of Red 1 calls and 39% of Red 2 calls—both of them codes for life-threatening situations—attended within the Government's eight-minute time limit. This is the worst performance ever in the UK since these records have been kept. Will the Government now accept their responsibilities to the public and to National Health Service staff and step in to ensure both proper funding and decent and effective management?

Lord O'Shaughnessy: I would have liked to have given data at the level that the noble Baroness asked for but it is not available in a way that has been centrally assured by NHS England. I have a responsibility to provide good-quality, verified data, and I hope she will understand that. However, the bigger point, with which I do not disagree, is that this is the worst-performing ambulance trust in the country, and that is the case whether you look at calls data or performance standards for call-outs. The question, as she rightly points out, is what you do about it. The CQC rated the service as inadequate about a year ago and has just followed up. Unfortunately, it is still inadequate, although the CQC says that some progress has been made. About half a million pounds of special measures funding has gone in. A new CEO has been in place since spring this year, and the local sustainability and transformation partnership has asked the ambulance trust for a business-case bid for transformatory funding. Therefore, I realise that

this is playing catch-up, because clearly the level of service is not good enough. I understand that the latest data month on month—that is, September compared with July—shows some improvement since bottoming out in July, but I agree with the noble Baroness that it has a long way to go.

Baroness Andrews (Lab): How many ambulances are there across East Sussex and West Sussex at the moment compared with five and 10 years ago? If it is difficult to collect that information centrally, can the Minister make efforts to make it available to us in some other way? I ask that because I had reason to be involved with the ambulance service earlier this year. There is a terrific amount of stress and pressure on paramedics, although they do the very best they can. I would also like to know how many paramedics there are in the service compared with five and 10 years ago. After two years of special measures, it is really worrying that this trust is failing on basic issues of patient safety and response times.

Lord O'Shaughnessy: I do not disagree with the noble Baroness. I do not have the specific data on the number of ambulances in that area but I can tell her that the paramedic workforce in that particular ambulance trust increased from 635 in May 2010 to 992 in July 2017. So there are more people, but there is a huge growth in demand, which they have to meet. However, the truth is that there are other ambulance trusts all over the country that do a much better job with similar resources. Therefore, as much as anything, it is a question of leadership and management, and that is part of the special measures process.

Lord Selkirk of Douglas (Con): My Lords, does the Minister accept that in the case of medical emergencies the wise use of defibrillators can, and sometimes does, make the difference between life and death?

Lord O'Shaughnessy: My noble friend is quite right to make that point. There has been a big effort to install defibrillators in a number of public settings—they are throughout the Palace of Westminster and many other workplaces. They make a big difference to that immediate response where it is needed.

Baroness Jolly (LD): My Lords, around a million calls a year are made to the South East Coast Ambulance Service and there have been many reports of technical problems with the service. According to a CQC report, the first reports of these malfunctions, which affected the recording of calls, occurred in June 2016. Does the Minister have any information on how many recordings were lost? Have the specific circumstances around any patient's arrival to NHS premises been lost?

Lord O'Shaughnessy: The noble Baroness is right about the technical problems. I understand that two new systems have been put in to address those; one is a computer-aided dispatch system and the other is the moving of the emergency operating centre to new premises. That is part of the special measures investment that has been taking place to improve the quality of service.

Terrorism: Sexual Violence

Question

3.20 pm

Asked by ***Baroness Cox***

To ask Her Majesty's Government what is their response to the recommendation of the Henry Jackson Society's report *Trafficking Terror* that an International Legal Task Force should be established to gather evidence on sexual violence as a tactic of terrorism.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, we condemn the use of sexual violence by terrorist organisations and are committed to holding perpetrators to account. UK law enforcement agencies are already assessing the threat posed by terrorism and human trafficking globally with our multilateral and bilateral partners. Our team of experts is also supporting efforts to gather evidence of sexual violence in conflict. The report makes a number of valid points and we will give them due consideration.

Baroness Cox (CB): I thank the Minister for his sympathetic reply. Is he aware of the scale of money flowing from modern slavery to terrorist organisations such as Islamic State and Boko Haram? According to the report, from just 16 victims taken hostage, Islamic State gained between £98,000 and £198,000 from ransom payments. Slavery is also used to provide a plethora of non-monetary incentives to attract and reward terrorist fighters. Will Her Majesty's Government consider the broader implications of laws, including the Modern Slavery Act 2015 and the Terrorism Act 2016, to reflect adequately the spectrum of crimes committed by individuals using sexual slavery and violence as a tactic of terrorism?

Lord Ahmad of Wimbledon: I assure the noble Baroness that we not only condemn it but act on that. She will be aware of our action at the highest level at the UN Security Council with the passing of Resolution 2331, which addresses the nexus between human trafficking, sexual violence and terrorism. More recently, as I have said to the House, in September this year at the UN Security Council we passed a resolution specifically to set up an investigative team to gather greater evidence on sexual violence and crimes committed by Daesh in Iraq. That demonstrates the action we are taking at an international level to ensure that we tackle this head on.

Lord Collins of Highbury (Lab): My Lords, this is one of those critical issues that requires interdepartmental examination and is not just about UN activity. The relationship between human trafficking, sexual violence and terrorist groups is complex. Will the Minister assure us that the departments in Whitehall are working together to examine this so that consideration is given to both international law and domestic law?

Lord Ahmad of Wimbledon: I can give the noble Lord that assurance. Only two weeks ago, the Home Secretary, Amber Rudd, chaired a meeting of Ministers,

[Lord Ahmad of Wimbledon]
including those from the Foreign Office and DCLG. They looked at the action we are taking domestically on the primary issue of modern slavery and the referral mechanism, which includes support for victims of human trafficking. The meeting also brought together elements of international action and our bilateral representation and leadership on this issue, and how modern slavery and human trafficking is one of many instruments used by terrorist organisations.

Baroness Afshar (CB): My Lords, are the Government aware that by misunderstanding or misrepresenting Islam, this kind of slavery is now extended to children as young as nine years old? The issue is becoming much more serious and needs to be comprehensively dealt with in the localities. Intervention is essential at the point where it starts.

Lord Ahmad of Wimbledon: I assure the noble Baroness that I understand that issue very well. Around the world, organisations such as Daesh, Boko Haram and al-Shabaab erroneously say that their actions are inspired by Islam, by religion. What religion? What humanity? We condemn them totally and unequivocally. On a practical point, I was in New York earlier this week and met the Deputy Secretary-General, Amina Mohammed. We discussed some of the steps that have been taken in Nigeria—including the very point the noble Baroness alerts us to—about working with communities and clerics on the ground to ensure that the poisonous narrative the terrorists present can be unequivocally condemned by the religious leaders who represent that faith.

Baroness Burt of Solihull (LD): My Lords, the excellent report of the Select Committee on Sexual Violence in Conflict recommended, among other things, a review of local legislation. Will the Minister update the House on the Government's progress in implementing this? Does he agree that it is in our interests to lead the international task force recommended in the Henry Jackson Society's report to show the international leadership that we are capable of and to help cut off funding for terrorism on the streets of Britain?

Lord Ahmad of Wimbledon: The noble Baroness raises a vital point and I agree with her totally. We also need to demonstrate local action. However, as she will be aware, such local actions are reflective of the international human trafficking that occurs. On the specific issue of preventing sexual violence, we have also led the way. She may be aware that over the past 12 months we have had 20 deployments through 10 countries. That demonstrates our commitment to building international co-operation on tackling not only sexual violence but what leads to human trafficking in that respect.

Lord Hylton (CB): Does the Minister accept that there are three stages to this business? First, you have to gather the evidence; then you have to have a prosecutor; and, finally, you have to have a court or tribunal to try cases. Will the Government try to co-ordinate all three stages?

Lord Ahmad of Wimbledon: The noble Lord is correct. That is why I again allude to the Security Council effort made this year in September, where the resolution passed does exactly what the noble Lord suggests. It is about gathering evidence, building the capacity of the team gathering that evidence, and then bringing terrorist groups to justice. This, of course, is focused specifically on Daesh. We want to see how we can replicate the effort to bring international co-ordination on this particular activity so that we can hold the perpetrators to account.

Mental Health at Work

Question

3.27 pm

Asked by ***Lord Haskel***

To ask Her Majesty's Government what is their response to the review of mental health and employers, *Thriving at Work*, published on 26 October.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, I am pleased to say that, as the Prime Minister announced, we have already accepted the review's recommendations that specifically apply to the Civil Service. In addition, the Government will support and encourage the wider public sector overall in taking forward the recommendations wherever possible. We are still considering the wider recommendations and plan to respond to the review later this year.

Lord Haskel (Lab): My Lords, I, too, welcome what the Prime Minister said about implementing this report. She spoke about the Civil Service and the NHS. What about other sectors of the public service where people work under stress—the police, the fire service and, yes, education? Will the Government make sure that the implementation of this report becomes part of the inspection regime by organisations such as Ofsted, Her Majesty's Inspectorate of Constabulary or even the Care Quality Commission?

Baroness Buscombe: My Lords, I entirely agree with the noble Lord's response to the review. It is very important that we encourage all across the public and private sectors to take up the very important recommendations made in it. The Prime Minister said that vital to this priority is the need to have a comprehensive cross-government plan which transforms how we deal with mental illness, not only in our hospitals and crisis centres but in our classrooms, on our shop floors and in our communities. It involves everyone in society. All of these issues will impact on overall well-being, occupational health and the ability to work.

Baroness Eaton (Con): My Lords, we know that work can be extremely helpful to those with mental health conditions. Can my noble friend tell me what is being done to support people with these conditions to get back to work?

Baroness Buscombe: Indeed I can. We are more than doubling the number of employment advisers embedded in the Improving Access to Psychological Therapies programme to enable more people to receive integrated mental health and employment support so that they can remain in, return to or find work. We have developed an enhanced mental health training programme for jobcentre work coaches—and, following testing, we expect to make it available later this year to all work coaches who would benefit from it.

Lord Fox (LD): My Lords, the Minister will note that the report endorses the idea of the well-being premium. This was developed by the West Midlands Commission on Mental Health, which was chaired by my right honourable friend in the other place Norman Lamb. The approach is designed to incentivise employers not only to improve the mental health of their employees but to address their physical health and obesity issues. Does the Minister agree that it is high time that we tried some different ways of improving employee health and will she confirm that funding will be coming forward to fund the trial that the West Midlands commission is proposing?

Baroness Buscombe: I entirely agree with the noble Lord and thank him for giving me early notice of his question. The West Midlands commission has undertaken important research into mental health and its impact on the public sector. Government officials are working positively with the West Midlands Combined Authority to explore ideas and undertake work that will support positive action on mental health in the region. The noble Lord is right to say that different things have to be looked at, including different ways of improving people's health and well-being. Indeed, as the immediate past chairman of the advisory board of the Samaritans, this is something very close to my heart. However, I cannot confirm an answer to his question referring to costs, so I will write to him.

Baroness Sherlock (Lab): My Lords, I, too, welcome this report. The authors state at the beginning:

> "We start from the position that the correct way to view mental health is that we all have it and we fluctuate between thriving, struggling and being ill and possibly off work".

I have to say that I love that; it is a really positive way to understand mental health. I realise that the Minister will need to take time to reflect on the recommendations in the report, but when she comes to respond, will she acknowledge that her department has a couple of specific responsibilities? The first is that it is an enormous employer with more than 80,000 staff: and, secondly, it runs programmes with the unemployed. Will she ask her department to think about recommending how it might go about modelling with its own employees a healthy environment for mental health? More specifically and perhaps more challengingly, will she reflect again on the programmes for assessing whether people who are suffering with mental health problems should be in work? I ask this because there have been a number of concerns that the nature of the assessments is actually making people's mental health worse rather than better.

Baroness Buscombe: I thank the noble Baroness for her helpful questions. I am proud to say that the Department for Work and Pensions is leading the way in terms of the enormous amount of support already available to its staff. However, she is entirely right to say that there is much more that we can do. We need to work across government, and that is why we are thinking carefully before responding to this review. Her question about assessments for people with mental health issues is very appropriate. We are making sure that people with long-term disability issues do not have to go through the assessment programme more than once when it comes to work capability. Of course there is more that we can do, but I think that we have made an amazing start.

The Lord Bishop of St Albans: My Lords, there are many valuable statistics in the report, but also some quite worrying ones. Apparently 35% of the people interviewed thought that if they had had depression they would be far less likely to get any sort of promotion, while half of those interviewed said that they would not be willing to discuss mental health issues with their line manager. First, in the light of that, is there not a pressing need for a new public mental health awareness campaign? Secondly, will the Minister look into the contribution that workplace chaplaincy can make to addressing this problem?

Baroness Buscombe: My Lords, I hope that we can continue to use this report and the response to the review as part of building awareness of that. The right reverend Prelate is absolutely right. We understand more than in the past that mental health conditions are a barrier to work but, if we can help more people into employment, work can be part of the solution for many. I very much take on board his suggestion that workplace chaplaincy is an example of where people can seek guidance and help. Sometimes it is important to think about whether it can be done very quietly and anonymously. There is a lot to think through. The review is an enormous step forward. We want to become one of the leading nations in the world in supporting mental health.

Baroness McIntosh of Hudnall (Lab): My Lords, does the Minister accept that in particular sectors it is sometimes the actions and behaviour of government itself that brings about stresses that some people in certain areas find very hard to cope with? I am thinking in particular about education, which was mentioned by my noble friend in his Question. A constant barrage of change and new requirements is very difficult for people who are already working under very high pressure to accommodate. Will she say whether her department or any of her colleagues' departments take this into account when they assess how they bring new requirements to bear on the people who depend on them?

Baroness Buscombe: I thank the noble Baroness for her question and say straightaway that in the Department for Work and Pensions we have introduced a new system of line managers so that people always have someone they can go to immediately for help. The truth is that people in both the public and private sectors are under enormous pressures off and on in their lives, as

[Baroness Buscombe]
we have said. The reality is that people face pressure, whether from government or through family crises. A lot of it begins at home and we know that conflict in the home can lead into the workplace and affect people's ability to cope. We need to focus on the coping strategies, whether in the workplace or elsewhere. This review is about supporting people into work.

Finance Bill
First Reading

3.37 pm

The Bill was brought from the Commons, read a first time and ordered to be published.

Sanctions and Anti-Money Laundering Bill [HL]
Second Reading

3.37 pm

Moved by ***Lord Ahmad of Wimbledon***

That the Bill be now read a second time.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, I thank all noble Lords for attending the debate and for the useful comments already shared with me and my noble friend Lady Goldie during the meetings we have held since the Bill was introduced. This is an important piece of legislation and we need to get it right.

The United Kingdom has long played a leading role on the global stage in tackling threats to international peace and security. One method of influence increasingly used by the international community is the imposition of sanctions. Sanctions encompass a range of measures, such as travel bans, asset freezes, trade restrictions and broader economic measures. In recent years they have been employed in relation to Russia's invasion of Ukraine and the conflict in Syria, and to put pressure on Iran to come to the negotiating table. Anti-money laundering regulations are also increasingly important in this globalised world and vital if the international community is to continue to protect itself from financial crime. The effectiveness of these measures depends on the consistent enforcement of technical and procedural controls mandated by the Financial Action Task Force, an international organisation of which the United Kingdom is a founder member.

I shall briefly set the scene as to where we are. The UK currently implements 35 sanctions regimes. These include country-specific regimes, such as those on North Korea, Syria and Iran, and regimes targeting terrorist organisations such as al-Qaeda and Daesh. Within these regimes there are currently around 2,000 individuals, groups and businesses subject to restrictive measures.

In broad terms, the UK implements four main types of sanction regime. The first is based entirely on UN Security Council resolutions. As a member of the UN, the UK is obliged to implement them. Indeed, our position as a permanent member of the Security Council means that we have agreed to those regimes in that forum before they become international law under the UN charter.

The second type of regime is where the EU has acted alone or with allies such as the US, generally where it has not been possible to reach agreement at the United Nations. I shall give an example of the former: after the annexation of Crimea, the UN was unable to impose sanctions on Russia because of Russia's veto in the Security Council, so the EU decided to act in concert with the United States and other like-minded countries. The third type is hybrid regimes. These are where the EU has adopted UN sanctions but has decided to top up the provisions within those regimes with additional measures. An example of this occurred recently on North Korea. Finally, the UK has some domestic powers to impose sanctions—for example, under the Terrorist Asset-Freezing etc. Act 2010.

This is a technical Bill which ensures that the UK can continue to meet its international obligations and to implement UK sanctions and anti-money laundering measures after we leave the European Union. New domestic legislation is necessary because most of the UK's powers to implement sanctions and anti-money laundering measures currently come from the European Communities Act 1972. When the EU withdrawal Act, as the Bill going through the other place will become, repeals the European Communities Act, it will freeze any sanctions regimes which are in force on the day on which the withdrawal Act commences, but we do not possess sufficient powers under current domestic legislation fully to impose, amend and lift existing or new EU UK autonomous sanctions regimes. Similarly, we do not currently possess sufficient domestic legal powers to update anti-money laundering and counterterrorist financing legislation after the UK ceases to be a member of the EU. This means that, without this Bill, the UK would quickly be in breach of international law.

Before I go into detail about the content of the Bill, I reassure noble Lords that there has been significant government engagement with individuals and businesses on this domestic framework. In April, the Foreign and Commonwealth Office, Her Majesty's Treasury and the Department for International Trade published a White Paper and launched a public consultation on the UK's future legal framework for imposing and implementing sanctions. My officials held round tables with a number of sectors including financial services, NGOs and the legal profession, as well as international partners. My right honourable friend Sir Alan Duncan, the Minister for Europe and the Americas, took part in a debate on sanctions in the other place on 19 July. On 2 August, the Government published their response to the consultation. This process had been transparent over the previous six months, and I intend to continue the same level of transparency with noble Lords as the Bill passes through this House.

Turning to the content of the Bill, I emphasise that it is about powers and not policy—it is a technical Bill which creates the legal framework for the UK to be able to continue to impose sanctions where appropriate. Part 1 allows the Government to impose a number of

sanctions: financial, trade, transport and immigration. This will allow the UK to maintain the full range of sanctions available at the moment. Part 2 deals with anti-money laundering and counterterrorist financing regimes, and Part 3 deals with general matters such as supplementary provisions and definitions. For each new UK sanctions regime, the Government intend to bring forward a statutory instrument which contains details for that regime.

I know how important it is that we have robust parliamentary scrutiny of these new powers. I also know that the noble Lord, Lord Collins, in particular shares this view. This Bill allows for such scrutiny. Regulations which deal with UN regimes will be made under the negative procedure. Once agreed at the UN Security Council, the UK has an obligation to implement these sanctions under the UN charter. Not doing so would leave the UK in breach of international law. Regimes which both deal with UN obligations and include additional sanctions or hybrid regimes will also be made under the negative procedure. Regulations which do not deal with the UN regimes will be made under the made affirmative procedure. This will allow regimes to come into force immediately, thereby negating the risk that assets are removed before restrictions take effect, while allowing Parliament to debate the regulations.

The vast majority of anti-money laundering regulations will be made using draft affirmative procedures. The one exception to this will be where the UK makes updates to the current EU regulation. This requires enhanced due diligence measures to be applied to persons in countries with strategic deficiencies in their anti-money laundering regimes. Such updates need to be made quickly, and will be made by using the affirmative procedure. At present, anti-money laundering regulations are transposed into UK law through the negative procedure, so the Bill will increase parliamentary scrutiny.

Risks arising from money laundering and financial crime evolve quickly, as reflected by the Government's active agenda to address these threats. The Bill therefore provides for the Government to take a sufficiently broad power to ensure that the UK's anti-money laundering regime remains fit for purpose and is able to respond swiftly to emerging risks. The content of the current money laundering regulations is sufficiently technical that it is better suited for secondary legislation, rather than primary. This is in keeping with the approach typically taken in the UK and elsewhere to establish detailed obligations on the regulated sector.

In some of the meetings that we have held, engagement with noble Lords suggested that the current requirements of the fourth EU money laundering directive should be included in the Bill, and therefore capable of being amended only through primary legislation. I have listened to the discussions we had very carefully but it remains our view that this would dramatically increase the size of the Bill, adding more than 100 new clauses, and would not reflect the rapidly evolving nature of anti-money laundering policy. As many noble Lords will know, the EU is already in the process of amending the fourth money laundering directive, in spite of it being transposed only earlier this year. This demonstrates again the need to act swiftly. Similarly, when a Government of the future need to anticipate or react to new threats, they may wish to create new types of sanctions. It would be remiss of us not to ensure that the Bill was future-proofed so that it remained useful. Regulations which create new sanctions will be exercised through the draft affirmative procedure, thereby allowing Parliament to have a full say.

An important element of the Bill is the threshold for designations. The Bill proposes that, to impose restrictive measures on an individual, a Minister must have "reasonable grounds to suspect" that they are involved in an activity we want to change or prevent. This is the same standard that we currently use when considering designations at the United Nations and the EU. It is broadly equivalent to the "sufficiently solid factual basis" applied by EU courts. The application of this threshold was considered and endorsed by the Supreme Court in the case against Youssef in 2016; it was also considered acceptable by the EU General Court in the case against Mohammed Al-Ghabra, again in 2016, where the court emphasised the need for the threshold to be supported by sufficient evidence.

The importance of a clear threshold of this kind was also underlined by colleagues involved in the European Union Committee's 11th report of the 2016-17 Session, *The Legality of EU Sanctions*, an inquiry conducted by its Justice Sub-Committee. Having the same threshold that we currently use when considering designations at the UN and EU will allow us to align with our international partners where our political objectives converge. Sanctions are always best applied by a broad coalition of countries. Working with partners increases the impact of the agreed measures and reduces the compliance burdens on business. I will return to this later.

As set out in our consultation response, the Bill also aligns the threshold for domestic counter-terrorism sanctions to this test of "reasonable grounds to suspect". This is a change to the current approach under the Terrorist Asset-Freezing etc. Act 2010, where Treasury Ministers must have "reasonable grounds to believe" that an individual is involved in prohibited activity and that the measure is necessary for the protection of the public. No new designations under the TAFA threshold have been made for two years and a reduced threshold will have a number of benefits. It will bring counterterrorism sanctions in line with other UK financial sanctions regimes, improving the coherence and clarity of our sanctions framework as a whole. It will allow the Government to impose sanctions based on similar levels of evidence to those required by our international partners, ensuring that we can maintain productive international co-operation on this issue. It will also give the Government more flexibility in using asset-freezing tools domestically, and thereby help to mitigate the threat from terrorism.

Noble Lords will be aware of how this threat has changed even in the short time since TAFA was passed. I need not dwell on this matter too long, but terrorists and others who wish us harm can cause significant damage without significant resources. Therefore it is an important point, especially in the light of the foreign fighters flooding back to their own countries, including the United Kingdom, as Daesh is dismantled in Iraq and Syria.

[Lord Ahmad of Wimbledon]

That said, a fine balance must also be struck between keeping our citizens safe—a priority for any Government is the security of their citizens—at the same time as protecting the fundamental rights of individuals. While the threshold for designating individuals for counterterrorism asset freezes may have been lowered by the Bill, the protections and procedural safeguards offered elsewhere are robust and in line with international best practice. Let me highlight two areas.

Lord Marlesford (Con): My Lords, just a moment ago the Minister—if I heard him right—said that terrorists are flooding back into the United Kingdom. Is that really what the Government think?

Lord Ahmad of Wimbledon: I shall repeat what I said for my noble friend. I said terrorists are flooding back to their places of origin, and of course there are people who may seek to return to the United Kingdom from Iraq and Syria. With the defeat of Daesh, that is a real possibility, so we need to ensure that there are measures both to keep them where they are in terms of prosecution and, if they do return, to ensure that any sanctions that we need are readily available.

I was about to provide practical examples of, first, challenges to designations allowing a route for redress for sanctioned individuals and entities; and, secondly, of reviews of regimes to ensure that the Government conduct due diligence on the restrictive measures they impose. In the Bill, there are two methods by which an individual can challenge their designation. The first allows them to request a reassessment of their listing by the Secretary of State. This is designed to offer quick redress to individuals, enabling those who are incorrectly designated or who can provide evidence which refutes the reason for their designation to be removed from a listing by the Secretary of State with the minimum of delay. If the designation is upheld following the administrative reassessment, individuals can challenge that designation before the High Court on the principles of judicial review. This is the second means of challenge. Provision is included in the Bill to allow for classified evidence to be shared with the court where appropriate. For UN sanctions, which the UK has an obligation to implement under international law, an individual can make a request that the Secretary of State uses his best endeavours to remove that person's name from the UN list. Were the Secretary of State to decide not to seek a delisting at the UN, the individual can challenge that decision before the High Court.

It is important that the Government review sanction regimes and listings to make sure they remain fit for purpose and up to date. Sanctions are not designed to be punitive or permanent. They are always intended as a temporary measure designed to prevent or change behaviour. Regimes must have a clear purpose. A regular review will ensure that remains the case. The Government will conduct an annual political review of each regime to check that it remains appropriate for its purpose. Every three years the Government will review all the designations under the regime to make sure they remain necessary and continue to meet the evidential threshold. As now, the Government will continue to be able to grant licences to allow activities that would otherwise be prohibited—for example, to allow individuals subject to an asset freeze to pay for their essential needs, such as food or legal fees.

We recognise that there have been criticisms of the current EU licensing system. This was highlighted to me last year when we had to ask the EU to amend the Syrian regime so that general licences could be granted permitting NGOs to provide humanitarian aid and associated support activities. This Bill will give the Government more flexibility to issue such general licences, which will provide more clarity to humanitarian organisations and reduce unnecessary bureaucracy.

I know that many noble Lords will be interested in what impact the new regime will have on business. We recognise that multiple divergent sanction regimes can raise compliance costs for business. This is already an issue on Iran, for example, where the EU and US apply different sanctions. As our impact assessment sets out, we expect the aggregate impact of the Bill on UK businesses to be less than £1 million. Most of these costs will relate to compliance as companies familiarise themselves with the UK regime and related guidance.

In designing and implementing future UK sanctions, we will, wherever possible, work closely with the EU, the United States and other international partners to ensure maximum alignment and to reduce the impact on business. We want to maintain close co-operation on sanctions with European and other international partners because, as I said earlier, they are most effective when delivered by a number of countries together. UN sanctions have global reach and are always our preferred option. Outside the UN, we expect to remain aligned with like-minded partners such as the EU and the US on many of the policy goals that drive sanctions.

For example, we continue to believe that sanctions on Russia must remain until the Minsk agreement has been fully implemented. It is too early to speculate on exactly what future co-operation with the EU will look like, and decisions in this regard will be taken at the appropriate time. As the Prime Minister has said, we are leaving the EU, not Europe. Our aspiration is to remain close to partners on foreign policy issues, as proposed in *Foreign Policy, Defence and Development: A Future Partnership Paper*, which was published by the Department for Exiting the European Union on 12 September. For now, we remain active in shaping and implementing sanctions within the EU.

In conclusion, this is an important Bill to ensure that a legislative framework is available to the Government to maintain and adjust sanctions and anti-money laundering measures once we have left the European Union. It will allow us to continue to fulfil our international obligations and to work with allies to protect and promote our shared values. I beg to move.

3.56 pm

Baroness Bowles of Berkhamsted (LD): My Lords, I will mainly speak on the anti-money laundering aspects of the Bill; other colleagues will speak on the sanctions part. I convey apologies from my noble friend Lady Kramer, who regrets not being available to speak today.

I am not entirely convinced that the two components of the Bill, sanctions and anti-money laundering, sit well together. Sanctions have generally come through an intergovernmental and ministerial channel, while the administrative money laundering requirements have come under the co-legislative procedure, with equal power for the European Parliament. I thank the Minister for explaining some of the web of where the various aspects reside, but it is also helpful to review this. The primary money laundering offences appear in the Proceeds of Crime Act, not referenced in the Bill, which also contains requirements for regulated businesses to report suspicious activity, with three secondary criminal offences for failing to report suspicious activity, tipping off or prejudicing an investigation. A similar set of primary and secondary offences appears in the Terrorism Act. The money laundering regulations of 2017, and their 2007 predecessor, cover further administrative provisions on businesses, including criminal offences for contravening a relevant requirement and for prejudicing investigations.

The EU directives in fact require only effective enforcement and deterrent: it is left open how that should happen, and the UK included criminal offences which appear to have been first introduced by secondary legislation in 2007 and added to in the 2017 regulations. Maybe it can be said that these offences derive from, or at least follow, the pattern of the POCA secondary offences. The money laundering definition in POCA is so wide as to cover use of money or any asset that has come from criminal activity, so in theory it covers use of a stolen paperclip, as some wag has suggested on Wikipedia.

With such a scope, it remains an insult that property bought with the proceeds of crime can hide under anonymity of the beneficial owner, enabling both the property and rental from it to evade any effective discovery.

I turn to today's Bill. It is proposed that significant money laundering legislation is to continue to be made by unamendable regulation, and these may be substantial and manifold regulations all in one. This is legislation that impinges on the daily lives of everyone opening a bank account or transferring money, and who may become subject to—well, under this Bill, I would say almost anything.

The fourth money laundering directive is clear on issues of proportionality and other guidance around the nature of things that should be covered in risk assessments and supervisory behaviour, such as record-keeping. The 2017 regulations add further detail relevant to the UK, but I am not sure they are quite so hot on proportionality. In future, though, under Clause 41 of today's Bill, we are to get the regulatory imposition of anything that the Minister of the day might fancy in the name of money laundering or terrorist financing, which, as I have said, are defined very broadly. It is a very strange way to take back control if instead of transposing EU legislation—which, whether or not you care for the system, has a full parliamentary process—we replace it with the omnibus rubber-stamping of standards from the Financial Action Task Force, which has no such scrutiny or accountability, and simultaneously paves the way for the exercise of generic powers and the creation of unspecified criminal offences, all by regulation.

We know what happens with regulations. A good example on this very subject comes up next Monday concerning the transposition of the fourth money laundering directive. There is to be a regret Motion, not least because the instrument was laid with three days' notice. How much regret can we tolerate? It gets worse if there is a rejection because it results in threats to the existence of this House. Switching to an affirmative procedure does not make any difference in that regard, even if it is a bit more respectful.

Schedule 2 gives some 27 wide regulatory powers to amend all the administrative topics that are in the 2017 regulation, and it is far from clear what safeguards will continue. I have called them topics because that is what they are; they are headings. There are no checks and balances, no mention of proportionality, no policy relating to the type of risk factors to cover, all kinds of yet-to-be-prescribed measures against yet-to-be-prescribed customers, and no indications regarding the use of information and data by supervisors or the need for supervisors to keep proper records. I could go on. It may be a technical Bill but I am afraid that power without policy is a very dangerous instrument.

The Government may have wanted to keep the schedule to three pages but there is a reason why the fourth money laundering directive is longer: it contains balance because it had to stand up to proper parliamentary scrutiny. I declare an interest in so far as that directive came under my remit as chair of the Economic and Monetary Affairs Committee in the European Parliament. I could ask why I should have less say here than I did there. Further, Schedule 2 states that these 27 powers are:

> "Without prejudice to the generality of section 41".

So not only could every jot and tittle of the 116 pages of the 2017 regulations be changed or revoked, almost anything could be added under Clause 41 using the massively wide definitions of money laundering or terrorist financing.

Great things could be done with those powers. Paragraph 6 of Schedule 2 could be used to create the beneficial owner registers for property that David Cameron promised. Further headway could be made on transparency in overseas territories and Crown dependencies. Paragraph 8 could be used to consolidate the myriad money laundering supervisors—some 25 of them—to get something more effective. Under paragraph 15, which gives carte blanche to create new but unspecified criminal offences, a "failure to prevent" offence could be created. But it could also make it criminal to open a bank account on Tuesdays or to present the wrong kind of utility bill because there is no guidance. New criminal offences by regulation are also enabled in Clause 16(3) in the sanctions part of the Bill, in that case with far longer sentences.

If there is no policy constraint, alongside possibilities for good things, the opposite could happen: setting aside the absurd, everything could be weakened or revoked, depending on the Minister at the wheel. It has been suggested that regulations are needed to keep up with the regular updates to FATF standards and other matters. The far longer EU process manages to keep up, as the Minister has already explained, so surely this Parliament, which is much more nimble,

[Baroness Bowles of Berkhamsted]
can also keep up. Indeed, I thought that was part of taking back control, and it certainly does not justify rule by regulation.

The Minister will know from my contributions during the passage of the Criminal Finances Bill that I am not a shrinking violet about money laundering criminal offences. The issue is that they need definition in an Act, along with the relevant defence. Noble Lords may recall that due to the ongoing call for evidence about "failure to prevent" offences, I explored an arrangement where both the offence and defence were defined in the Bill but not activated until later by an individual and specific statutory instrument—one not buried in a sheaf of other regulatory adjustments—and not to sunrise it through a statutory instrument until the result of the call for evidence was known. Even then, several noble Lords were very uncomfortable with the idea of any new criminal offence by statutory instrument.

Given that new offence by regulation is enshrined in Schedule 2 to the Bill and in Clause 16(3), I ask the Minister to explain the Government's policy on criminal offences introduced by secondary legislation. I shall be considering two strands for amendments: one to limit the perpetuation of legislation by regulation, and the other to add to the Bill the things I have mentioned—in particular, issues around transparency and beneficial ownership, which have been criticised frequently in the European Parliament and by the OECD.

There is some urgency over this. The House of Commons Home Affairs Committee *Proceeds of Crime* report put estimates of at least £100 billion being laundered in the UK every year. In addition, failure to be seen to address those known weaknesses—well known in the European forums—could jeopardise equivalence or other arrangements made for financial services with the EU if we are outside the EU.

4.08 pm

Lord Hope of Craighead (CB): My Lords, first, may I say what a pleasure it is to see the noble Baroness, Lady Anelay, here this afternoon enjoying a very well-earned rest from the Front Benches? I am sure we are all looking forward very much to hearing what she has to say when she speaks immediately after me.

The imposition of sanctions is a political act which the courts, when invited to do so, will always subject to anxious scrutiny. Nobody can doubt that there may be situations where measures of the kind that must be resorted to in the interests of national security or international peace, or for furthering the prevention of terrorism, have to be put in hand. However, there is always a risk that those who are given such powers may overreach themselves. Sanctions of the kind contemplated by this Bill do not in so many words involve depriving individuals of their liberty. To that extent, the human rights considerations that arise in such cases are not engaged by the Bill. But the effects of the financial and other restraints that are provided for here are likely to be severe. That indeed is what they are designed for. Individuals who are deprived of access to any kind of economic resources may end up being confined like prisoners in their own home. In the case of financial institutions, such as banks, the effect can be disproportionate to the risk that they pose. So a Bill of this kind must be approached with great caution, lest it invests the Government with extravagant powers, with powers that are not needed, or with powers that are not surrounded by appropriate safeguards.

Part 1 of the Bill deals with sanctions regulations. The scope of the power is described in the first subsection of Clause 1. I welcome the giving of power to the appropriate Minister to make regulations for the purpose of complying with a UN obligation or any other international obligation. There are good reasons why we need to make provision for meeting the obligations which rest on us internationally, but I am more cautious about the purposes described in the second subsection, which I can refer to as the "domestic" part. They extend to furthering the prevention of terrorism in the United Kingdom, the interests of national security, the interests of international peace and security and foreign policy objectives of the Government. It is here that we need to be satisfied that it is proper that the Government should have power to impose these sanctions in additional to those they already have, and that exercise of the power will be accompanied by appropriate safeguards.

I approach the question of the powers in the international part against the background of two cases that came my way in the UK Supreme Court. One was the case of HM Treasury v Ahmed in 2010, the other was Bank Mellat v HM Treasury in 2013. The Ahmed case was about the legality of powers exercised by the Treasury by Order in Council under Section 1 of the United Nations Act 1946, to give effect in the United Kingdom to decisions of the sanctions committee of the Security Council of the UN, which is responsible for deciding whether sanctions should be imposed, against whom and with what effect. The orders had the effect of freezing the assets of several named individuals, but they were made without any kind of parliamentary scrutiny.

We took the view in the Supreme Court that the consequences of the orders were so drastic and oppressive that we had to be alert to see that this coercive action really was within the powers of the Treasury. We must remember that, even in the fact of the threat of international terrorism, the safety of the people is not the supreme law. There must come a point, we said, when the intrusion on the right to enjoyment of one's property is so great and so overwhelming that it can be brought about only under the express authority of Parliament. So the orders, which were made without parliamentary scrutiny, were set aside.

In the case of Bank Mellat, the complaint, which was also upheld by a majority, was that directions made by the Treasury under the Counter-Terrorism Act 2008 were flawed on procedural grounds and were disproportionate. So they, too, were set aside.

It is against the background of two failed attempts to deal with the issue that I welcome the international part of Clause 1. We need to have a sound and easily understood mechanism—or, as the Minister put it, a legal framework—for meeting our international obligations, which has the full authority of Parliament. I think that this Bill, which provides for parliamentary scrutiny, achieves that. So far as these obligations are concerned, it is necessary and appropriate.

The domestic part described in the second subsection of Clause 1 is more troublesome, and it will need to be scrutinised very carefully in Committee. I acknowledge that the parliamentary procedure in Clause 45 is for any such regulations under that subsection to be subject to the affirmative procedure. That, of course, is as it should be, given what was said in the case of Ahmed. I acknowledge, too, that provision is made in Chapter 2 of Part 1 for review by an appropriate Minister and in Chapter 4 for his decisions to be reviewed by the courts on the application of those affected by the decision. We will need to look at those chapters carefully too, but in doing that we should be under no illusions about the grave effects the imposition of sanctions may have. We must assume that where these powers are given they will be used, and may be used to the full extent that Parliament permits, given the relatively low threshold—the "reasonable grounds to suspect" threshold which the Minister mentioned—that Clause 1 sets for their exercise, compared to the existing one under the Terrorist Asset-Freezing etc. Act 2010.

So there is a heavy responsibility on us to see that these powers are not excessive and that the safeguards provided are as complete and effective as they can be. That said, I welcome the provision in Clause 36 requiring the Minister to issue guidance about regulations made under Clause 1.

There is one point of detail about the provisions for court review about which I seek reassurance from the Minister. Clause 32(2) provides that:

"The appropriate person may apply to the High Court or, in Scotland, the Court of Session, for the",

Minister's,

"decision to be set aside".

Does this formulation allow for appeals to the UK Supreme Court? I think this is not really in doubt as far as the High Court is concerned. But it may be suggested that this is not so for Scotland on the ground that, where an Act refers to the Court of Session without more, the matter is to be decided in that court alone and no further. I hope that appeals to the Supreme Court will be open from the Court of Session too, subject, of course, to the provisions for permission in Section 40 of the Courts Reform (Scotland) Act 2014. However, I would like the Minister to reassure me on this point, if not this afternoon then at some later stage.

Lastly, I come to Part 2 of the Bill and Clause 41, on anti-money laundering. I entirely recognise the force of the point made by the Economic Secretary to the Treasury in his Written Ministerial Statement on this subject last Thursday. He said:

"As the threats from illicit finance and terrorist financing continue to evolve, so must our understanding of the risks and our response".

Nevertheless, the scope of the power to make provision for this purpose by regulations, when read with the extensive list of things mentioned in Schedule 2, is surprisingly wide. I agree very much with the points made so forcefully by the noble Baroness, Lady Bowles of Berkhamsted.

There is another side to this issue: reaction to the spectre of money laundering is making itself increasingly felt in our daily lives. The requirements that must be satisfied if we need access to professional services that are anything whatever to do with money are just one example. At present, they are not much more than an irritating and time-wasting nuisance, but we surely must be careful not to box ourselves in with so many rules and regulations that the burden of having to comply with them becomes intolerable.

I am not really worried about the making of increased provision for detecting and investigating money laundering, but it is in the making of increased provision for its prevention that the risk lies. That could affect anybody and everybody, as the noble Baroness said. One only has to look at the titles of the regulations that are to be the subject of the regret Motion next Tuesday to get a sense of what lies in store for us if we are not careful. One of them is called the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations. I wonder what burdensome provisions would be made by that measure—and there are two more in the package.

I do hope that the Minister can assure us that proportionality will always be at the heart of these very wide-ranging powers.

4.19 pm

Baroness Anelay of St Johns (Con): My Lords, I thank my noble friend for setting out so clearly the objectives and content of the Bill before us today. I was the sanctions Minister at the Foreign and Commonwealth Office when the White Paper was published back in April, just squeaking in underneath the barrier that came down as a result of the purdah period. That meant that we were able to have a proper period of consultation. I am therefore delighted to be able to speak at Second Reading today and to support the Bill.

With the leave of the House, I will just take a moment to thank all those who have made such kind comments over the past day or two and, in particular, to thank all those with whom I have worked on the Front Bench, both opposite when I was there for 13 years and on the Government Benches for seven and a half years. I thank them for their kindness, co-operation and sheer hard work. Working as a team, even in opposition, is absolutely crucial. I want to put on record, in particular, my thanks to the officials so often referred to only when we get to Third Reading. I will mention now the sterling support provided by the private offices and departmental officials in the Government Whips Office, FCO, BIS, DfID and, more recently, DExEU, in all of which departments I have served.

I will not mention all the individuals—I will not test the patience of the House that long—but I would like to thank my private office at DExEU: Tim, Joe and Daniel and my ministerial colleagues there, David, Robin and Steve. They have all been a joy to work with and, from working so closely with them, I have confidence that we are going to achieve a successful negotiation with the EU as we leave—one that is good for us as well as good for the other EU 27. We will remain their next best friends.

It is also why I am doubly pleased to be able to support Second Reading today. Sanctions such as arms embargoes, asset freezes and travel bans are vital tools used by the international community to promote

[Baroness Anelay of St Johns]
human rights and democracy, particularly in conflict and post-conflict situations. As my noble friend set out, the UK is active on the United Nations Security Council and within the EU in promoting "smarter sanctions" that are legally robust and effective in delivering on our human rights goals. Of course, the noble and learned Lord, Lord Hope, was right to point out that there must always be appropriate safeguards in these matters.

The UNSC and EU have established a number of sanctions regimes that include targeting human rights abuses or violations in countries such as the Democratic Republic of the Congo and South Sudan, both of which I have visited as a Minister, in particular because of my then role as the Prime Minister's special representative on preventing sexual violence in conflict. I congratulate my noble friend Lord Ahmad as the Minister taking on that role.

As my noble friend said, most of the UK's current powers flow from the European Communities Act 1972. We have some limited domestic powers to impose sanctions, but they simply would not be enough to cover the full range of sanctions that are currently in force through both the UN and EU. The ECA will be repealed by virtue of Clause 1 of the EU (Withdrawal) Bill and. if we do not have a domestic system in place by the time the ECA is repealed, we will very rapidly be in breach of international law. I know that every single Member of the House would wish to avoid that.

Clearly, some have asked why the Bill cannot be subsumed within the EU (Withdrawal) Bill itself. In practice, that would not work because that Bill takes a snapshot of applicable EU regulations and law at the time that we leave and transposes them into UK law. It freezes everything in aspic at that moment, subject to some of the correcting powers. So, in addition to having a functioning statute book as we leave the European Union, we need to ensure that, as we leave, we have the power not only to support the sanctions of our international colleagues in the UN and, nearer at hand, in the EU, but to impose other sanctions that may prove appropriate. The withdrawal Bill simply cannot enable us to do that. After all, events can be very fast moving and one needs to be able to take action quickly but proportionately; I believe that the Bill gives us that opportunity. We will have the chance to look at the details in Committee—I listened very carefully to what the noble Baroness, Lady Bowles, said.

The importance of being able to impose sanctions, and target them effectively and proportionately, was brought home to me when I visited South Sudan in May this year. It gave me the chance to meet people subject to sanctions—noble Lords can imagine that I was not particularly popular with them—and to see how sanctions can benefit the wider population.

The history of South Sudan's internal conflict since 2013 is well known to this House. The country is poverty stricken, despite having vast oil reserves, and life is bleak for most of its population. There was a further deterioration in the human rights situation in South Sudan last summer. In July, violence broke out in the capital, Juba. Government and rebel forces both breached commitments to end hostilities, and fighting spread to areas of the country that previously had not been touched by such conflict. This led to serious human rights violations in the summer of 2016 by government forces, and breaches of international humanitarian law. Child soldiers continue to be recruited and, as on previous occasions, women bore the brunt of the violence. The term "brutality" covers so many sins. Talking to those who survived that violence puts everything else in this world into perspective. Some were attacked and raped outside a UN protection of civilians camp, in full view of UN peacekeepers who did not intervene to help them. Others were gang-raped in a hotel used by international NGOs, where a journalist was also executed.

So what have we done? The UK has worked tirelessly with the EU and UN to persuade the Government of South Sudan that those responsible for the atrocities should be held to account, and to achieve a cessation of hostilities that is real and is not put on just because it happens to be the rainy season. The imposition of sanctions has played an absolutely vital part in that work. At first the Government of South Sudan appeared to take no action against those responsible for the vile attacks in Juba. Then the EU made it clear on 13 December 2016 that it was ready to impose further sanctions—autonomous restrictive measures—against,

"any individual who obstructs the peace process … impedes UNMISS"—

the UN force there—

in the performance of its mandate … prevents actors from exercising their humanitarian duties … incites ethnic hatred or … commits atrocities against civilians".

Words were translated into action when, on 7 March this year, the EU added four individuals to its list in relation to the sanctions on South Sudan. Have sanctions worked? There has been some progress, but much more needs to be done and we need to keep up the pressure. Finally, this summer, a case has been brought to court to prosecute those alleged to have raped a foreign national in the Juba outrage last summer. I pay tribute to the brave lady who travelled from Europe back to South Sudan to give evidence, as at first the court refused to take video evidence. Despite the threat to her life, she gave evidence in the courtroom and identified four persons.

A ceasefire was announced by President Kiir just before the rainy season started in May this year. We need to see that extended to the dry season, when it becomes more possible for armies to move around. While in South Sudan, I was able to travel to Malakal in Upper Nile State to visit the UK Armed Forces who are an integral part of the UN forces there. I mention this because of something that happened after my visit. Malakal had been the second city of South Sudan, with well over 100,000 people. Now there may be half a dozen, with 45,000 in the protection of civilians camp outside Malakal. Dozens of people in the camp told me about the reality of life there. I then experienced unreality as I travelled in a convoy through a deserted, ghost-like city that was no more. There was nothing left to loot. I then met the governor in his mansion beside the White Nile, who tried to persuade me that people in their thousands came into Malakal every day. No—I can see, as can others, that that did not represent anything near the truth.

When I returned to South Sudan's capital, Juba, I met a senior representative of the Government who was in a very good mood. He told me, "When the UK leaves the European Union, there won't be any sanctions against South Sudan any more because you won't be able to impose them and you won't choose to. You will have left that system and so we'll be able to have trade with you—open, fair, free and to the benefit of both". No—that is not what happens. I told him clearly and firmly that as the UK leaves the European Union, we will put in place legislation to ensure that we will continue to be able to work with both the UN and the EU to impose sanctions where it is right to do so and to think of the wider good of people such as those across South Sudan who deserve a better future than any of them face at the moment. I wish the Bill a fair wind.

4.30 pm

Lord Hain (Lab): My Lords, it is a real privilege to follow the noble Baroness. I have been in the House for less than two years, but she has always struck me as a real star. I have marvelled at the way in which she has managed to make the Government's case on Europe vaguely plausible, which shows expertise and charm. I have also noticed that the noble Baroness has always spoken and answered questions from the Front Bench, including from myself, with great courtesy, even giving the impression in her answers that she has listened to the questions. Her colleagues may well want to bear that in mind. I note that the casualty rate in the post that she has just left seems to be quite high. I wish her all the best in the future, and I am sure that the whole House does as well.

The noble Baroness made the case for sanctions against South Sudan and elsewhere compellingly. I do not refer to her specifically, but I remember the way in which this House opposed sanctions against the apartheid regime. If she had been in the Conservative Government at the time, perhaps that might have changed.

There have been no criminal prosecutions for money laundering of financial institutions, and very few of other "enablers" such as lawyers and accountants. There have been regulatory fines, but it is not clear that these are enough to deter banks and other financial players from making their anti-money laundering compliance regimes a tick-box exercise rather than a meaningful one. This Sanctions and Anti-Money Laundering Bill enables the Government to introduce regulations that would create new civil penalties and criminal offences for money laundering, but the threshold for the latter is low—a maximum three-month sentence for a criminal conviction.

As the noble Baroness, Lady Bowles, mentioned, using such powers to enable the Government to introduce criminal offences by regulation is against parliamentary convention. The noble and learned Lord, Lord Hope, also referred to this matter with his expertise. Surely it would be better for the Government to accept or introduce an amendment to the Bill to introduce a "failure to prevent" money laundering offence, like that in the Bribery Act and as there now is for tax evasion, which would ensure that such an offence was introduced by primary legislation.

As I said, the noble Baroness, Lady Anelay, made moving points about South Sudan and elsewhere from her experience. However, my main focus today is whether the Bill will deal effectively with the massive money laundering organised from the very top of the Government in South Africa, the presidency itself—the subject of my Oral Question on 19 October in your Lordships' House and my letter to the Chancellor of 25 September. I beg some indulgence in speaking at greater length than the noble Baroness on this to spell it out. It is serious.

Corruption within and money laundering from a monopoly capital elite around the President's family in South Africa and their close associates the Gupta brothers—which is painful for me to witness, having been active along with my brave parents in the anti-apartheid struggle—show that winning the war against financial crime will require co-ordination, influence, action and accountability between multi-jurisdictional law enforcement agencies. Money laundering is a key enabler of organised crime, allowing criminals to transmit multi-billion pound illicit funds into the legitimate economy, undermining its integrity and public trust. However, confronting it is difficult, partly due to the fragmented information-sharing arrangements across borders and between banks and law enforcement agencies. It is all very well to develop better protection for our own country, as this Bill purports to do, but, without simultaneously enhancing cross-border co-operation, we will not win the war against financial crime.

On regular visits to South Africa—most recently last month—I have been stunned by the systemic transnational financial crime network facilitated by an Indian-South African family, the Guptas, and the presidential family, the Zumas. If there had been more proactive and genuine co-operation between the multi-jurisdictional law enforcement agencies, and within and between the banks, which have been moving money for the Gupta/Zuma laundering network, the devastation wrought on South Africa could have been significantly reduced, and perhaps the financial institutions involved would have been able to better mitigate their exposure.

I had delivered by hand last night to the Chancellor printouts of transactions and named the British bank concerned, and I asked that he again refer these to the Serious Fraud Office, the National Crime Agency and the Financial Conduct Authority for investigation. This information shows illegal transfers of funds from South Africa made by the Gupta family over the last few years from their South African accounts to accounts held in Dubai and Hong Kong. The last columns of each sheet, now in the Treasury, show the relevant banks involved, and the records show all account numbers used. Many of the transactions are legitimate, but many certainly are not.

The latter illicit transactions were flagged internally in the bank concerned as suspicious, but I am reliably informed that it was told by the UK headquarters to ignore it. That is an iniquitous breach of legal banking practice in the UK, which I trust Ministers would never countenance, and it is also an incitement to money laundering, which has self-evidently occurred in this case, sanctioned by a British bank, as part of the flagrant robbery from South African taxpayers of many millions of pounds and many billions of their local currency, the rand.

[Lord Hain]

Each originating transaction would start with one bank account and then be split into a number of accounts a couple of times to disguise the origin. Undoubtedly, hard questions will need to be asked of the facilitating banks, because they have aided and abetted the Gupta money laundering activities. Can the Chancellor please ensure that such evident money laundering and illegality is not tolerated and that the bank is investigated for possible criminal complicity in this matter? Urgent action is needed to close down this network of corruption.

Then let us consider an example of the devastation caused to South Africa by cross-border money laundering. The Free State, one of nine provinces in the country, is marked by miles of flat, rolling grassland and crop fields, and it is the country's granary, responsible for 70% of total maize production. Britain played a defining part in the history of this province, as it marked one of the most contested spaces during the late 19th century/early 20th century South African wars involving the British imperialists, the Afrikaner nationalists and the Basotho people.

Today, the Free State is one of the poorest provinces in South Africa. Nearly one in two of the people is unemployed and nearly two-thirds live below what is called the "upper bound poverty line". More than half of the people in that province survive on one meal a day, tens of thousands of children go to school hungry, if they are fortunate enough to be in school, and over half of the province's children drop out of school before obtaining their matric—roughly equivalent to our A-levels—primarily because their daily focus is on survival.

Therefore, when in February 2013 the Free State Government announced that they would spend £18 million —approximately 340 million South African rand —to build, in a small Free State town called Vrede, a dairy farm which would be part-owned by 80 impoverished beneficiaries, the local community felt a sense of hope. Indeed, this kind of public/private partnership is a commendable and deeply necessary model of economic empowerment to redress the profound racial inequalities generated by the apartheid state, which continue to reverberate throughout South Africa.

What the people of Vrede did not know was that this project, and therefore their village, would become the scene of a transnational money laundering crime committed by collaborators from within the Free State Government on the one side and the now notorious Guptas on the other. In essence, this criminal network used these 80 people and their families as pawns in a swirl of international money laundering, which involved some British and other financial institutions.

The laundering operation went like this. Step 1: in May 2013, three months after the Free State Government announced the dairy farm project, a company called Estina—ostensibly the vehicle for the 80 beneficiaries but which was actually linked to the Guptas—was handed a farm to begin building the dairy. Estina's sole director was an IT salesman with no farming experience. The project was not put out to public tender. Step 2: the Government almost immediately transferred about £6 million to Estina. Step 3: instead of investing this in the farm, Estina transferred most of the money to a Gupta company in the United Arab Emirates called Gateway Ltd. Gateway is registered in Ras al-Khaimah, RAK, which is one of seven emirates making up the UAE and a highly secretive offshore company jurisdiction. At the time, Gateway held its account with the British bank Standard Chartered, which the bank has subsequently closed.

Step 4: once the funds were in Dubai, the Guptas engaged in a classic laundering cycle, transforming illicit money into ostensibly legitimate assets. In arguably the most eye-watering example, they transferred over £2 million of the Estina dairy money in two separate tranches through two shell companies, ultimately consolidating it in their Standard Chartered account for another of their UAE-based companies, called Accurate Investments. The bank has since closed this account too. Step 5: they then transmitted this money into an entity called Linkway Trading, banked with the State Bank of India, back into South Africa.

Step 6: once in Linkway, the Guptas used these funds to pay for a lavish four-day family wedding where, among other extravagances, over £1,000 was spent on chocolate truffles, £120,000 on scarves for guests and £20,000 on fireworks. At about the same time that the Guptas were celebrating at the wedding, veterinarians in the town of Vrede were called to the dairy farm because of the reeking stench of dead animals. According to their report, they found at least 30 cows that had been buried in a ditch having died from,

"an unknown condition that could be caused by malnutrition".

I have detailed the Vrede dairy example because many of us do not appreciate the destitution caused by money laundering. It almost always requires the complicity, whether witting or unwitting, of financial institutions. In this case, some of those are headquartered in Britain, such as Standard Chartered. I am grateful that the bank is now being investigated, along with HSBC and the Bank of Baroda, by the Serious Fraud Office, the Financial Conduct Authority and the National Crime Agency following my Question in your Lordships' House on 19 October and my request to the Chancellor.

The success of these criminal networks relies also on the action or inaction and co-operation or non-co-operation of the relevant law enforcement authorities. Always, it is the poorest who bear the brunt. In my letter to the Chancellor on 25 September requesting that he investigate UK bank exposure to the Gupta/Zuma network, I listed the 27 entities and individuals who were, among others, involved in the Vrede dairy farm tragedy. It is by no means the only example of the devastation wrought on South Africa by the Zuma/Gupta network.

The Vrede dairy criminal catastrophe proves that the laundering was effected through a transnational triangulation between South Africa, the UAE and British and other global banks. Therefore, the success of our law enforcement authorities in protecting our country from the proceeds of ill-gotten gains entering our financial system, as this Bill seeks to do, and by association protecting more vulnerable developing nations from falling victim to extractive criminal networks, depends on genuine and proactive co-operation and collaboration between the relevant law enforcement agencies in the concerned jurisdictions. Frankly, this Bill falls well short of what is required to do that.

Familiarising myself with the Vrede dairy farm tragedy—and taking some time in this House to explain it—what struck me time and again is why an internationally respected bank such as Standard Chartered would open bank accounts for shell entities registered in a free trade zone such as Ras al-Khaimah, whose primary attraction is as a highly secretive offshore jurisdiction. What was it doing this for? Shell companies, by virtue of their ownership anonymity, such as those used by the Guptas in the Vrede dairy tragedy, are generally classic vehicles for money laundering and other illicit financial activity. According to the Financial Crimes Enforcement Network, shell companies,

"typically have no physical presence other than a mailing address, employ no one, and produce little to no independent economic value".

The Financial Action Task Force, established in July 1989 at the G7 Paris summit, has consistently warned that free zones could be used for illicit trade and money flows that fall below the radar of regulatory authorities. We know that free zones have become an increasingly popular mechanism for the UAE and other countries looking to lure international investment and boost foreign trade. However, the question for us is whether we are ensuring that our financial institutions are facilitating, inadvertently or not, misuse by those interests attempting to move their illicit funds from one part of the world to another in order to facilitate money laundering, mafia crime, terrorist activity and financing, as the Minister said, and robbery from taxpayers, as in the South African case.

There are disturbing questions around both the complicity, witting or unwitting, of UK global financial institutions in the Gupta/Zuma transnational criminal network, and these institutions' wilful blindness to the reality that the laundering process most often necessitates financial systems with lax regulation and controls. Unless we urgently find ways to leverage our respective capabilities to co-ordinate and influence action between the law enforcement and banking sectors—domestically here in the UK and globally—we cannot win this battle.

I have received new information, which is still being corroborated, that the Gupta/Zuma network may be using the global metal recycling sector—some of the company names I have received have a UK presence—to launder the proceeds of their corruption. Indeed, this preliminary information suggests that, as South African banks, including British headquartered ones there, have shut down Gupta accounts in response to the financial crime risk they pose, so the family has simply shifted its laundering machine into the metal recycling sector, using intermediaries within these companies in South Africa, the Middle East, possibly the UK and Hong Kong to move their funds for them.

My question, therefore, to British-based financial institutions and to the Government is: are their compliance departments applying the necessary forensic eye to this secondary-layer threat—as primary accounts are shutdown, so the illicit funds must find alternative channels—and are law enforcement agencies and their regulators applying their minds, sharing information and, in so far as they can, acting on it?

My latest information, supplied as before by South African whistleblowers deep inside the system and disgusted by the corruption at the heart of the state, suggests metal recycling is the latest conduit. However, there may be other sectors these criminal networks are penetrating and I ask the Minister to investigate this.

Unless we use the opportunity before us to crack down meaningfully on these criminals, they will always be one step ahead. Over the past few months, several multinational companies have either fallen or been massively contaminated as a result of their complicity in the Gupta scandal, including Bell Pottinger, McKinsey, KPMG and SAP. The US Justice Department and the US Securities and Exchange Commission are now investigating German multinational SAP after it apologised the other week—"wholeheartedly and unreservedly"—to the people of South Africa for paying over £6 million in kick-backs to Gupta companies as part of their network of corruption headed by President Zuma and his family.

I believe that it is a matter of time before financial institutions in South Africa, in the Middle East, in Hong Kong, here in the UK and in the US will be forced to answer hard questions about their own complicity, and they must. I am today sending a copy of this speech, together with my letter of 25 September to the Chancellor, to the US Ambassador to London formally asking the US regulatory authorities to intervene, as the FBI has already begun to do. I am also asking the Government—I would be grateful if the Minister could respond on this point—to press the financial authorities in Hong Kong and Dubai to cut all links with the Guptas and Zumas. My Labour MEP colleague Neena Gill is raising the matter in the European Parliament, and Commissioner Pierre Moscovici has agreed to her request to investigate European banks which may be involved. In parallel, I wrote to the President of the European Commission, Jean-Claude Juncker, on 25 September asking him to act, but have not yet had a reply.

It is not only financial institutions and Governments which need to ensure that they are above reproach. A number of other global firms, whether legal, auditing, forensic or advisory in nature, have provided professional services to some of these complicit individuals, companies and institutions. These include UK-based firms such as Grant Thornton and Hogan Lovells, which have conducted forensic investigations at the South African Revenue Service under the brief of its Gupta-aligned head, Tom Moyane. Norton Rose Fulbright and Morrison & Foerster have assisted in the internal investigation at McKinsey into that company's links to the Guptas. There are other examples. I am not suggesting that these firms are necessarily complicit in the corruption, because in most cases they have been employed by the complicit companies—for example, Norton Rose and Morrison & Foerster by McKinsey—to try to surface the corruption.

In conclusion, I am suggesting that it is absolutely critical that all professional firms cut their contacts entirely with any individuals or entities associated with the Gupta and Zuma families or their associates. At the very least, whatever pressure they may come under from their clients and whatever the cost is to their commission or fees, they must conduct themselves according to the highest professional standards, which most if not all have palpably failed to do so far, as we saw with KPMG, McKinsey and SAP. To its credit,

[LORD HAIN]
the law firm Cliffe Dekker Hofmeyr recently upheld the highest professional values by boldly exposing corruption and dishonesty by senior executives at the country's power utility, Eskom.

As I stand here today, the 80 individuals who were supposed to benefit from the Vrede dairy farm are destitute. The complicity of our financial institutions in this, as well as the responsibility of law enforcers and regulators in all the concerned jurisdictions, should make UK Government Ministers and UK parliamentarians hang their heads in shame. Just as they were complicit in sustaining apartheid, so today they are complicit in sustaining the corrupt power elite in South Africa which is now betraying the legacy of Nelson Mandela and the anti-apartheid struggle.

4.53 pm

Lord Paddick (LD): My Lords, the noble Baroness, Lady Williams of Trafford, said in her answer to a question earlier this week that Foreign Office issues are not her area of expertise. They are not mine either, but this Bill overlaps to some extent with my responsibilities on these Benches for home affairs. I have one question for the Minister on Clause 40 and the power to make provision relating to immigration appeals. If noble Lords will allow me, if we can deal with this matter today by means of a comment from the Minister in his summing-up, it will obviate the need for amendments later in the Bill's passage.

As noble Lords will know, the Bill gives powers to Ministers to impose sanctions, and among those sanctions are immigration sanctions or the power to designate persons to be excluded persons for the purposes of Section 8B of the Immigration Act 1971. In essence, part of the sanctions package could be either to remove designated persons from the UK or to prevent their entering the UK. In addition, the Bill provides mechanisms for those affected to ask for the decision to impose sanctions to be reviewed, initially by a Minister and subsequently by the courts—as the noble and learned Lord, Lord Hope of Craighead, has said, the Court of Session in Scotland and the High Court in the rest of the UK—including a decision to designate them as an excluded person. This would in effect be an appeal against the decision to impose the sanction.

An excluded person could also claim that they have a right to claim asylum in the UK, or that their human rights would be infringed if they were returned to their country of origin or refused entry to the UK. These would be appeals against the consequences of the imposition of the sanction, rather than appeals against the decision to impose the sanction itself. It is clearly important that these two potential routes to challenge either the decision to designate or the consequences of being designated are kept separate. My understanding is that that is what Clause 40 would allow the Government to do by regulation.

Clause 40 is quite complex and I wonder whether the Minister can reassure the House when he sums up that, as the Explanatory Notes appear to suggest at paragraphs 115 and 116, claims of asylum and human rights will continue to be dealt with by the Home Secretary—the Minister with the knowledge, experience and expertise to decide these matters—not the Minister imposing the sanctions, and that any appeal against the Home Secretary's decision would be to the Immigration and Asylum Chamber of the First-tier Tribunal, a specialist tribunal with expertise in deciding such claims, not the High Court or Court of Session, where an appeal against the imposition of the sanction would be heard. I appreciate that that is what is contained in the Explanatory Notes, but that does not have legal effect, whereas clarification from the Minister at the Dispatch Box would.

4.56 pm

Lord Pannick (CB): My Lords, the Minister said in his opening remarks that this is a "technical Bill". However, it raises a number of constitutional issues and concerns which flow from the fact that the imposition of sanctions on an individual has a very adverse impact on the person designated, as the noble and learned Lord, Lord Hope of Craighead, rightly said. The noble and learned Lord mentioned the Supreme Court case of Ahmed, in which he was a member of the Appellate Committee. He rightly said in that case that an order freezing the assets of an individual makes such persons,

"effectively prisoners of the state".

He added that these orders are,

"intrusive to a high degree",

and have an adverse effect on not just the individual but members of their family.

My first concern is that the Bill states, at Clause 10(2)(b) and Clause 11(2)(b), that if there are "reasonable grounds to suspect", then the question for the Minister is whether it is "appropriate" to designate. The current legal test applied by the courts here and in the Court of Justice in Luxembourg, in part by reference to the European Convention on Human Rights, is to ask whether designation is proportionate in all the circumstances, including the impact on the individual. Can the Minister say whether the Government accept that a proportionality test will continue to be applied under the Bill? If so, will the Government accept that it would be highly desirable for this to be stated in the Bill?

My second concern is that Clause 11 allows for designation of persons by description. Currently, EU law requires that persons or entities must be expressly named if sanctions are to be applied. That is for a very good, practical reason. For a person to be designated other than by reference to their name will inevitably cause uncertainty not just for the persons concerned but for those who have to apply these provisions-in particular, banks required to freeze the assets of persons who are designated. Will the Minister comment on these problems which will inevitably arise if persons are designated by description?

My third concern is that Clause 2(1) will allow for financial sanctions to be imposed not just on designated persons but also on persons,

"connected with a prescribed country".

Clause 50(4) will allow the Minister to make regulations specifying the relevant connection. Can the Minister explain why sanctions should be imposed on a person simply because they are connected to a specified country as opposed to misconduct by that person or their

personal responsibility for the decisions of a repressive regime or a regime which otherwise justifies a sanctions border?

My fourth concern is procedural fairness. I think the Minister accepted in his helpful opening remarks that one of the vital safeguards in this context is the right of the individual to know the case against them and to have the opportunity to answer it. The European Court of Justice has recognised that procedural rights are vital to the integrity of any sanctions regime. The Minister said that the Bill contains "robust" provisions to protect procedural rights. In fact, the Bill contains very little indeed on the subject of procedural fairness. I well understand that a person cannot be told anything before listing occurs, as there will be too great a risk that funds may be dissipated, but once listing has occurred, the individual must have a right to be told why listing is taking place and by reference to what evidence so that he or she has a fair opportunity to respond—subject, of course, as the Minister mentioned, to retention by the state of security-sensitive details, but even then the individual must be told the essence of the case against him or her, as the case law requires.

It is striking that this Bill does not include any provisions setting out such a basic requirement of fairness at the stage after a designation order is made—neither a detailed code nor even a statement of principle to be developed in secondary legislation. There is only a requirement of disclosure if and when a case comes to court; that is, Clause 34(1), which refers to Sections 66 to 68 of the Counter-Terrorism Act 2008 and which incorporates the special advocate procedure for sensitive material. Even then, there is no recognition that individuals must be told the essence of the case against them.

I would like to see a duty to disclose at the earlier stage; that is, when or soon after the designation is made. The reason why it is essential that the individual is told at least the essence of the case against them at the designation stage is that you cannot start court proceedings under Clause 32(1)(d), read with Clause 33(5), until you have sought a review by the Minister and received a decision on that review from the Minister. That may take months—one hopes that it will be speedier than that, but, being realistic, it is bound to take time. There are no requirements on Ministers as to the timetable for conducting reviews. Unless you know the case against you, it is impossible effectively to present your arguments on the review. It is important to have clarity in this area on the face of the Bill, otherwise there will inevitably be litigation—and that litigation will lead to the courts imposing a duty to follow a fair procedure, which is my fourth concern.

My fifth concern about the Bill is in relation to the periodic review provisions in Clause 20. The appropriate Minister is required to consider any designation of a person every three years. That is far too long a period given the gravity of the consequences of listing a person. In the EU system, the periodic review sometimes occurs every six months, but in all such cases it must occur at least every year. It is true that the listed person can themselves seek a review under Clause 19, but, under Clause 19(2), once such a request has been made,

"no further request may be made … unless … there is a significant matter … not previously … considered".

There will be cases where although there is no significant new material, the very fact of the passage of time may justify looking again at whether a listing is really appropriate. The three-year period is especially troubling because, as I said, you cannot start court proceedings until you have sought a review by the Minister and received a decision on that review. Will the Minister say why the review period of one year at the most in Europe is being increased to three years, and will he please reconsider the point?

My sixth concern is that the Bill would remove effective remedies for persons listed in the UK in order to implement a UN designation. The current position under EU law is that it is contrary to the rule of law for a UN listing to be implemented without procedural safeguards—that is, supporting evidence, effective judicial review, and the European court has the power to quash an order if it is not proportionate. Under the Bill, Clause 21(2) and (4), the individual would only have a right to request the Secretary of State to use his or her best endeavours to take the matter up at the UN to remove the person's name. There is a right under Clause 32(1)(c) to seek a court review of the Minister's decision not to use best endeavours. Can the Minister confirm that I have correctly understood that the intention of the Bill is to deprive the individual on the UN list of the rights that he or she currently has under EU law to obtain from the court, in appropriate cases, a quashing of a listing that derives from the UN?

If that is so, the individual designated in this country as a result of being placed on a UN sanctions list will have much less legal protection than a person who is listed in France or Germany as a result of being placed on the same UN sanctions list. The Minister said in his opening remarks, and he is right, that this country has an international law obligation to implement a UN listing. But can he confirm that, nevertheless, the European Court of Justice in Luxembourg requires the rule of law to be satisfied and has a power to give effective judicial remedies in appropriate such cases?

My seventh and final concern is the very broad delegated powers conferred on Ministers under the Bill, for example under Clause 39. The noble and learned Lord, Lord Judge, will address this topic, and I share the views that I know he is going to express. I look forward to hearing the Minister's response on these points.

5.10 pm

Lord Freeman (Con): My Lords, first, I pay tribute to the excellent service on the Front Bench of my noble friend Lady Anelay. Judging by the quality of her contribution this evening, I am sure she will replicate that distinguished service for many years to come.

I support the Bill. Unlike those with much legal background and training, I shall concentrate on some practical matters and principally on money laundering. I find myself in agreement with the noble Baroness, Lady Bowles, about the implications of the Bill—I hope they are positive—in terms of money laundering. I appreciate that the UK has recently transposed the fourth money laundering directive and I hope and trust that the UK will continue to be a member of the international Financial Action Task Force. I would be grateful if the Minister could confirm, either tonight or in due course, that that will be the case.

[Lord Freeman]

The power in the Bill enables the United Kingdom, after leaving the EU, to update UK anti-money laundering regimes. The changes to be made to UK legislation will be made under the affirmative procedure. I am delighted by this. Those noble Lords who have sometimes suffered in a more rapid process must welcome the fact that we will debate the regulations and the changes that are due to come under the affirmative procedure rather than the negative procedure. Parliament is better involved in detail if that is the case.

I understand that the Government's review of the UK's anti-money laundering legislation is planned to conclude in December 2018. I am not quarrelling with that timetable, although I am a little disappointed, but it is vital that the target is met. I am sure the Minister, who has the same degree of attention to detail that he had when serving with other ministerial responsibilities, will comment on my plea that we conclude that legislation properly.

One area it is vital to cover is the need for a mandatory register of house owners located abroad who are currently able to buy UK property anonymously. I have lived in London for most of my life, although I did not represent a London consistency in another place, and I am acutely conscious that there is a good deal of concern not just in central London—in Kensington and Chelsea and Mayfair—but throughout Greater London about the anonymous purchase of property and the implication—implication only; I make no charge—of improper sources of funds to buy the properties. The Government have promised to introduce legislation by April 2018 to bring transparency to the housing market so that overseas companies must publicly declare their beneficial ownership. That is a very important target to meet on legislation and government action. Transparency International has apparently identified more than £4 billion-worth of London property bought with wealth considered suspicious—these are not my statistics, and I am grateful to that organisation for briefing me—and 40,000 London properties that are owned anonymously.

Action is required. Companies House, I am sad to say, has far too few employees dealing with registration. I gather it is a handful—or less than a single handful—and therefore staffing should be increased dramatically. We need a register of beneficial owners of UK property, which should be open not only to your Lordships' House but to the general public.

5.25 pm

Baroness Ludford (LD): My Lords, I start by also welcoming the contribution to the debate of the noble Baroness, Lady Anelay, whom we much miss from the Front Bench. I am sorry that she is lost from the team of Ministers in DExEU, and, like the noble Lord, Lord Hain, I fear that the balance of opinion in the ministerial team in that department has tipped for the worse. I hope she can continue to have input into government policy and towards the achievement of a sensible one from the Back Benches.

This Bill is necessary but inevitably, because of Brexit, it is not as good as what we have at the moment. Within the EU we operate through the common foreign and security policy framework, which serves as a vehicle for the UK to multilateralise its own sanctions policy and benefit from the support of EU partners. It is an example of where we punch above our weight and multiply our power through EU membership, which enhances our overall influence in the foreign policy arena.

The Government say the purpose of the Bill is to continue to work effectively and consistently with our European and international partners to tackle the shared challenges in foreign policy and security. However, part of the Brexit narrative is that we need flexibility to be able to do things differently. There is an obvious tension here, and the Bill represents the conundrum that is there in Brexit as a whole.

The first example of tension could be about how this greater flexibility outside the EU is used—to what purpose and with what potential loss. There will be a loss of voice and influence for the UK and potentially a loss in terms of a weakening of the global effort against rogue states and other actors, because the EU sanctions regime might be less efficient or effective, or if the strength of our own is diminished because of pressures that it will come under.

Secondly, "taking back control" means an increased administrative and bureaucratic burden—having to create and run a UK-only regime and taking up the time and energy of legislators on this Bill. We are not seeing less red tape with Brexit, but more. Compliance costs will increase. Businesses and individuals benefit from having to deal with only one regime, with uniformity and consistency. An authorisation for an exception from sanctions obtained in one member state is valid EU-wide at present. There is also a lot of litigation. Currently this all goes through the Court of Justice of the European Union. In future it will land on our courts, and I am sure they are welcoming the extra work. The sheer costs and upheaval being created in order to liberate ourselves—in the words of some—from an organisation that, despite some flaws, works well is amply demonstrated by the Bill.

Thirdly, as my noble friend Lady Bowles has well described, there is a reduction in transparency and democracy as scrutiny and joint legislative power for MEPs are replaced by a governmental power grab way beyond the correcting power in the repeal Bill. There is no taking back control for Westminster.

Fourthly, the UK risks a serious loss of influence. Will we become like Norway, not in the room when decisions are taken but having to align ourselves with the EU? How will the UK retain a position of leadership as opposed to accepting that it can be only a loyal follower of EU sanctions or choose to weaken that solidarity by departing from them? How will we influence EU sanctions policy from outside the EU?

We do not yet have the benefit of the EU External Affairs Select Committee's report on sanctions policy as the inquiry is still in progress, but we have been able to dip into some of the evidence. A witness from RUSI said:

"We still have the biggest financial lever in the European Union"—

in the form of the City of London—

"that the EU can use".

So the collective weight of the EU is greatly strengthened by UK participation in the sections regime. This also includes the institutional capacity of the EU, to which seconded British experts significantly contribute.

Another feature brought out in evidence to that inquiry is that the UK contributes considerably to the backbone—one witness described it as "the lead in the pencil"—of EU sanctions policy. We have a very important position in the development and promulgation of EU sanctions. When or if we are separated from the EU, the ability of the EU and UK to pursue common foreign policy objectives through sanctions will be reduced. Indeed, our pull-out could weaken the resolve and political will of the EU as well as its ability, since we are one of the strongest advocates of sanctions.

We would put at risk the so-called consensus bias in the EU—the way in which it creates an intention and willingness to work together in support of sanctions regimes, even when certain member states are suffering economically. A good example is the way the EU has coped with Russia's divide-and-rule policy. The EU has managed to withstand the pressure because of its common institutional architecture, within which no doubt there can be compensation in other policies for unhappy member states that are feeling the pinch from Russian pressures. If that EU architecture is fragmented by UK exit, the outcome becomes less predictable and more vulnerable to such pressures.

On the Bill itself, I am glad to see the "reasonable grounds to suspect" standard of proof adopted, in line with the recommendation in the report from the EU Justice Sub-Committee, on which I sit. There has been some criticism in the past of due process failings in the EU sanctions regime, although there has been improvement in recent years. I was going to ask the Minister if he could highlight ways in which the Bill corrects those failings but the noble Lord, Lord Pannick, has answered the question: he says there are no ways in which the Bill improves the EU procedures. Indeed, he highlighted that in both remedy and review the Bill creates a worse situation. Could the Minister at least assure us that the administration and enforcement of UK sanctions will be well-resourced? We have seen that other enforcement areas, such as the police and trading standards, which are well away from sanctions, have been considerably weakened by cost-cutting. Will the enforcement of sanctions be protected from that?

It is asserted by some that if we get greater control we can better tailor compliance regimes to suit the needs of UK business and other affected sectors. The Minister mentioned licences for humanitarian NGOs, but there might be less laudable beneficiaries. What happens if the City of London tells the Government that it would like to see less pain than it currently gets under EU sanctions? How will the Government ensure that there is not inappropriate deregulation? At present the EU acts as a shield for national Governments who are reluctant to defend and justify their own decisions. "It was terrible; we got outvoted," they say, when you know jolly well that the decision was taken by consensus. The UK Government running its own sanctions regime will not have that pretext and will be more exposed to lobbying at the national level. Can the Minister give us some idea of how the Government intend to exercise their new-found autonomy and flexibility and reassure those of us worried that this could mean a laxer regime?

A senior Treasury official told the EU Committee inquiry:

"We have the ambition of reducing burdens on business where we can with any additional flexibility we may have once we exit the EU".

What did that remark specifically envisage? It could mean sensible reform or it could mean an ominous weakening.

The UK must not become a haven for those escaping validly applied sanctions elsewhere through British deviation from an EU sanctions listing. Britain must not become a refuge for the corrupt, the criminal and the corporate villains—or at least, no more than, sadly, we are now. Will the Government surprise us by exhibiting a resolve to use its new-found freedom from the alleged Brussels straitjacket to tackle money laundering as well as tax evasion in the British overseas and dependent territories? Will they now commit to introducing that register of true owners of overseas companies currently able to purchase UK property anonymously? That was highlighted by the noble Lord, Lord Freeman. As Transparency International, whose figures were cited by the noble Lord, said,

"this bill is a timely opportunity for ministers to confirm their determination to deliver on this promise",

of introducing that register. It went on:

"Without doing so, there is little prospect of ending the UK's role as a safe haven for corrupt money".

5.26 pm

Lord Judge (CB): My Lords, the objectives of this Bill are admirable: we fulfil our international obligations; we also protect national security; we try to prevent terrorism; and as far as possible, we eradicate money laundering. So there is nothing wrong with the objectives. My concern is the way in which we are going about it.

This is a vast, great superstructure of secondary legislation being erected on virtually non-existent primary legislation. It is, in truth, a bonanza of regulations. It is not shy about it. The very first words refer to power to make regulations. The Bill actually says "Power to make sanctions regulations", but it is about power to make regulations. That is the term in the first clause, which states:

"An appropriate Minister may make sanctions regulations where that Minister considers that it is appropriate to make the regulations".

The regulations are then defined. The regulations that the Minister may make mean,

"regulations which do one or more of the following … impose financial sanctions … immigration sanctions … trade sanctions … aircraft sanctions … shipping sanctions … sanctions within section 7 (other sanctions for the purposes of UN obligations)",

and regulations that may "make supplemental provision".

Noble Lords will not be too pleased to hear me go through clause by clause of this Bill, but I assure them that in relation to the creation of powers, rather than any review that may take place, not a single clause does not depend on regulation-making powers being given to the Minister. For me, the comeuppance comes at Clause 16, which I think, with great respect, is a rather shocking proposal. Clause 16(2) states:

"Regulations may make provision … for the enforcement of any prohibitions".

[LORD JUDGE]

Fair enough. Subsection (3) states:

"The provision that may be made by virtue of subsection (2)"—

I shall read this slowly—

"includes … provision creating offences and dealing with matters relating to those offences, including defences and evidentiary matters".

Then subsection (4)—this is very generous—states:

"Regulations may not create an offence punishable with imprisonment for a period exceeding … in the case of conviction on indictment, 10 years".

This is really rather remarkable. We have criminal offences being created by regulation. I assume that there will be a trial before conviction—it does not say that there will not be, anyway. The reception of evidence to demonstrate that the case is proved depends on ministerial regulation. At the end of the trial, assuming that there is a conviction, the judge may impose a sentence of 10 years. This is not the stuff of secondary legislation; this is a very serious provision. I do not speak to any others—but I want to return to the story, because we then go to money laundering.

In Clause 41, we have regulations again, where it says:

"An appropriate Minister may by regulations",

do this and the other. Then Schedule 2 makes further provisions about regulations under this section. Schedule 2 starts by saying that,

"regulations … may do any thing mentioned in paragraphs 2 to 17",

and then there are a whole series of provisions, which include, as the noble Baroness, Lady Bowles, has already pointed out, making:

"provision creating criminal offences and dealing with matters relating to those offences, including defences and evidentiary matters".

It then says:

"Regulations … may not provide for any such offence as is mentioned",

but there punishment on indictment is up to two years. Phew, what a relief. Why money-laundering punishments should be less than the others is an interesting question, but there it is.

One might have thought that the regulation powers given in this Bill were of such vast amplitude that it might be enough—but it is not, and I ask the question whether this is really how we wish to legislate. I go back to Clauses 38 and 39. Clause 38 provides,

"a power, by further regulations",

called,

"'new regulations' … to revoke any regulations",

made under Section 1, or,

"to amend any regulations under that section".

And so it goes on.

Clause 39 also includes a power to authorise additional sanctions, saying:

"An appropriate Minister may … amend this Part so as to authorise regulations … to impose prohibitions or requirements … additional to those for the time being authorised".

So what you get in Clause 1, which I dashed through—noble Lords will all remember getting rather bored—about financial, immigration, trade and aircraft sanctions and so on, is not the story. There is a whole new additional power to add to that list.

Over and beyond that, we come to the heavy foot of King Henry VIII, in Clause 44. Stark as you like, it says:

"Regulations … may make supplemental, incidental, consequential, transitional or saving provision … in the case of regulations",

to which I have referred—those arising under Section 1, and,

"provision amending, repealing or revoking enactments (whenever passed or made)".

So the galumphing King Henry comes along, but to rescue who from what?

This is an extraordinary piece of legislation. I support the objectives of the Bill, but we are legislating in a most extraordinary way. I say this with great respect to all the parliamentarians who have come before me but, speaking for myself, I do not think that an affirmative resolution process does the business. The affirmative resolution is there and it is wonderful—but when was serious scrutiny made under the affirmative resolution powers that led to a statutory instrument being abandoned, either here or in the other place? Yet our main function is to scrutinise legislation and point out to the Executive that in the end we, the legislature, are in charge. This Bill gives too much power to the Executive.

5.34 pm

Lord James of Blackheath (Con): My Lords, my contribution to these proceedings will be to present my memories of two money-laundering activities that took place and see how they compare with what might happen today if they had to contend with the presence of this enacted Bill.

The first case emanates from the northern shores of Africa and the other one relates to our old friends the IRA. They are very different, and I shall take the Libyan incident first, which is astonishing in its own way. President Gaddafi had decided that he had to get rid of this terrible capitalist symbol known as Coca-Cola. Coca-Cola had to be driven from the shores of Libya, but he did not have another drink to replace it, and Libya is a very hot country and you have to have a drink.

He approached a company in Yorkshire which specialises in turnkey operations and said, "Please invent me a cola company". Unfortunately, and unbeknown to them at that time, I was about to be made chairman of this company because the bankers were frightened about how much its borrowings were rising. I arrived on the day when the cola had apparently been created to replace Coca-Cola. Coca-Cola had been sent from the shores of Tripoli with the blasts of cannons echoing in their ears—he got planes to shoot at the ship as it went out to sea, carrying all the residual Coca-Cola of Libya—and the new cola was born.

Unfortunately, the headline in the national press the next morning, on the launch of this new cola—I am awfully sorry but I am going to use a very non-parliamentary word; apologies to Hansard and to the Chair—was, "Kitty Kola is Kitty Cat Piss". I thought, "This is terrible—if this is what Mr Gaddafi thinks, he will never pay the invoice". So I said, "How are we going to get paid for it? How much do they owe us?". They said, "£27 million, sir". I had only been there since Monday and this was the Tuesday. I said, "We're not going to get paid, are we?". They said, "Yes, we will—you wait and see".

Later that day, they came to me and said, "We've been paid". I said, "Let me see", and they showed me a credit transfer for £29 million. I said, "That's £2 million too much". They said, "Yes". I said, "Send it back immediately and just keep the £27 million". "Don't be a fool", they said, "You're a new chairman and you don't know what's going on". I said, "I certainly don't. What's the £2 million for?". They said, "You'll be told later today". I said, "I can hardly wait."

Shortly after that, I got a communication from Libya saying, "Please take the £2 million and open a bank account for us in Rome, and provide us with all the bank details—and by the way, we've sent you a picture of the passport of the individual whose name we need to have on the account". I said, "We're not doing this, are we?". They said, "If you don't do it, we'll never get another deal in Libya". I said, "Have you done this before?". They said, "Yes". I said, "How many times?". They said, "Seven times". I said, "You've opened seven bank accounts? For how much?". "Well, it's usually about £2 million each time". "And what's that money being used for?". They said, "We don't know—it's none of our business". I said, "It jolly well is. We're going to have to talk to the security staff about this, straight away". They said, "You can't—they'll blow us away".

So I got on to the security people and said, "Are you interested in this?". They said, "Yes. Come and have breakfast and bring all the stuff with you". So the next morning—they always do it nicely—I got breakfast at the Dorchester, which is never to be complained about, and I took all the files on this thing. They said, "This is wonderful! This is like gold dust." I said, "I think it's terrible". "No, no, no—don't stop doing it; just give us all the details and then we'll have the whole thing completely under supervision". I said, "This is going to be used for buying armaments to murder the Pope and everything else". "We'll look after that; you just do what they're telling you, give us the details and we'll all be happy".

The present Bill makes everything that I have just told noble Lords very illegal. But I ask the Minister: how are we going to catch it, because I cannot see that there is any regulatory process or overview that will stop it happening again? And do we think it is not happening today? The company that I was chairman of for that brief period is not there today—but somebody is and they will be doing the same. How are you going to make this Bill work to stop that happening again? I bet it is happening today, and will happen tomorrow and the next day. I would not like to know how many private bank accounts are opened up which provide easy access for Islamic terrorist intervention across the shores of the southern Mediterranean.

I have a conundrum for your Lordships. I will mention five different types of company and I want noble Lords to tell me if they can see instantly why it was attractive to the IRA to acquire a controlling interest in five small listed companies trading individually on the London Stock Exchange. They were as follows: one, the world's biggest library of photographs available for press utilisation; two, a spoil reclamation company, taking salvage spoil from mining tips; three, the building of a residential village on the shores of Portugal; four, a technical film services company; and five, an extremely upmarket and very posh limousine service working round the airports of Europe. What was the possible interest in having those five companies? I have asked around and only one Member of the Lords got the answer: my noble friend Lord Holmes of Richmond—it took him about seven seconds. I think that he should be put in charge of intellectual investigations of all suspicious work immediately.

The answer, quite clearly, is that every one of them performs a service abroad for which an invoice for payment can be provided from Ireland. It is an easy way of transferring money wherever you want it, in small or big sums, and having the money—criminally acquired funds by the IRA in Ireland—filtered away into little bits and pieces. The village in Portugal is funny, I think, because it was intended to be the holiday venue and retirement homes for retired successful IRA operatives. I did not know that it had such care for the welfare of its people. It makes one feel proud to know that the IRA was so responsible.

The film technical services company was the one that caused the greatest problem. There was in those days—this is the terribly important difference from what we have now—a hugely active corporate governance department in the Bank of England. It was run by a man called Jonathan Charkham who, among his many other great distinctions, was the father of my noble friend Lady Shackleton of Belgravia. Jonathan Charkham was the witchfinder general for the IRA's activities in the 1980s and he was brilliant at it. He sadly died some years ago. The department in the Bank of England had ferreted away and had found a very strange set of circumstances. An American company that it could not identify had worked through Savory Milne, the broking arm of the Swiss Bank Corporation, to acquire the controlling interest of a company called Eagle Trust and had then used Eagle Trust to float a rights issue to acquire a tiny little film services company called the Samuelson Group for £55 million. The Bank of England decided that something was really wrong because the £55 million, which had been used for the rights issue, was stolen completely. The IRA took that as its up-front money.

Again, I was put in to sort this one out. Jonathan Charkham went in one day and called the board. He had the right—as the backbone of the Bank of England—to call a board meeting which he could attend, sitting beside the chairman of any public company. He sat with this lot, went through the whole thing and then fired the whole board on one day. He then put me in as chairman and I had the night to get together a new board for the next day. We looked at this and it was just a nightmare. Eventually, we found that money had indeed been stolen and, later on that same day, there arrived some very strange Americans from a company in New York who announced that they were the new owners of Eagle Trust. The IRA had been in collusion with Cosa Nostra—I do not how this Bill would cope with that if we get it again. The IRA was using foreign money to buy up a company that it wanted to steal some money from. I am not sure that this Bill gets anywhere near providing a regulatory network to get into that. The difference as I see it between then and now—I know I am talking about

[Lord James of Blackheath]
25 or 30 years—is that, whereas then we had the regulatory people and professionals who could act on and work with this sort of thing, nowadays we rely upon the FCA and conventional police forces; the security arm will only act if there is a specific security leak recognised with it. We do not have anything like the old Bank of England corporate governance arm which did so much wonderful work to watch what was happening and move on it. Without that, I cannot see how the Bill will have teeth.

A funny thing about the acquisition of the Samuelson Group was that when we went through the accounts, we found that the IRA had ticked off items and had written down, "Four funerals, £500,000". We wondered what the IRA wanted with four funerals for £500,000. It turned out that this was code for the film "Four Weddings and A Funeral", which it had spent all the money producing. The IRA had worked for a year for no fees, which had caused it to go bust, in return for 65% of the revenue from the film, which was an enormous amount of money—so we turn from a £4 million a year loss to £14 million a year profit. The flotation raised nearly half a billion pounds and all the banks were paid back with all the money from that. The IRA lost the lot—which I have to say is one of the most satisfactory things I could ever record.

As I say, I cannot see that the Bill will have teeth. There are no foot soldiers to back it up, and we need them. If the Bill is to work, we need to get the Bank of England to decide whether it will reactivate corporate governance as one of its arms. Are we going to make the FCA do its proper job for once and get on with supervising these things, or will it be the security services more generally? At the moment, it is not there and it will not happen—and unless we get it, this well-meaning Bill will not work. It did work before—we cleared the decks and we do not want them to get cluttered with these dreadful people again. We need to make something to back this Bill.

5.46 pm

Lord McNally (LD): My Lords, that speech provided the Minister with an interesting dose of realism on the range of responsibilities and the size of the problem that this Bill seeks to cover. As the noble Lord, Lord James, said with some emphasis, these things are still going on and we should consider the Bill in that light.

I advise the Minister never to start a speech by assuring the House that a Bill is just technical, and that we should therefore move along as there is nothing to see. That only stirs us up. I remember that my mother was very fond of the saying, "The more she spoke of her honour, the more I counted the spoons". Ministers who say that a Bill is technical provoke our learned friends in particular. As has been emphasised, we want to see the Bill pass into law, but we want to examine its wider context of setting high standards and taking global leadership in the fight against corruption.

I, too, am pleased to see the noble Baroness, Lady Anelay, in the Chamber. I spent some 11 years in tandem with her making this place run, when I was the leader of the Liberal Democrats and she was Chief Whip.

I take up the point made so forensically by the noble and learned Lord, Lord Judge, and warn against the overuse of secondary legislation and Henry VIII powers in this and other Bills. It is ironic that a Brexit campaign which called for the return of a supposedly lost parliamentary sovereignty has resulted in a power grab by the Executive which would have made Henry VIII blush.

I recommend to noble Lords the text of a speech given by the noble and learned Lord, Lord Judge, at King's College London on 12 April 2016. In fact, I think that the Minister should get a copy, read it and show it to the Prime Minister, because it is a masterly analysis of the problem that we now face in abundance. In it he quotes from an earlier speech made at the Lord Mayor's banquet for the judiciary in 2010, when he said that this increasing accretion of executive power via secondary legislation and Henry VIII powers,

> "will have the inevitable consequence of yet further damaging the sovereignty of Parliament and increasing yet further the authority of the executive over the legislature … Henry VIII clauses should be confined to the dustbin of history".

However, now Henry VIII clauses proliferate across Bill after Bill. Parliament will need to address the situation as a matter of urgency if it is not to be known as the jellyfish Parliament for lacking backbone in the face of such blatant usurping of its powers. I go back to the noble and learned Lord's speech at King's College. He did not give these quotes today, but this goes to the heart of it. He said:

> "Since 1950, sixty-five years, some one hundred and seventy thousand statutory instruments, prepared not by Parliamentary Counsel but by government departments, exercising powers granted by legislation, have been laid before Parliament. In that time seventeen … have been rejected by one or other house".

In essence, that is the answer to what we hear time after time from Ministers: "Of course it will come before Parliament!". Some of it will be by the super-affirmative or affirmative procedures, but the truth is that the use of affirmative, negative and super-affirmative procedures is no check or balance. It is a sham, and one that works, as we found before. The Labour Opposition—the Official Opposition—always has the thought, "When it is our turn, if we unravel this rather nice idea that secondary legislation comes before proper parliamentary scrutiny, they'll do it on us". We have seen that in the past, with the Labour Front Bench backing off from confronting the Government.

I believe that, as we go into this period of legislation ahead of us, if the Government think that they can do this simply by Henry VIII clauses and secondary legislation, we will drive into a constitutional car crash. It would be wise if the Lord Speaker and the Speaker of the House of Commons could consider bringing together a committee of both Houses to look at this to devise ways to provide some parliamentary machinery to scrutinise these powers that the noble and learned Lord, Lord Judge, so eloquently warned us against.

Much of this Bill is anchored by the work of the European Parliament. For 40 years, British politicians and the British media liked to treat that organisation as one of those funny foreign assemblies—not like the real thing. In the Bill—and in the Data Protection Bill, which I am also working on—we have evidence of just

how thorough the European process of lawmaking really was. We are fortunate to have on our Benches two outstanding examples of European lawmakers in my noble friends Lady Bowles and Lady Ludford. In the Bill we will have the immense benefit of their experience. As a Minister I saw at first hand their skills in making EU legislation better, more effective and—yes, of course—in our national interest. That is real sovereignty in action—being there and being able to influence. I hope that the Minister will listen carefully to what is said as the Bill progresses.

One of my proudest moments as a Minister was when, in 2011, Ken Clarke and I were able to bring into force the previous Labour Government's Bribery Act 2010. That was by no means a done deal. There were the usual complaints that this would lose us vast orders—it was usually implied that the French would get them if we did not. But it was a significant turning point in taking a legislative stand against the corruption of free and fair trade. It is equally important in keeping Britain at the forefront in delivering sanctions against regimes and individuals whose behaviour undermines human rights and violates established international law.

My noble friends Lady Northover and Lady Sheehan will be casting their expert eyes over the sanctions part of the Bill as regards national security and our ability to contribute fully to humanitarian and peacebuilding works. Yesterday we were briefed on the Bill by NGOs. I think that in Committee we will have to reflect on some of their concerns about the unintended consequences of the regulations on their operations.

On the brighter side, we were told by the NGOs that one of the better outcomes of tougher laws on money laundering was that international banks, particularly in Africa, were pulling out, or threatening to pull out, of countries where a laxity of controls might cause those banks to fall foul of EU or United States sanctions. The result is that many of these countries are beginning to put their own houses in order. Therefore, sanctions and anti-money laundering legislation are good for our own economic and political health, but they can have a positive impact on others, too.

However, it would be very complacent of us to imagine that everything in our own garden is rosy. We still hear voices arguing that the real Brexit will come only when Britain cuts itself loose to be a free-trading buccaneer, roving the seven seas, taking booty where it can and operating a lightly regulated, small-government regime here at home. That goes back of course to my earlier concerns. It is all very well the cuddly, lovable noble Lord, Lord Ahmad, saying, "Give me these powers and I will use them wisely for the common good", but what happens when we find ourselves in the post-Brexit wonderland, with Jacob Rees-Mogg at the helm and John Redwood in place of the noble Lord, Lord Ahmad?

That is why the Government must seize the opportunity to couple this Bill with some announcements that would provide reputational mood music demonstrating our firm commitment to fighting corruption and the money laundering that provides its lubrication. This is the front line against organised crime, terrorism, modern-day slavery, people trafficking and the abuse of state power by elites. He is not in his place now, but the contribution of the noble Lord, Lord Hain, was a very sobering and rather depressing account of how that can happen. It would, for example, be useful if, in parallel with the legislation before us, the Government could publish their cross-government anti-corruption strategy, which is now nearly a year overdue.

We need to make it clear that the UK is not a safe haven for corrupt capital and that there will be no race to the bottom when it comes to money laundering and offering a safe haven for the wealth of the world's corrupt elite. In that respect, a key indicator of intent would be the delivery of the UK's commitment to introduce a register of beneficial ownership of UK property. I was very pleased to hear what the noble Lord, Lord Freeman, said on that and the quotations that he gave from Transparency International's briefing material, which I will not repeat.

Again taking up a point made by the noble Lord, Lord Freeman, there is also a need to beef up the number of those with responsibility for oversight in Companies House in order to tackle these issues in the countries that have been cited. All the evidence shows that Companies House is understaffed and, on occasion, overwhelmed. Surely what is needed is an elite squad of investigators, headed by an individual who will make his or her name by cracking down on the money launderers.

As I said, we want to help the Government use this Bill to send the right messages both at home and abroad. We need to look at the money laundering provisions for weaknesses and loopholes, as so ably analysed by my noble friend Lady Bowles. We need to give clear and unambiguous guidance to our banking system which will give them comfort and confidence in operating both sanctions and money laundering regimes. We have to examine the concerns of NGOs and humanitarian agencies about unintended consequences that might make them vulnerable to falling foul of international sanctions or the law. We agree with the Minister that we need to give the legislation flexibility and adaptability so that we can respond quickly to new emergencies and circumstances, but that must not be at the expense of parliamentary scrutiny.

Those are the tasks we will face in Committee over the next few weeks. I am glad to see that the Minister is back in his place because I want to reassure him, as he sets out on these tasks, that as he well knows, "We're the Liberal Democrats and we're here to help him".

6 pm

Viscount Waverley (CB): My Lords, I offer my support to government objectives at this stage of the Bill, because continuity of current arrangements is clearly an imperative. I have, however, listened carefully to the concerns of noble Lords, and I hope that the Government are on message. We have heard from the Minister that flexibility would allow Ministers to add differing components. That is helpful. He mentioned transport, trade and immigration. However, any mechanism to specifically place more emphasis on removing corruption from the world stage, alongside that on money laundering, would be propitious for inclusion in future sanctionable objectives. The noble Lord, Lord McNally, touched on that point twice in his remarks.

[Viscount Waverley]

Defining corruption can be a nebulous challenge, but it often extends to poor governance. It is essential to exert pressure to improve governance where needed, particularly in relation to the recipients of UK aid funds.

The use of sanctions for economic or regime change purposes, or targeted sanctions on individuals for human rights abuses—a mechanism short of more drastic measures—is on the increase. Understanding how best to measure those sanctions against their intended purpose and ensure that the unintended do not suffer disproportionally, and when expedient how to allow leaders on the receiving end to save face, are all challenges. The need is sometimes to allow or provide an assured exit route for those facing international justice or a route back to a state of peace and reconciliation for conflicted peoples.

I would welcome a global review of sanction processes at a convenient time in the future. Knowing when and how to instigate sanctions as a tool of policy does not require multilateral-level consideration by a body such as the United Nations. More effectively, it should be introduced by smaller and more coherent regional or economic groupings, such as the G7 and European Union members. Regional fora to discuss and implement sanctions have the benefit of speedier action without as much compromise on principles compared with the UN. Many crises require more timely responses while UN bodies conduct their reviews and investigations. On another note, regional groupings carry more weight in terms of "who is in the right", as typically those in regional groupings are neighbours. For example, African Union sanctions on African states could carry more moral weight, as it is not seen as a group of western nations punishing a poor African state. I took note of this general theme when listening to the vehement remarks made recently in your Lordships' House by his excellency the President of Namibia.

The underpinning of sanctions as a transatlantic set of initiatives is fundamental. This might serve also as a brake on occasional future excesses by the United States.

We must all be in step. If in step, what should be done about the effects of extraterritorial components unilaterally instigated by others—for example, the US Helms-Burton legislation, a United States federal law which strengthens the United States embargo against Cuba? Whether it be Cuba or elsewhere, it is often western banks and companies—notwithstanding the desperate tale outlined by the noble Lord, Lord Hain, who is not in his place—which, against their individual corporate interests and without consultation, shoulder the burden.

However, the overall balance must be got right. We are headed possibly towards a differing geopolitical and geo-economic world. Care needs to be exercised for sanctions not to become a "them and us" circumstance. Some suggest possible future axes of those to the East standing between themselves and the ideals of the West are in the making.

While a clear set of objectives exist we should be mindful of states not being boxed into a corner or blind alley with little or no exit strategy. Any possible reciprocal sanctions programmes might have dramatic and untoward long-term adverse repercussions. If sanctions become a wedge between differing ideals, certain eastern economic powers might decide they are more in kilter with those in the East than the West. Presumed groupings and informal alliances are much more variable than we might think. So, sanctions achieving their end, and not beyond, are crucial.

I was struck recently by a comment from a UK Foreign Minister that encapsulates one aspect of the challenges. He noted that we live,

"not in a world where isolation works".

6.07 pm

Lord Gold (Con): My Lords, the Bill is to be welcomed. That said, I hope the Government reflect on the powerful and eloquent comments of the noble and learned Lord, Lord Judge, echoed afterwards by the noble Lord, Lord McNally.

As we have heard, the immediate necessity in relation to the Bill is the Brexit vote and our departure from the EU in 2019. I hope that anyone who doubts the need for our own sanctions law is persuaded by the sobering comments of my noble friend Lady Anelay when speaking about Sudan. Most current powers to implement sanctions flow from the European Communities Act 1972. However, when this Act is repealed and we leave the EU, we must have our own domestic powers to impose sanctions. The Bill introduces considerable flexibility, for both sanctions and licensing, and simplifies the process of imposing non-UN sanctions. At a time when terrorists appear to move with ease across borders and do the same with their assets, the Government must be in a position to move quickly and impose effective sanctions. The Bill allows that to happen.

After discussion across relevant departments co-ordinated by the Foreign and Commonwealth Office, an appropriate statutory instrument can be laid before Parliament without delay. This contrasts greatly with the present system in Europe, where proposals for sanctions emanate from the EU, then—inevitably and understandably—there must be consultation and negotiation across member states before any new EU regulations can be issued. Only after that can we proceed by way of statutory instrument here.

Although this streamlining is to be applauded, there is a risk ahead against which we will have to safeguard. There could easily be an additional compliance burden if there are divergences between the UK and the EU in substantive sanction prohibitions. To achieve efficiency and be effective we will have to find a way of working with the EU to co-ordinate our approach. This may be difficult if, as I have indicated, we are able to impose sanctions more quickly as our processes are simpler.

If these sanctions are not later supported in the EU, I can see problems of enforcement and maybe legal conflicts. The need to move quickly and efficiently is recognised by a proposed change to the evidential requirement for the imposition of a sanction. It will be sufficient to show that there exist "reasonable grounds to believe" that an individual should be added to the sanctions list and that the proposed sanction is appropriate. There will no longer be the need to demonstrate that the sanction is "necessary" to protect the public, which

has proved to be a high evidential burden. This is an important change as terrorists are now causing significant damage with little money or resource as, regrettably, recent terrorist outrages in Manchester and London have demonstrated.

I want to say a little more about the flexibility that this Bill introduces for government. In addition to traditional-style sanctions such as freezing assets or imposing restrictions on investments, the Government will have the flexibility to introduce measures that take account of the ownership or control of entities or funds. The Bill also supports a flexible approach to the imposition of trade, aircraft and shipping sanctions.

In relation to money laundering, Ministers are given a wide power of investigation and can introduce regulations to prevent money laundering and terrorist funding. Ministers may require "prescribed persons", as defined in the regulations that are to be issued, to put in place policies, controls and procedures to prevent money laundering and terrorist funding; take prescribed measures in relation to their customers; provide or disclose information; and produce and retain registers and records, including information on beneficial ownership. I would hope that these powers, sensitively thought through and applied, would be flexible enough to prevent the abuse that was so clearly set out earlier by the noble Lord, Lord Hain.

Although these powers are similar to powers already found in EU law, I hope that when finalising the regulations, Ministers will be sensitive to the administrative burden that measures of this kind impose on businesses. Many noble Lords have mentioned on other occasions some of the difficulties already being experienced by some individuals simply in opening bank accounts. By increasing the reporting and policing obligations of our institutions and possibly imposing financial and penal penalties for failure, we must be wary of the considerable inconvenience that could be caused to customers.

I end by saying that I am pleased that provision is made for regular review by Ministers of the sanctions regime to ensure that it is still warranted and fit for purpose. I am also very pleased that provision is made for those affected by any sanctions to be able to challenge them by seeking a review by the Minister—and if not satisfied, to challenge the review by applying to the High Court, the principles for applying being similar to or the same as the judicial review provisions. But I share the view of the noble Lord, Lord Pannick, that sufficient information must be forthcoming so that people affected by sanctions understand the reasons for them, ensuring that they are at least on a level playing field if they want to challenge them.

6.13 pm

Baroness Sheehan (LD): My Lords, my opening remarks will echo those of my noble friend Lord McNally and the noble and learned Lord, Lord Judge—but much less eloquently, I fear. Two years ago last week was an eventful time in your Lordships' House. The day of 26 October 2015 was remarkable not just because it saw the introduction into your Lordships' House of the first lady Bishop in history, which caused the House very unusually to erupt in applause, but because it was marked by the controversial vote to delay tax credit cuts in order to protect the poor, which the Government lost. I should also say that the day is indelibly ingrained in my memory because it was when I, too, was introduced into your Lordships' House. I had not expected such excitement here.

Upon losing the vote on tax credit cuts, the Prime Minister accused Peers of breaking a constitutional convention. Noble Lords will recall that a rapid review was set up to find ways to ensure that financial measures cannot be overturned by the House of Lords. Those who voted against the Government argued that that viewpoint was nonsensical because the tax credits were being introduced through a statutory instrument and had not been declared a formal financial measure. The review was asked to look at ways of guaranteeing that statutory instruments cannot be overturned by Peers, who have done so on only five occasions.

We were told that this presented no less than a constitutional crisis—all caused by controversy over one statutory instrument. I fear that we are in for many such crises, as many similar controversial measures are coming down the line.

We have before us a Bill that threatens to overturn certainly my admittedly meagre understanding of how we, in this mother of all Parliaments, have operated for centuries. It drives a coach and horses through previous practice and risks reducing our elected representatives and noble Lords to mere spectators. We are told that it is an enabling Bill. My fear is that it will enable precedents that will diminish democracy and hand over too great a power to the Executive. It begs the question: who is taking back control and what relationship does that control bear to parliamentary sovereignty?

The Bill in this respect is deeply flawed. As we have heard, many safeguards that should appear in it are missing. Nevertheless, it is before us. My focus on it will primarily reflect my role as my party's spokesperson for international development. I will restrict my remarks accordingly.

The case for ensuring that the sanctions regime is replicated meaningfully and strengthened was well made by the noble Baroness, Lady Anelay, and the noble Lord, Lord Hain. I would like to see a Bill that explicitly gives the Government flexibility and legal powers to permit NGOs and charities to deliver humanitarian, development and peacebuilding activities through general exemptions, permissions and licences so that they are not prevented from doing their work. Essentially, we want them to be able to buy petrol and mobile phones, access banks et cetera, and to ensure that their work is not hindered.

I will add my voice on the issue of how we can use the anti-money laundering part of the Bill at the outset to deliver on the UK's commitment to introduce a register of the beneficial owners of UK property. I, too, have benefited from the very useful briefing from Transparency International. At the 2016 anti-corruption summit in London, led by the then Prime Minister David Cameron, the UK Government committed to introducing legislation by April 2018 that would bring greater transparency to the housing market by requiring overseas companies owning property here to declare publicly their beneficial owners. This has wide support and the Government should take the opportunity to deliver on that commitment.

[Baroness Sheehan]

Developing countries are often accused of corruption—the noble Lord, Lord Hain, gave us a graphic example—but we must acknowledge that corrupt leaders would soon be out of business if they did not have laundry facilities. We have been a laundry and facilitated those options for long enough. Let us use this Bill to end corrupt practices that divert billions of pounds from the poorest people on the planet. The Bill presents an opportunity that will not come again any time soon.

6.20 pm

Baroness Northover (LD): My Lords, I thank the noble Lord, Lord Ahmad, for introducing this Bill and pay tribute to all those who have spoken. I pay tribute in particular to the noble Baroness, Lady Anelay, and thank her for everything that she did in her long service as a much-respected Minister. It was a great pleasure working with her.

This is the first Bill to reach the House of Lords which seeks to set into UK law the law and regulations under which we have been operating in the EU. I am not sure how auspicious it is. Clearly, if we leave the EU, this is an area of law that we must have in place. We cannot have a hiatus in this or other areas. The Bill will therefore be followed by many others. That poses an enormous challenge to us as we can see from simply looking at this area. It is an area which per se—enabling us to have a sanctions regime and to prevent money laundering—should be non-controversial, which is no doubt why this Bill is starting here in the Lords.

The Minister has explained that the Bill would enable the UK to continue to implement United Nations sanctions regimes, to use sanctions to meet national security and foreign policy objectives and to enable anti-money laundering and counterterrorist financing measures to be kept up to date. If we leave the EU, we fully support the proposal that the UK must have the ability to maintain its sanctions and anti-money laundering regimes.

Like other UN charter states, the UK is obliged under international law to implement UN sanctions. The UK has also taken action where there are no UN sanctions, through the EU and often with the US, Canada, Norway and others. Thus we have had sanctions in relation to Syria, Iran, North Korea, Sudan and Zimbabwe, and would wish to have the ability to continue to use them as part of our foreign affairs armoury. The noble Baroness, Lady Anelay, made the clear and incontrovertible case for the use of sanctions, although she will be aware that the UK has often led the EU in this field and our leaving may have a negative impact—my noble friend Lady Ludford also made this very clear, as have witnesses to the House of Lords EU Sub-Committee on External Affairs.

The Bill also creates the power to amend the money laundering regulations of 2017 should the UK withdraw from the EU and to pass new regulations making provision against money laundering and terrorist financing. Part 1 of that legislation, which deals with terrorist asset-freezing, will be replaced by the Bill. It also enables the Government to update UK provisions to reflect international standards set by the Financial Action Task Force, of which the UK is a member.

Our task in this House is to scrutinise closely whether the legislation brought before us does what is required, does nothing detrimental—either by design or inadvertently—and puts in place a framework that will work for the future. The Minister and his team will be in no doubt that we will take very seriously our responsibilities to scrutinise. There are areas in which we may wish to improve things, as there always are in Bills. We hear, for example, of the way that sanctions may make life difficult for NGOs working in the humanitarian sphere in places such as Syria and we will have to see whether the Bill adequately addresses their concerns. I welcome what the Minister has indicated in that regard. Is he in contact with DfID over how best to frame exemptions and licences for such organisations? I note that his noble friend Lord Bates was next to him at the beginning of this debate. Will such issues be addressed in the Bill, rather than buried in secondary legislation and possibly moved to the back of the queue? The NGOs especially request the power to provide for exemptions and general licences in respect of humanitarian responses, international development and peacebuilding activities, and for these to be administered flexibly.

As we have heard, Transparency International has made a very cogent case on the money laundering section; no doubt the Minister has heard that as well. I look forward to hearing how the case to which the noble Lord, Lord Hain, referred now progresses. As my noble friend Lord McNally said, I have seen the very useful effect on African regimes of foreign banks pulling out for fear of US courts and fines.

This is an important opportunity to see whether what the Government propose could be strengthened. They have always argued that while no protections that the EU afforded would be lost in the process of leaving the EU, improvements could also be made. My noble friends Lady Ludford and Lord McNally have warned that things could of course move in the other direction, and he also made it clear that this must be an opportunity to put into UK law what the Government have long promised on fighting corruption. I recall during the coalition, for example, the moves made to ensure that property ownership in the UK was placed on a public register and the promises to extend that further. My noble friend Lady Sheehan referred to this. Yet we see that this provision is only in secondary legislation here. This means that there is a possibility of it being implemented; it may also mean that no one acts and nothing is done.

However, as noble Lords have made extremely clear, there are much more fundamental concerns about the Bill. Noble Lords have heard devastating critiques in this Second Reading, in particular from my noble friends Lady Bowles and Lady Ludford, the noble Lord, Lord Pannick, and the noble and learned Lords, Lord Judge and Lord Hope. These concerns stem largely from the wide use of secondary legislation. The Government are clearly constrained, as they have no idea what the likely future relationship with the EU will be. Their capacity is stretched to breaking point with all that they need to cover. We thus do not even know whether we are trying to have a sanctions and anti-money laundering regime that is so close to the EU as to be indistinguishable, as Norway argues is in

its economic and other interests. What a piece of homework to set our civil servants. Much is therefore being put into secondary legislation, suggesting that the Government might do this or that. The extent of powers afforded to Ministers in the Bill raises huge concerns, as we have heard.

We have also heard that the anti-money laundering measures were added at a late stage—people have mentioned that to us. Given how short the part of the Bill is in this regard, it certainly looks likely. The very fact that there was earlier scrutiny of the sanctions section rather bears that out. It would also explain why so much of this part is being put into secondary legislation, even to the extent of allowing Ministers to create new criminal offences, as noble Lords have pointed out. It seems as if this part of the Bill was particularly rushed: lest the Bill enshrine in primary legislation elements that the Government were not quite sure about, they resort to secondary legislation to allow them to set things in place later. But the risk must be that if we put overarching frameworks in secondary legislation, exactly when would primary legislation setting out the parameters ever come back to Parliament?

My noble friend Lady Bowles, with her long experience as a former MEP—even more so as a former chair of the EU Parliament's Committee on Economic and Monetary Affairs from 2009 to 2014, which was a rather crucial time in the world's financial history—is right to point out the severe challenges in this part of the Bill. When she makes it plain that there is a whole democratic layer missing here, we should listen. Here are offences decided by Ministers without safeguards, and without the safeguards that exist in their EU counterparts, as the noble Lord, Lord Pannick, explained.

Secondary legislation is a very blunt instrument. As my noble friend Lady Sheehan pointed out, we know that it is very much a "take it or leave it" affair in the UK Parliament and that the Government became extremely heated when in this House we decided that we would not accept their tax credit changes as proposed in secondary legislation. When they were voted down, there was, as my noble friend pointed out, almost a constitutional crisis. The Government risk the same here by setting in place an arrangement by which such important decisions are made. That is why it is important that a democratic and sound framework is put in the Bill and we do not have important areas simply left to secondary legislation. For that reason, it will be important to see what the Delegated Powers Committee has to say about the Bill, and I note what my noble friend Lord McNally proposed as a way through.

I am sure the Bill is meant to be a non-controversial start to the Brexit legislation we will need to have in place should we leave the EU in March 2019. I also picked up on the Minister's reference to this Bill being simply technical. This is an area where there is much cross-party agreement, but it is very clear from the Bill how challenging it will be to do what the Government are doing in such a short time. As my noble friend Lord McNally indicated, it may well be that nobody would doubt the intentions of the current Minister, but he will know, as I do, that Governments and Ministers come and go. What we need here is a far more robust—to use his word—piece of legislation which does not push all the decisions down the track to be opted into or out of according to the whim of another Minister or Government, even to the extent of creating new criminal offences.

I look forward to the scrutiny of the Bill, to the extent to which the Minister can reassure the House that the powers taken here are appropriate and to his willingness to think again where he and we find that the Bill as drafted simply cannot stand. Only then will the ultimate aims of enabling the UK to have effective sanctions and anti-money laundering regimes be achieved.

6.32 pm

Lord Collins of Highbury (Lab): My Lords, I, too, start by thanking the noble Baroness, Lady Anelay, for her contribution. Laying down that evidence has been really important and will govern a lot of what we will consider in relation to the Bill. I am sad that she has left the Government. It is not often that opposition and government parties can work together, but we have because we have a common interest in defending democracy and supporting human rights, and in particular I welcomed her work on LGBT rights. She will be sorely missed from the Government, but I know that she will continue to work from the Back Benches on those important issues, and I welcome the opportunity to work with her.

I also thank my noble friend Lord Hain for his contribution, again because he has enabled us to consider what we are trying to deal with in this legislation. His example and his evidence will be at the forefront of our minds when we consider the specific points in the Bill. It was an excellent contribution.

If we take any of the most pressing foreign policy challenges of our time, from North Korea's nuclear weapons programme to ethnic cleansing in Myanmar, the likelihood is that sanctions will feature heavily in discussions about how we should respond. But if those examples demonstrate the importance of sanctions as a foreign policy tool, they also point to some of the limitations of relying too heavily on sanctions alone. The case of Iran, on the other hand, shows that sanctions can be made to work if there is strong enough political commitment. Thanks to a combination of carefully targeted sanctions and a sustained commitment to diplomacy over 12 painstaking years, EU negotiators, led by the noble Baroness, Lady Ashton, ultimately achieved a breakthrough with Iran which led to a comprehensive nuclear deal that many had previously dismissed as unthinkable. Recent history shows above all how important it is to make careful use of sanctions as part of a clear, overarching diplomatic strategy. This is just one reason why the Bill is so important.

It is also important because passing new legislation is a legal necessity, as sanctions currently take effect in the UK almost exclusively via EU regulations, and we need a new domestic legal framework to be in place before we leave. Without this, we would not be able to fulfil even our most basic international obligations as a member of the United Nations. On that basis, Labour fully recognises the need for new sanctions legislation, and we will not obstruct the Bill unnecessarily. At the same time, we believe there are areas that will need to

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be improved, and to that end we will put forward a number of amendments to address some of our particular concerns.

In his introduction, the Minister emphasised the need for co-operation to ensure that sanctions are effective—and the examples given by the noble Baroness, Lady Anelay, amplified this. We cannot work in isolation. In relation to non-UN sanctions, how will the Government ensure not just that UK-EU co-operation on sanctions continues after we leave the EU but that we maintain the ability to shape decisions on EU sanctions when they are imposed? The Lords EU Committee has warned that the UK must continue to co-ordinate sanctions policy with the EU after Brexit. I know it is a lot to ask of the noble Lord, and he may be unable to respond today, but will he set out at some stage of the Bill as it progresses the detailed plans for future co-operation and effective co-ordination between the UK and the EU?

As we have heard in the debate tonight, one concern about the Bill is that there is no requirement for Ministers to set out an overarching strategy for achieving any specified goals. We will seek to amend the Bill in order to address this omission. We will also seek to require robust impact assessments, setting out any potential humanitarian consequences of sanctions and what steps will be taken to mitigate this risk. We will certainly back the calls for a streamlined process for granting any necessary exemptions to sanctions on humanitarian grounds.

We hosted a round table with NGOs and, although I appreciate what the noble Lord said in relation to the powers within the Bill to grant exceptions, there are concerns about how these will operate in practice, and they will need to be addressed when we scrutinise the Bill clause by clause. In particular, as the NGO sanctions and counterterrorism working group said, is the Minister aware of how important it is for licences to be of the duration of an NGO's programme and to be relatively open-ended, and subject to change only in negotiation with the NGO? If we do not have that, we will be putting the staff and the assets of the NGOs at risk. I hope the Minister will be able to assure us that the scope and application of Clause 14 will meet the expectations of NGOs.

We will seek to improve transparency by requiring the Government to publish an annual report on sanctions implementation. Ministers would have to continually reassess whether sanctions were working, whether enough was being done to meet the relevant objectives via the diplomatic track and whether adequate safeguards were in place to prevent any unintended consequences, humanitarian or otherwise. Only by requiring such information to be made public can the Government truly be held to account.

The next item of concern that Labour will seek assurances on is the need for ongoing parliamentary oversight of sanctions policy. Currently, the only review mechanisms that the Bill provides for are ministerial, and the Government's implementation of sanctions will therefore essentially be self-policing, setting aside the individual rights for judicial review. This is clearly unacceptable. We will table amendments to guarantee greater parliamentary scrutiny throughout the process, including on decisions to lift sanctions as well as decisions to impose them in the first place. I hope, bearing in mind the comments that have been made across the Chamber today, that we can have that on a cross-party basis.

As the noble and learned Lord, Lord Judge, said, the Bill contains a number of Henry VIII powers. We look forward to the DPRRC's report on this with great interest. Looking at the committee's timetable, I hope we will have that in plenty of time for Committee stage. In Clause 39, the Bill creates a power for new types of sanctions to be introduced by regulation. This is said to "future-proof" the Bill. It will be subject to the affirmative process, but there is no scope for amending SIs. The idea that there are new challenges and therefore we need new laws, which will simply be done by these means, just does not seem accessible.

With regard to these powers, I always admire the ability of the noble Lord, Lord McNally, to be relatively selective in his memory. The Lib Dems were of course in government, and he presided over some of the things that concerned me most about the coalition Government regarding the reduction in access to justice, which will remain at the forefront of my memory. I recognise that often opposition parties will say something in opposition but, when they feel the full weight of responsibility in government, they say something else. So I accept what the noble Lord says, but the job of this House is to scrutinise. In our parliamentary democracy, I am proud that we have the appropriate checks and balances, and the role of the courts is certainly important in that. That is why I look forward to working with noble and learned Lords, and others, to ensure that there are those proper checks and balances.

As noble Lords have said, is it really appropriate for the whole of the new anti-money laundering legal framework to be produced almost entirely by delegated legislation? This House cannot amend regulations. If they are not subject to proper parliamentary review and scrutiny, it may be that it will be much more difficult to prevent future backsliding in anti-money laundering provisions, particularly as London begins to compete with Frankfurt. There may be other pressures on the Government in relation to these issues. Exactly how does the Minister intend to ensure that Parliament has a major role in scrutinising future changes to the AML regime?

The noble and learned Lord, Lord Judge, referred to several provisions in the Bill, including Schedule 2. I particularly want to raise the issue of Schedule 2 and the powers to create new criminal offences in relation to money laundering via delegated legislation. Is that really appropriate? In the Delegated Powers and Regulatory Reform Committee's report of 2014, *Special Report: Quality of Delegated Powers Memoranda*, it stated:

> "Where the ingredients of a criminal offence are to be set by delegated legislation, the Committee would expect a compelling justification".

I do not think that the Government's memo on this gives us a real compelling justification, and I hope that the Minister will be able to address that firmly. We will certainly be looking at that very carefully as we go through the Committee stage.

Finally, and for me perhaps most importantly, bearing in mind the comments in the contribution of the noble Baroness, Lady Anelay, we will seek to expand the criteria for imposing sanctions in the future, including a strong and unequivocal commitment to promoting human rights as part of British foreign policy. The absence of such a commitment in the Bill is, for me, disappointing. I hope we will have the opportunity to address that. The next Labour Government will be fully committed to observing these principles regardless of whether our amendments succeed. I hope that, nevertheless, we will be able to address these issues.

One of the things that will be uppermost in our minds, and which we must not forget, is that the decision of the people in the referendum to leave the EU will have consequences. A major consequence will be our ability to influence a collective and co-operative approach to some of the most oppressive regimes and oppressed people in the world.

6.48 pm

Lord Ahmad of Wimbledon: My Lords, first, I thank all noble Lords for their very thoughtful speeches today. Again, they reflect the experience and expertise in your Lordships' House not only in the matter before us, but in all discussions and debates we have. I cannot agree more with the final point made by the noble Lord, Lord Collins, on the issue of co-operation and working constructively. I hope that I have done so thus far, in terms of engagement and taking on the chin, as a Minister often does, the criticisms levelled at the Government. That will certainly be the basis on which I hope to continue the engagement we have had so far, and as we go forward.

Getting this Bill right, as I said at the start, is very important and our ability to impose sanctions and anti-money laundering measures is central to our vision of a rules-based international system. While, shall we say, differing opinions were expressed during the debate, the principle that I have just articulated is something that we all very much subscribe to. I thank the noble Lord, Lord Collins, the noble Baroness, Lady Northover, and the noble and learned Lord, Lord Hope, for the constructive discussions we have had with the respective Front Benches, and that will continue to be the case.

Again, all noble Lords have agreed on the importance of flexibility and the ability to impose sanctions against the most undesirable regimes—and not just the most undesirable. We find regimes across the world that commit inexplicable horrors against their own populations. When we leave the EU—I say "when", correcting the noble Baroness, Lady Northover; I am sure that it was a mistake when she used the word "if"—it is right that we have the same ability to continue not to have any flights of assets.

At this juncture, I acknowledge the contribution of my noble friend Lady Anelay, who so aptly spoke of the principles, but also the sentiments and emotions of why we are doing this. This is about human beings, after all; it is about the human element that sanctions are imposed for. If we were living in a perfect world, we would not be having this debate but, unfortunately, that is not the case.

As I said in the opening speech—I hesitate to use the word "technical", after listening to the noble Lord, Lord McNally—it is a Bill based on principle. Perhaps that is a better way to put it. Of course, I worked very closely with the noble Lord, Lord McNally, and we have had many discussions on this, although those discussions remain as part of the coalition agreement of that time. I listened carefully to his contribution and, in particular, to that of the noble and learned Lord, Lord Judge. I heard what he said about the powers of the Executive through secondary legislation. I was aware of his previous articles and the speeches that he has given, particularly on the Henry VIII powers. But let me assure all noble Lords that our intent here is not to take powers for the sake of the Executive; it is about ensuring that we have flexibility and sustainability in a sanctions regime.

As I am sure the noble and learned Lord will acknowledge, there are precedents for the use of secondary legislation, although I am sure that it will not change his opinion in any way. One example, of course, is the export control orders under the Export Control Act 2002. I fully acknowledge the difference in the views of noble Lords in this regard, but the Government are certainly of the view that we must balance the need to act swiftly with the importance of parliamentary oversight, which I alluded to earlier.

While the principle is clear, we must, as noble Lords have acknowledged, get the detail right, and the expertise of noble Lords in this Chamber will be vital to ensure that we get progress in this regard. While there are differences, as we have said already, I believe that we can agree on the broad principles of why this Bill is necessary.

I am conscious of limits on time, and I shall seek to get through as many of the issues raised as I can, with the caveat that, if I am unable to answer specific questions that noble Lords have raised, I shall write to them. To take an issue on process, I should say that the Delegated Powers Committee was supposed to meet earlier, but I believe that the revised date is 15 November. I look over to the Box and get a thumbs up, which is always good; it happens rarely from the Box, but I got that one right. Working through the usual channels, we will ensure that the Committee sittings reflect the ability to have that detailed scrutiny.

I turn to some of the questions asked, first by the noble Baroness, Lady Bowles. I welcome her expertise in this area—and I look forward to working with her, particularly on the aspects of money laundering that she raised. The noble and learned Lord, Lord Hope, spoke about the definition and powers being too broad. The definition of money laundering in the Bill replicates that currently used in UK law. It is necessarily broad to ensure that the full range of illicit activity criminalised through the Proceeds of Crime Act 2002 is similarly captured by the Bill. Where a person's rights under the European Convention on Human Rights are affected by any regulations made under Clause 41, the Minister responsible will still be under the existing legal obligation to act with proportionality, as per Section 6 of the Human Rights Act.

The noble Baroness raised the issue of failure to prevent offences, and the noble Lord, Lord Hain, mentioned that in his contribution. When bringing

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forward secondary legislation of this type, we will consult and act in view of the responses, ensuring that there is a proportionate approach taken in this regard.

The noble Lord, along with the noble Baroness, Lady Ludford, and my noble friend Lord Freeman also raised the issue of beneficial ownership information and overseas territories. As the Minister responsible for OTs—it has been a rather busy brief in recent times—I can assure them that this issue is not lost on the Government. On the contrary, Crown dependencies and overseas territories have agreed to hold company beneficial ownership information in a central register and to share it with UK law enforcement on request. As noble Lords know, we have legislated through the Criminal Finances Act 2017 to review the effectiveness of the first 18 months of these arrangements, which will be before us on 1 July 2019. The Government's focus right now is also on supporting the Crown dependencies and OTs in fully meeting their obligations in this regard.

The noble Baroness, Lady Bowles, referred to her regret Motion regarding the 2017 regulations. This is a happy place, and when we hear the word "regret", that is always regrettable. As the noble Baroness notes, it will be debated on 6 November and the Government will respond more fully at that time. The transposition deadline by which the UK was legally required to implement the directive was 26 June 2017. This allowed very little time for the Government to publish the regulations after the general election, due to purdah restrictions. We regret that, as she acknowledged, there was a breach of the 21-day rule connected with the transposition of this directive. However, we had consulted extensively with stakeholders on our policy intention. That is all I will say right now; I am sure we will return to this issue when we debate the regret Motion.

The noble Baroness and the noble Lord, Lord Hain, raised the issue of the Government's approach to criminal offences in secondary legislation. The 2017 money laundering regulations deal with both civil and criminal penalties, and the primary money laundering criminal offences are set out in the Proceeds of Crime Act 2002. The offences established through the money laundering regulations provide a necessary backstop to penalise the most serious sustained breaches of the regulations. Criminal sentences for sanction offences are set out in Clause 16(4), which refers to a statutory maximum of 10 years. I will write to the noble Baroness and the noble Lord about the other details.

The noble and learned Lord, Lord Hope, and the noble Lord, Lord Pannick, raised the exercise of power with appropriate safeguards. Yes, in our view there are sufficient safeguards. First, Parliament must authorise every type of sanction that can be imposed. Secondly, all designations are supported by evidence. Thirdly, those affected can ask for a reassessment and challenge through the courts. Fourthly, the Minister must act in accordance with human rights, as per Section 6 of the Human Rights Act 1998. Let me assure noble Lords that we intend to write this week to the newly constituted Joint Committee on Human Rights, setting out the detailed analysis of what I have just described.

The noble and learned Lord, Lord Hope, also talked about explicit authority for Parliament for non-UN sanctions. The Bill sets out in detail in Clauses 2 to 6 what Parliament is authorising. As I said in my opening remarks, any new sanction can take effect only after a vote in both Houses authorising that regulation.

The noble and learned Lord also raised the issue of appeals to the Supreme Court being available for the Court of Session in Scotland. Yes, the intention is very much that appeals to both the High Court and the Court of Session will be available.

The noble Lord, Lord Pannick, among others, raised proportionality, seeking assurance that it will always be part of the decision regarding non-UN sanctions. Yes, I can assure noble Lords that where human rights are affected, a Minister will always need to comply with the European Convention on Human Rights and Strasbourg case law, and that will include an assessment of proportionality.

Concern was expressed by several noble Lords about taking powers to prevent money laundering. The UK's appeal as a financial centre makes it necessary that we prevent money laundering effectively—a point acknowledged by several noble Lords. The 2017 regulations and the EU funds transfer regulation both require that the transfer of funds be accompanied by specified information, enabling effective monitoring and transfer of funds. This will be vital in enabling enforcement authorities to understand and disrupt illicit financial flows.

The noble Lord, Lord Pannick, also raised designation by personal description. We anticipate that we will have sufficient information to identify a person and, where it is the case, we will do so by name. Designation of persons by description is necessary to deal with members of proscribed terrorist organisations who, for example, conceal their identities. We will also provide as much detail as we can so that businesses and banks can carry on their business.

The noble Lord went further and asked about the imposition of financial sanctions on persons connected with a prescribed country. This is necessary to ensure that broad sectoral measures can be imposed which restrict general access to financial persons and markets. There are other elements within this and exemptions that may be applied, so I will write to the noble Lord and place the letter in the Library as well.

The issue of thresholds was also raised by the noble Lord. Where relevant convention rights are engaged, proportionality will, as I have said, be part of the decision-making. Under Section 6 of the Human Rights Act 1998, the appropriate Minister must act in compliance with those convention rights and Strasbourg case law. We accept that this includes the need for the Minister to satisfy himself or herself that the designation is proportionate and includes consideration of the impact of the individual.

The noble Lord also raised issues of procedural fairness and several other matters. In the interests of time and covering other aspects, I will, with his kind permission, write to him and copy other noble Lords into that response.

The noble Baroness, Lady Ludford, who speaks from great experience of the European Parliament,

talked about resourcing enforcement of sanctions. We have increased the maximum criminal sentences for breaches of financial sanctions in the Policing and Crime Act to seven years, which we are enabling in this Bill. This means that a breach of financial sanctions is a serious crime, which allows the National Crime Agency to dedicate significant resources to investigations and prosecutions.

She also asked about our having no influence on sanctions as we leave the EU. A question on our relationship was also asked by the noble Lord, Lord Collins. It would be great if I could say, "Right, here's the page and here's the answer", but all this is under negotiation and the exact nature of our future relationship with the EU on sanctions, like much else, still needs to be determined. However, we need to look at this from a global context, with our relationship, our permanent seat on the Security Council at the UN and our other international engagement. The UK has led on many issues within the European Union and I certainly believe, reflecting the optimism across government, that pragmatism will prevail in many areas. I am sure we will see greater detail emerge on this relationship.

Periodic reviews were raised by the noble Lord, Lord Pannick, and my noble friend Lord Gold. These provisions are to ensure that designations are kept under regular review and do not simply lie on the shelf. It is important to remember that a number of things can happen within the period that we have set. First, the designated person can request a review and have the decision looked at again; secondly, they can challenge in court; thirdly, if new evidence arises or there is a new matter that has not been considered, they can request a further review; fourthly, the appropriate Minister can instigate a review on their own initiative in response to changing events; and fifthly, the appropriate Minister can bring the deadline forward and complete the review before the end of the three-year period. Given all this, and that the matter of designation is clearly a live matter throughout the period, we do not consider the period to be excessive.

Turning to other questions from several noble Lords, the issue of transparency associated with Scottish limited partnerships was raised by the noble Baroness, Lady Bowles. As of June this year, Scottish limited partnerships have been brought into the scope of the public register of beneficial ownership maintained by Companies House. They are also required to submit an annual confirmation statement that the information held on this register is accurate and to keep the information up to date.

My noble friend Lord Freeman asked whether the UK would remain a member of the Financial Action Task Force. The short answer is yes; the UK is the leading member of the Financial Action Task Force and has been since its establishment. We will continue to fulfil this leadership role after leaving the European Union, so as to continue to influence international standards.

The noble Baroness, Lady Bowles, raised the FATF. Given her expertise and experience, she will be aware that the standards set by the Financial Action Task Force form the basis for both the fourth money laundering directive and anti-money laundering legislation in FATF member states outside the EU. This reflects the international nature of how financial crime can be targeted and dealt with.

Beneficial ownership of property was raised by the noble Baroness and my noble friend Lord Freeman. We sought views earlier this year on the proposed ownership register of overseas companies that own UK property. The responses are being reviewed by the Department for Business, Energy and Industrial Strategy, which will make an announcement in due course.

Among other things in his contribution, my noble friend Lord James gave some practical examples of the Bill's operation and asked whether it would stop money laundering in Libya. The short answer is yes; the powers in the Bill will enable us to locate and prohibit that type of criminal activity. We can also put sanctions in place against terrorist groups.

I turn to some of the other questions, to demonstrate that we were listening. The noble Lord, Lord Hain, raised a specific issue in relation to Dubai and Hong Kong having ties with the Gupta family. I am grateful to the noble Lord for bringing this information to our attention. As he acknowledged, he has already written to my right honourable friend the Chancellor of the Exchequer, and I will, of course, bring his contribution to my right honourable friend's attention.

The noble Viscount, Lord Waverley, referred to international collaboration. I thank him for his wise words on the importance of linking sanctions to strategy agreed with international allies. The global impact of sanctions can work only if there is consensus across like-minded states.

My noble friend Lord Gold referred to anti-money laundering regulations being risk-based and proportionate. I agree with him. He is right to highlight the importance of firms taking a proportionate approach to implementing anti-money laundering systems and controls, and ensuring that they properly target the highest risks in this regard.

The noble Baroness, Lady Sheehan, asked about the Bill's provision for general licences for humanitarian needs. I suggest to her that there are specific clauses on this issue. I will write to her in this respect but Clause 14(3)(a) allows the Government to issue specific and general licences. However, I am keen to hear her views on that, and those of the noble Baroness, Lady Northover, who was formerly a Minister with responsibility for this area, so it would be useful to hear from her. The noble Baroness, Lady Northover, asked whether we were talking. Yes, we are. My noble friend was sitting right next to me and we are working very closely with the Department for International Development in this regard.

The noble Baroness, Lady Northover, also referred to the anti-money laundering clause that was included at the last minute. That was always the plan, and she will have noticed that we have been transparent about this since the start. Our plans were set out in the FCO, HMT and DIT joint consultation, which was published in April, and confirmed in the government responses.

I apologise to the noble Lord, Lord Paddick: I will write to him on his specific questions as I had to leave the Chamber momentarily during his intervention.

[Lord Ahmad of Wimbledon]
However, I thank him for it as we have talked about some of his concerns outside the Chamber. I hope that they have been addressed.

The noble Lord, Lord Collins, referred to licences for NGOs and said that they should be open-ended and last the duration of the regime. The Bill, as drafted, can deliver this.

I will write to noble Lords on any issues that I have not had time to cover today. Once again, I emphasise that the Bill is about powers rather than policy. It is not about punishing specific individuals, groups or Governments, but about enabling this Government, and every future UK Government, to act to keep this country safe and continue to play a responsible role in international peace and security once we leave the European Union.

It would be remiss of me not to conclude, entirely appropriately, by putting on record, if I may, the thanks of the whole House to my noble friend Lady Anelay. I embarrass her somewhat, but that is not my purpose. She has served both government and this House—and, indeed, our country—in an exemplary fashion. On a personal level, she was my first boss in government. She was the guiding hand of the Chief Whip when I first joined the Front Bench and acted not only as a guide, a mentor and a colleague but, most importantly, as a friend. She leaves the Front Bench with many fond memories, as she herself acknowledged in her contribution. Equally, however, the Front Bench has lost a great exponent of government policy who carries the full respect of this House. If I can emulate perhaps a portion of what my noble friend has achieved in her career, I will be a happy Peer. On that positive note, I thank all noble Lords again for their extremely valuable contributions and look forward to working with all across the Chamber on this important Bill.

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

House adjourned at 7.10 pm.