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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

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

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House of Lords

Tuesday 21 November 2017

2.30 pm

Prayers—read by the Lord Bishop of Coventry.

Introduction: Lord Chartres

2.38 pm

The right reverend and right honourable Richard John Carew Chartres, KCVO, lately Bishop of London, was introduced and took the oath, supported by Baroness O'Neill of Bengarve and Lord Luce, and signed an undertaking to abide by the Code of Conduct.

Drones

Question

2.43 pm

Asked by ***Baroness Randerson***

To ask Her Majesty's Government whether they intend to bring forward legislation to control the use of drones; and if so, when.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, following the public consultation on this in July, I can confirm that the Government intend to bring forward legislation with regard to drones. As set out by my predecessor, we hope to bring legislation forward as soon as possible next year, including an amendment to the Air Navigation Order 2016. I will be setting out further details on the content and timing of that legislation in the coming weeks.

Baroness Randerson (LD): My Lords, hundreds and thousands of drones are now in operation, and over 50 near misses involving aircraft were reported this year alone. Is the Minister aware of research by the British Airline Pilots Association showing the risks and dangers of a serious accident as a result of a drone strike? Does she accept that the Government need to develop a much greater sense of urgency in dealing with this serious problem, which will lead to an accident if it is not controlled?

Baroness Sugg: My Lords, I am indeed aware of the evidence put forward by BALPA on the danger that drones can pose to aircraft and helicopters. I understand the need to move on this and we are taking action. Since the consultation response, we have been assessing the best way to implement the legislation, which will include the registration of drones and leisure pilot tests. We are engaging internationally on developing the best practice for drone rules, and we are reviewing and exploring the other possible policies that we set out for further consideration.

Lord Balfe (Con): My Lords, I draw attention to my entry in the register as vice-president of BALPA, which is very pleased with the Government's response. This issue was debated during consideration of the Space Industry Bill when both the present Minister, who was then a Whip, and her predecessor gave undertakings. BALPA is looking forward to the Government producing the due legislation at a very early stage, as they have promised to do, as we know the Government wish to avoid any accidents.

Baroness Sugg: My Lords, as the noble Baroness, Lady Randerson, said, this report was into passenger airliner and helicopter windscreen vulnerability. We are very grateful to BALPA and the Military Aviation Authority for their work on this. The results are concerning, and we have asked the CAA to consider the evidence. It will be publishing a report on the risk analysis by the end of the year. Of course, we use this evidence in developing legislation and influencing international regulations.

Lord Hylton (CB): My Lords, will legislation be needed to establish exclusion zones protecting airports' landing and take-off paths, or could this be done by administrative means? I have been asking for this for the past two years.

Baroness Sugg: My Lords, I am afraid that I cannot answer that question directly. We are exploring the possibility of restricting drone use near airports and are looking at a combination of primary and secondary legislation. I will attempt to clarify that and write to the noble Lord.

Lord Rosser (Lab): My Lords, the noble Lord, Lord Balfe, welcomed legislation coming at an early stage, but I thought the Minister said that legislation would come some time next year, which does not seem to me to be "at an early stage". What is the Government's current assessment of the possibility of a drone being involved in a major incident resulting in loss of life or serious injury? Is such a major incident becoming more or less likely as each day passes?

Baroness Sugg: My Lords, I am aware that the expectation of an incident is high. Of course, there has not been a significant incident yet—

Noble Lords: Oh!

Baroness Sugg: But obviously, more drones are being sold every day, so we are very clear on the need to take action on this. We will be setting out the legislation as soon as we can and, as I said, in the next couple of weeks I will be able to write to noble Lords to update them.

Lord Naseby (Con): Bearing in mind that I asked questions on drones well over two years ago, is my noble friend aware that her news is extremely welcome? However, what has happened to the pathfinder programme, which involves the commercial use of drones, particularly maritime uses such as coastguards and air sea rescue? There, the issue is of some urgency and does not require legislation.

Baroness Sugg: My Lords, I will have to come back to my noble friend on the detail of the pathfinder scheme. As I said, we trying to take action on this as soon as possible, and I will lay out some of the things that we have done since this issue was raised. We have launched the drone code, which is an education awareness campaign, and the drone assist app, both of which will help to improve safety.

Baroness Finlay of Llandaff (CB): My Lords, do the Government intend the legislation to cover illegal uses of drones such as the reported taking of illicit drugs into prisons and other associated illegal activities?

Baroness Sugg: My Lords, we will be looking to expand police powers in the Bill. I am of course aware of the issue of smuggling illegal substances into prison and obviously, the Ministry of Justice is determined to tackle this. It announced a £2 million investment to ensure that every prison has access to mobile phone detectors and is working with Her Majesty's Prison and Probation Service to ensure that it is analysing drone use and acting on it.

Lord Hughes of Woodside (Lab): My Lords, the noble Baroness has twice said that she would reply to noble Lords who have asked questions. Would she go further and make a statement when she has made up her mind, or put a copy of her reply in the Library?

Baroness Sugg: I shall make sure that a copy of my answers is put in the Library.

Lord Trefgarne (Con): My Lords, I welcome the legislation announced by my noble friend, but will it deal with the recent menace of lasers directed at the cockpits of aircraft?

Baroness Sugg: My Lords, shining a laser at pilots or drivers is of course incredibly dangerous, and we are looking at how to address that. The legislation I am discussing today refers solely to drones and not to lasers.

Lord Berkeley (Lab): My Lords, can the Minister explain to the House who is going to catch the perpetrators who fly drones illegally? What are the Government going to do about it, and what kind of penalties could there be? There are so many flying around today—who is going to identify and catch them?

Baroness Sugg: My Lords, as I mentioned, we will extend police powers in the legislation. I am sure your Lordships understand that it is sometimes a challenge to link an operator to a drone. We are trying to help address that by introducing a registration system, and we are investigating electronic identification. We are looking at putting powers in the legislation for the police to require drone users to produce registration ID and documents and to land their drones, and to search for and seize a drone when there is reasonable belief that a crime has taken place. We very much hope that that will enable police to capture people who are misusing drones.

Kashmir

Question

2.51 pm

Asked by ***Lord Hussain***

To ask Her Majesty's Government what is their assessment of the human rights situation in Indian-held Kashmir.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the Government monitor closely the situation in India-administered Kashmir. We encourage all states to ensure that their domestic laws are in line with international standards. Any allegations of human rights abuses must be investigated thoroughly, promptly and transparently.

Lord Hussain (LD): I thank the Minister for that Answer. For decades, the Indian army has been reported for illegal detentions, torture, rape and murder in Kashmir. Last year, it started to use pellet guns on civilians in the region, often blinding them. According to the Amnesty International report of September this year called *Losing Sight in Kashmir*, of the 88 people named in the report 31 suffered injuries in both eyes. What will Her Majesty's Government do to get those human rights abuses investigated independently and impartially?

Lord Bates: We are certainly aware of the accusations that were made. The United Nations High Commissioner for Human Rights said that there will be remote monitoring of the human rights situation in Kashmir and the findings will be made public in the near future.

Lord Ahmed (Non-Afl): My Lords, given that India has formally registered a reservation against Article 1, on the right to self-determination, of the 1966 International Covenant on Civil and Political Rights, widely acknowledged as the bedrock of international humanitarian law, on what basis can the UK Government support an Indian claim to a permanent seat at the UN Security Council?

Lord Bates: The situation that the noble Lord refers to is highly complex and dynamic, and we are very sensitive to it. It has been the long-standing position of the UK that it can neither prescribe a solution to the situation in Kashmir nor act as a mediator; it is for the Governments of India and Pakistan to find a lasting solution, taking into account the wishes of the Kashmiri people.

Lord Gadhia (Non-Afl): My Lords, does the Minister agree that we should be cautious in lecturing the world's largest democracy on human rights, which are enshrined in its constitution, protected by a well-established legal system and accountable to an independent judiciary—not to mention a large and vibrant investigative media and an active civil society? In the meantime, we should support our ally, India, to combat cross-border terrorism sponsored by Pakistan and Pakistani infiltrators, who are the real threat to peace, stability and human rights in that region.

Lord Bates: Both Pakistan and India are close friends of the United Kingdom and we want to maintain that strong relationship. Of course, we wish for a peaceful outcome to negotiations. We welcome the fact that the Government of India have recently appointed an interlocutor but we feel that, as in all conflicts, the countries themselves—the parties to the conflict—must be the parties to the peace.

Lord Collins of Highbury (Lab): Could the Minister outline what practical steps the Government are taking to ensure that all parties are brought together and that we build peace and reconciliation? In the previous

question, the noble Lord raised freedom of speech. One of the biggest concerns we have on these Benches is that limitations on freedom of speech will harm and hinder that process of reconciliation.

Lord Bates: The practical situation is that the British high commission in New Delhi monitors human rights in the country and in Kashmir as a whole, or certainly in the Indian-administered portion of Kashmir. We look at that fairly closely. However, we have to recognise that the situation is extraordinarily sensitive and that our words and actions, even in this House, can contribute to instability in that area. It is in everybody's interests that an open dialogue is maintained. We do not want to do anything that would detract from that.

Baroness Nicholson of Winterbourne (Con): As the Minister will be aware, countless thousands of families seek to meet other family members from whom they have been parted for 30 to 40 years. Is my noble friend able to influence the Pakistan Government, who are the block on those families meeting, as I saw myself on the ground as the European Parliament rapporteur for Kashmir for many years?

Lord Bates: I recognise my noble friend's great expertise in this area. However, I repeat that we believe it is for the Governments of Pakistan and India to initiate an open dialogue. As I said, we are encouraged that the Government of India have appointed an interlocutor but it is for them to initiate the process. However, the absolute wish of Her Majesty's Government is that those talks should happen and be productive, so that there can be a solution and the types of issues that my noble friend raises can be resolved.

Lord Singh of Wimbledon (CB): My Lords, the Minister said that both India and Pakistan are friends of this country. Does he agree that friendship has no relevance to the abuse of human rights and that we should be even-handed in our condemnation of human rights abuses wherever they occur?

Lord Bates: Human rights are important. Whenever meetings take place between Ministers, be it Mark Field recently and my noble friend Lord Ahmad, human rights issues are always on the table and are always addressed. However, in conflict situations we also need to recognise that there needs to be a dialogue towards a peaceful resolution of the problem, so that human rights, and most crucially, human development, can take place.

Baroness Northover (LD): My Lords, what are the Government doing to encourage the Indian Government to secure justice and closure for the families of those who have disappeared in Kashmir? Might we share with India the lessons from Northern Ireland on how transitional justice can help to facilitate peace?

Lord Bates: The noble Baroness raises a very interesting point about lessons from our own experiences of conflict but, again, I come back to the point that it would be for the Governments of India and Pakistan to invite people to take part in that process. It is not something that we feel we should impose, other than to express our overwhelming will that an open, continuing dialogue should commence and take place.

Social Housing

Question

2.59 pm

Asked by ***Lord Shipley***

To ask Her Majesty's Government what is their target for the number of additional social homes to be built by 2022.

Lord Shipley (LD): My Lords, in reminding the House that I am a vice-president of the Local Government Association, I beg leave to ask the Question standing in my name on the Order Paper.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, affordable housing is the Government's priority. That is why the Prime Minister announced a further £2 billion of funding for affordable housing, increasing the affordable homes programme budget to over £9 billion to March 2021. The programme will deliver a wide range of affordable housing, including social rent homes. Funding for social rent will be focused in areas with acute affordability pressure. The programme is flexible and the precise number of homes and tenure types will depend on the bids received. This allows providers to have the flexibility and agility to respond to local needs and markets, building the right homes in the right places.

Lord Shipley: My Lords, I thank the Minister for his reply. On 9 November, the Government published figures which showed that in 2016-17, only 5,380 homes for social rent were completed, amounting to just 2.5% of the total number of 217,350 new homes. That figure includes new builds and conversions. Is the Minister as disturbed as I am by those figures, given the huge length of waiting lists for social homes for rent, and what plans do the Government have to free up local authorities to get building again?

Lord Bourne of Aberystwyth: My Lords, last year—2016-17—was the best year for housebuilding for a decade. Having said that, I accept there is a significant challenge in relation to social housing. Much of that £2 billion will, as I indicated, be committed to that, and that will begin to tackle the problem. However, I agree with what the noble Lord is saying. There is a challenge there, and we are hoping to meet it—and, of course, we have a Budget tomorrow.

Baroness Eaton (Con): Can my noble friend tell the House what the Government are doing to support housing associations to deliver new affordable houses?

Lord Bourne of Aberystwyth: I agree with the thrust of my noble friend's question; as I say, there is a challenge to be met. In the last week, I think, housing associations have been taken off the public balance sheet—an issue which we have debated in this House—which has taken £70 billion off the public balance

[Lord Bourne of Aberystwyth]
sheet and will undoubtedly help. The £2 billion will also be of assistance, as will the fact that there is now certainty in renting in that sector.

Baroness Farrington of Ribbleton (Lab): My Lords, will the Minister accept that the Government's commitment to raising standards in education rings hollow when so many families with small children live in temporary accommodation? I refer to my own experience as chair of education in Lancashire. These children cannot settle and have the good early years education or the family life and security that they need to achieve the Government's objective, which they keep repeating, to improve educational standards.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Baroness for restating once more that noble aim. First, I would point out to her that we have delivered more affordable housing in the last seven years than was delivered in the last seven years of the previous Labour Government. However, I accept what she says about the interrelated nature of these problems and agree that tackling housing also helps with education, well-being and health.

Lord Best (CB): My Lords, does the Minister agree that the big mistake in housing policy over the last 20 years has been our reliance on a handful of major-volume housebuilders which have let us down at every turn? They have let us down on quantity, by hoarding their land; on quality, in relation to the standards of design and production; and on the affordable homes that they said they would build but which they have reneged on along the way. Can we take it from the Government that the corner is now being turned and there will be a greater reliance on the other suppliers of housing in this country—the housing associations, the local authorities and the smaller housebuilders, which have so much to offer?

Lord Bourne of Aberystwyth: My Lords, the noble Lord comes with unparalleled experience in this area. I take the point about the need for diversity of supply, particularly looking to smaller suppliers, self-build and modern methods of construction, which we looked at yesterday. I also accept a point implicit in his question, which was also raised yesterday by my noble friend Lord Forsyth—the fact that there is land banking. We need to take account of that, and we committed to do so in the housing White Paper.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I refer the House to my relevant interests as set out in the register—as a councillor and as a vice-president of the Local Government Association. We will have to wait until tomorrow to see what the Chancellor says about housing, but does the noble Lord not agree that, to get to their housing targets and deal with the pressing need that we have heard about, the public sector has to be both encouraged and allowed to build around 100,000 homes a year for social rent rather than any other unaffordable models?

Lord Bourne of Aberystwyth: My Lords, the noble Lord knows that I agree with his general point that over successive Governments the social rented sector has been somewhat neglected, and we are certainly looking to make up some of the shortfall. As I said, we have had a record year—the best for a decade—but that does not make us complacent. There is an awfully long way to go, but we have a great battery of policies and, as the noble Lord rightly says, we await tomorrow's Budget.

Baroness Grender (LD): My Lords, is the Minister aware that affordable housing is 30% more expensive than social housing for rent? The fact that there has been such a shortfall in the building of social rented housing—the worst since World War II—will impact directly on the 65,000 families who will be homeless this Christmas. Can he give them an assurance that developers' loopholes will be closed tomorrow in the Budget?

Lord Bourne of Aberystwyth: My Lords, I hear what the noble Baroness says. I do not know what is in the Budget, so am unable even to slip up and say what will be in it. She is right that social rent is set at about 60% of market rent, whereas affordable rent is set at 80%. Of course, there is a conundrum in switching from one heading to another, as it means that there will be less affordable housing if more social housing is built. As noble Lords have rightly said, we await tomorrow's Budget.

Student Loans Company

Question

3.06 pm

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government what steps they are taking to improve the performance of the Student Loans Company, in the light of the dismissal of Steve Lamey, the Chief Executive.

Viscount Younger of Leckie (Con): My Lords, the performance of the Student Loans Company remains strong, with customer satisfaction rates for applicants currently stable at around 85% and for borrowers in repayment at around 72%. So far in this academic year, the SLC has processed over 1.4 million applications for student funding and has paid out approximately £2.5 billion in maintenance funding and £2 billion in tuition-fee payments to providers. The SLC board acted swiftly to appoint a highly experienced individual as the interim CEO.

Lord Hunt of Kings Heath (Lab): My Lords, the noble Viscount says that the company's performance is strong, but it has long had a reputation for poor performance, bureaucracy and overcharging on student loans. The last chief executive, Steve Lamey, was appointed to improve performance, and it looked as though he was doing so. This year he had a performance appraisal in which the chairman commended him for re-energising the business, but two months later he was suspended and was sacked this month. Can the noble Viscount confirm that the reason for his dismissal, as recounted in the *Times*, was that he publicly informed people about the problems with the company? Will the noble

Viscount publish the findings of an internal investigation in which 52 of the 58 allegations against Steve Lamey were dismissed?

Viscount Younger of Leckie: First, the performance of the Student Loans Company has improved year on year for the past six years. I cannot go into the precise details of Steve Lamey's dismissal; I can only say that his behaviour as a leader and a manager fell below that expected of the position that he held.

Lord Maude of Horsham (Con): My Lords, when an experienced and robust operational leader is brought in to turn round what had been known to be a failing organisation, is told consistently that he is doing an excellent job and is then summarily dismissed, principally on the basis of allegations put forward by staff who had themselves been given poor performance ratings, what does my noble friend think is the prospect of attracting to the Civil Service other experienced, serious and badly needed operational leaders?

Viscount Younger of Leckie: With reference to Mr Lamey's dismissal, there was a thorough process of looking at the details of the allegations. In fact, there were two internal inquiries, one run by the Government Internal Audit Agency and the other by Sir Paul Jenkins. They both concluded that there were allegations that needed answering. In terms of the future, it is very important that the process to replace Mr Lamey as soon as possible is robust. We are delighted that Peter Lauener has agreed to take over as the interim CEO. However, the future process must be robust and we must make the right appointment.

Lord Addington (LD): My Lords, would it not be a good idea if the empire of the Student Loans Company were slightly restricted, as it is now a very big organisation? Is this a good opportunity to remove the disabled students allowance from it as we could probably get better results if we had a more focused attitude towards that?

Viscount Younger of Leckie: I do not agree. For some time, the Student Loans Company has had a strategy that includes an initiative to improve the SLC performance across the board and with a focus on user experience for borrowers and staff engagement. The DfE and the SLC are working very hard on this.

Lord Adonis (Lab): My Lords, do the Government have a response to yesterday's report by the Higher Education Funding Council for England into the governance of Bath University, which found very serious failings? Does the Minister agree that the position of the vice-chancellor—paid this year £468,000—is now untenable after the findings of HEFCE?

Viscount Younger of Leckie: The noble Lord has raised the issue of Bath on a few occasions and I understand his concern. However, this is not something for the Government to iterate too much on—the House will remember the point made about institutional autonomy during the passage of the then Higher Education and Research Bill. However, we say very strongly that universities must look carefully at what they pay not just their vice-chancellors but their senior leaders. That is something that the Office for Students will be looking at earnestly when it is set up.

Baroness Finn (Con): My Lords, will my noble friend confirm that, in the case of Mr Lamey, none of the investigations, hearings or appeals was conducted by an individual who was truly independent of the Civil Service establishment and the Student Loans Company, and that what happened here was, on the face of it, a breach of natural justice which states that no one shall be the judge in their own cause?

Viscount Younger of Leckie: As I said earlier, there were two thorough internal investigations. The initial allegations were raised in May, and here we are in November. That time was needed for both internal investigations to go through the thorough process of looking at the issues, and then a decision was made on 7 November.

Lord Elystan-Morgan (CB): My Lords, about a year ago at Question Time I was told that it was the Government's estimate that, for one reason or another, only about half of then current student loans would be repaid. What is the Government's best estimate of that at the moment?

Viscount Younger of Leckie: Following the rising of the thresholds—from £21,000 to £25,000 and up to £45,000—our estimate is between 30% and 45%. Previously, it was about 30%.

Lord Cormack (Con): My Lords, can my noble friend please explain why adulation was so quickly followed by condemnation? It is deeply disquieting. We live in an age where allegation seems to be taken as condemnation more roundly, so can we please have a proper explanation? Perhaps my noble friend will deposit the necessary papers in the Library.

Viscount Younger of Leckie: I can certainly do that for my noble friend. However, there was no indication in the recruitment process for Mr Lamey to indicate any cause for concern. That is the whole point: he was appointed on the basis of his references and the particular process. Issues were raised only as part of the two internal investigations that came about; that was when the problems arose.

Intelligence and Security Committee of Parliament

Membership Motion

3.13 pm

Moved by ***Baroness Evans of Bowes Park***

That this House approves the nomination of Lord Janvrin and the Marquess of Lothian as members of the Intelligence and Security Committee of Parliament.

Motion agreed.

Financial Guidance and Claims Bill [HL]

Third Reading

3.14 pm

Amendment 1

Moved by ***Baroness Buscombe***

1: Insert the following new Clause—

"Objectives

(1) The objectives of the single financial guidance body are—

(a) to improve the ability of members of the public to make informed financial decisions,

(b) to support the provision of information, guidance and advice in areas where it is lacking,

(c) to secure that information, guidance and advice is provided to members of the public in the clearest and most cost-effective way (including having regard to information provided by other organisations),

(d) to ensure that information, guidance and advice is available to those most in need of it (and to allocate its resources accordingly), bearing in mind in particular the needs of people in vulnerable circumstances, and

(e) to work closely with the devolved authorities as regards the provision of information, guidance and advice to members of the public in Scotland, Wales and Northern Ireland.

(2) The single financial guidance body must have regard to its objectives when it exercises its functions.

(3) In this section "information, guidance and advice" means—

(a) information and guidance on matters relating to occupational and personal pensions,

(b) information and advice on debt, and

(c) information and guidance designed to enhance people's understanding and knowledge of financial matters and their ability to manage their own financial affairs."

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, on Report I agreed to consider a range of matters concerning Clause 2, and I now make reference to government Amendments 1, 3 to 9, 12 to 13 and 32. During our debates on the Bill I think that we have all been in agreement that the provisions articulated in Clause 2 were important in setting the tone and ethos for how the single financial guidance body should operate. In the debates on Report, we discussed the need for these provisions to be well structured and clear. I believe that this group of amendments provides that clarity and structure. They tidy up the framework on which the body will progress towards achieving its objectives and assist it and all those with whom it will work closely in understanding our expectations in relation to its activities. I am extremely grateful for the enormous contribution that noble Lords have made to the Bill. Indeed, so significant has been that contribution that we have ended up with a rather long and unwieldy Clause 2, so for this reason we propose to split it into three separate clauses.

Government Amendments 1 and 6 remove the objectives from the end of Clause 2 and insert them as a separate clause immediately before the clause. This reordering picks up on the points made by the noble Lord, Lord Stevenson, that starting with functions and moving on to objectives was perhaps the wrong way around. I agree with him. Placing the body's objectives upfront will emphasise and aid a wider public understanding of the overarching objectives of the body and how it carries out its functions. Government Amendment 8 divides the remaining provisions in Clause 2 into two. The first sets out the broad functions of the body and the second contains the specific cold-calling provisions pertaining to the broad consumer protection function. It does not change the content of the cold-calling provisions.

Setting out the detail of the body's new consumer protection function in a separate clause is consistent with the approach we have taken in the Bill. For example, this is how we have, from the introduction of the Bill at Second Reading, treated the specific detail about pensions guidance, which is articulated in a separate clause after Clause 2. Alongside relocating the body's objectives, this amendment simplifies what had become a very long and complex clause. The Government want the legislation for the single financial guidance body to be clear and to flow in a way that the people who will use it, including the body itself, are able to read and understand. On the whole, people will not have had the benefit of our debates in Parliament, at least not without considerable reference to *Hansard*. The easier the Bill is to read when coming to it for the first time, the better.

In addition, I have considered the case that was made well by the noble Baronesses, Lady Finlay, Lady Coussins and Lady Hollins, and the noble Lord, Lord McKenzie, about the need for clarity around access to financial guidance and awareness of financial services for people who find themselves in vulnerable circumstances. Again, I agree that we should be clear about the body supporting vulnerable people in exercising its functions. Government Amendment 1 therefore strengthens the body's objective to ensure that its information, guidance and advice is available to those most in need of it, bearing in mind in particular the needs of people in vulnerable circumstances.

Moving on to government Amendment 3, as I indicated on Report, facilitating the bringing together of expertise to address the difficult and sometimes interrelated financial issues that people experience in terms of budgeting, savings, retirement planning and problem debt is a cornerstone of the policy for the single financial guidance body. We want to make it easier for people to access the help they need to make effective financial decisions. This amendment speaks to the concerns raised by the noble Lords, Lord McKenzie and Lord Stevenson, and places an obligation on the body and its delivery partners to consider all the financial guidance and debt advice needs of people accessing its services, and whether they would benefit from receiving other services that the body provides.

Government Amendments 4 and 5 make small changes to the strategic function of the body. They address points raised by several noble Lords during our debates in Committee about the lack of clarity around the body's role in developing a national strategy to improve people's financial capability and ability to manage debt. The strategic function currently requires the body to work with the financial services industry, the devolved authorities, and the public and voluntary sectors to support the development of a national strategy.

These amendments make it more evident that the single financial guidance body will lead on developing the strategy and that it will have some responsibility for overseeing the delivery of activities stemming from

the strategy. I believe these amendments address the concerns about accountability that a number of noble Lords expressed.

Finally, Amendments 7, 9, 12, 13 and 32 are minor and technical in nature. Amendments 7, 12 and 13 are together a tidying-up measure. They remove the definition of devolved Administrations from Clauses 2 and 14 and insert the definition into Clause 19, "Interpretation of Part 1". Amendment 9 corrects a technical defect in Clause 3(2), replacing the reference to the Pension Schemes Act 2015 with one to the relevant section of the Financial Services and Markets Act 2000. Amendment 32 allows for differential commencement by area. This is so that, in accordance with Cabinet Office guidelines, if it is necessary to commence at a later date for Northern Ireland there is a power to do so.

I trust and hope noble Lords will agree that these amendments provide sensible and pragmatic adjustments to the Bill, improving its structure and providing clarity. I beg to move.

Baroness Coussins (CB): My Lords, I welcome Amendment 1 and remind noble Lords of my interest as president of the Money Advice Trust. The amendment, in clarifying the single financial guidance body's objectives, will ensure that its services are available to those most in need of them, specifically with the inclusion of the words in proposed new subsection (1)(d), "bearing in mind", the particular,

"needs of people in vulnerable circumstances".

As noble Lords heard during our debate on this on Report, there has been a great deal of progress in this area in the financial services industry in recent years, including through the work of the Financial Services Vulnerability Taskforce. It is very good to see that the SFGB should give similar prominence to vulnerability in its work. The explicit inclusion of "vulnerable circumstances" in Amendment 1 is an excellent example of this approach.

I offer my sincere thanks to the Minister for listening so carefully to what I and my noble friends Lady Finlay and Lady Hollins said on this matter at an earlier stage, and for agreeing to reflect this in the Bill. I am very pleased to support Amendment 1.

Baroness Finlay of Llandaff (CB): My Lords, I add my most sincere thanks to those of my noble friend Lady Coussins. This new clause is incredibly important. Yesterday, this was unanimously welcomed at the National Mental Capacity Forum leadership group, including by all those from the financial sector represented in the group, as being a very important way forward to make sure that our society is increasingly integrated and recognises the needs of those with permanent and transient impairments and incapacity, and those who may temporarily have been put in extremely vulnerable circumstances.

I also thank the Minister for the way she has listened and stayed in communication with us as the wording has been developed. It really was a very positive and constructive dialogue.

Baroness Kramer (LD): My Lords, as well as congratulating the Minister on bringing the language of "vulnerable circumstances" to the Bill, I want to congratulate the others who have made this issue so clear during our very positive and engaged debates; namely, the noble Baronesses, Lady Coussins, Lady Finlay and Lady Hollins. When the Minister first put down a slightly earlier draft of the amendment, which reordered some of the opening sections of Clause 2, because I am a naturally suspicious person, I tried to see whether there was some bear trap in there or something that I should be afraid of. I could find no such bear trap—and nor could my colleague, my noble friend Lord Sharkey, who I think now has a reputation for the most incisive examination of language in a Bill. I fully understand the desire of the Government to be clear and transparent—they seem very positive. I shall have more to say about the Bill in later stages—but, with this first grouping, we start off on a rather good note for the opening of Third Reading.

Baroness Altmann (Con): My Lords, I congratulate my noble friend on the hard work done by her and the Bill team to include the changes called for in our earlier debates on the Bill. I fully support the reworking of the sections to improve the clarity of the Bill; the adjustments are sensible and pragmatic. I also add my congratulations to the noble Baronesses, Lady Finlay, Lady Hollins and Lady Coussins, on the important provision relating to vulnerable individuals. It is important that we have achieved that increased protection for them in the Bill. I again thank my noble friend and offer support for the amendment.

Baroness Tyler of Enfield (LD): My Lords, I add my thanks and congratulations to all concerned in this area. We now have within the objectives the reference in paragraph (d) to,

"the needs of people in vulnerable circumstances".

That is hugely relevant. As chair of the former Lords Select Committee on Financial Exclusion, I know that we spent a lot of our time looking at the problems faced by people in vulnerable circumstances. We focused particularly on the needs of people with mental health problems and disabilities and the vulnerable elderly. We received a lot of evidence on that point, and I know that many people will be very glad to see these words included.

Lord Kirkwood of Kirkhope (LD): My Lords, I add my congratulations; this has been a very good outcome. The Minister has done a splendid job in reflecting the concerns. The Bill is now much better as a result, and she deserves some of the credit for that. I am interested particularly in Amendment 3, because vulnerable people are now much better cared for. It will put more work, pressure and responsibility in the direction of the new body. I begin to wonder whether it will be expected realistically to carry the weight of some of these new, important duties with the financial envelope that we have—we will have time to discuss that afterwards—but the shape and framework that the body now has is a lot better for serving the needs of the most vulnerable and distressed.

I hope that consideration of people with vulnerabilities will also include signposting to the official social security benefits that exist so that they are taken up—universal credit will obviously increase take-up automatically,

[Lord Kirkwood of Kirkhope]
but a lot of other residual benefits still sit outside universal credit. Signposting under Amendment 3 would add value to having the power in the Bill. I look forward to seeing how this works out. It is a much better provision than was previously the case, and the Minister deserves credit for that.

The Earl of Listowel (CB): I, too, thank the Minister and noble Lords for making significant progress. Perhaps I may ask for clarification: will care leavers be included in the "vulnerable" group? I apologise to your Lordships for being absent from Report—I was not able to be present—so I ask this question now.

Baroness Buscombe: There is no question: care leavers will be included in this group.

3.30 pm

Lord Stevenson of Balmacara (Lab): My Lords, I declare an interest as a member of the Financial Inclusion Commission and a former chair of StepChange, the debt charity. Before I get on to the nature of the amendments, which we support, I want to pick up on the tone that has already established itself around the House of a group of people with expertise and knowledge, willing to put aside any political differences they might have at the start of such a Bill, and with a fierce commitment to work together to improve what we have before us. We have just heard a series of short comments which are redolent of a much greater and more important truth: namely, that when the House does this, it really does it well. I am very grateful to all concerned who have been part of this. We are seeing today a Bill that has been transformed, not because of any particular line or argument in a political or wider sense but because people genuinely believed that there were things here that could be made better and that, as a result, the lives of people right around this country would be improved. I think it is very important that we hold on to that.

I thank the Minister, as everyone else has, for introducing this group of amendments which reorganise and expand the objectives and functions of the new single financial guidance body and set the tone for its future activities. We are pleased to support the group of amendments, as I said. It is important to get a sense of the journey we have been on: we made it clear at Second Reading that, although we agreed with the Bill, we thought it was a framework Bill and not a Bill that had the substantial and important powers that we thought were needed. We wanted to make sure that by the time it left your Lordships' House it had been changed a lot—and of course it has.

As originally drafted, it was too narrowly focused on the near-term task of bolting together the three separate functions that were being brought together—debt advice, pensions guidance and financial capability—and on transferring the very important responsibility for claims management to the FCA. It was really short—a lot of people picked this up—on the vision that the body should have and what the sector was going to be in the medium term. It seemed to devalue the work on strategy that was so important and is now at the centre of the activities. The fact, as the noble Baroness said, that the original Clause 2 led on functions and only later referred to objectives meant that the Bill, I think unintentionally, gave the impression that the main purpose was the enactment of what would be simply a series of structural adjustments.

This, as we have been reminded, was at a time when the Government had decided to change the terms of trade in financial inclusion by creating a new Minister at the DWP, the department that is sponsoring the Bill, but had not set out clearly what they expected the Minister to do. We all agreed, I think, right around the House, that the Bill and the new functions of the SFGB would actually be about delivering a holistic financial inclusion policy. As we have already learned from its chair, the excellent Lords Select Committee that reported at about this time on a range of issues around financial inclusion made the case for extending the Bill to cover a number of specific proposals.

Towards the end of Report, when it was clear that the Bill had changed and was going to contain much more about the application of financial inclusion policies, as we will hear again later today, we suggested that Clause 2 should be revamped. What we wanted was a bit more of the longer-term vision that the SFGB should be aiming for, and we argued that putting the objectives first and then dealing with the functions at the new body's disposal was a better way of doing that—and I think that splitting the original clause into separate groups is a concrete way of doing it. So we are very grateful to the Minister for seeing the merit of our arguments and we thank the Bill team for working very hard to get the new draft into shape. I have a reputation in your Lordships' House for not being very good at drafting, so I was delighted when they agreed to take it away and bring it back in the form in which we now have it: it is so much better.

The noble Baronesses who spoke on the vulnerability issue did the House a great service by raising with great passion the need to make sure that the Bill, as well as generally describing the new body, focuses on vulnerable people. We are very grateful to see that amendment here today. With that, we support these amendments.

Baroness Buscombe: My Lords, I thank noble Lords for this short debate and for their support for this amendment. In reply to the question raised by the noble Lord, Lord Kirkwood, yes, we expect persons in vulnerable circumstances to be robustly signposted to UC and other benefits where appropriate.

Amendment 1 agreed.

Clause 2: Functions and objectives

Amendment 2

Moved by ***Baroness Buscombe***

2: Page 2, line 21, at end insert ", and

(b) advice to the Secretary of State on the establishment of a debt respite scheme (see section (Debt respite scheme: advice to the Secretary of State))."

Baroness Buscombe: My Lords, I turn to the protection of indebted consumers, in particular the idea of providing a breathing space scheme, referred to in the amendment as a debt respite scheme. I thank noble Lords for their insightful and constructive contributions to previous debates on the subject.

I promised on Report that the Government would do further work on the issue in time for Third Reading. My officials and I have worked hard to produce an amendment that enables breathing space to be delivered quickly and effectively, a case for which noble Lords—in particular, the noble Lord, Lord Stevenson—put forward eloquent and powerful arguments. Indeed, the wording of the amendment builds on the amendment tabled by the noble Lord, to which the noble Lord, Lord Sharkey, and the noble Baroness, Lady Altmann, added their names on Report.

The best of your Lordships' House has been on show in the development of the amendment. The way in which the Government and the Opposition have worked together to achieve consensus on a workable amendment which will enable the successful delivery of a breathing space scheme has been impressive, and it is my pleasure to introduce the amendment to your Lordships' House. I know that there is broad agreement across your Lordships' House that a breathing space scheme is both necessary and important. It has the potential to help thousands of vulnerable families out of problem debt, and provide a better life for individuals and their families.

I reassure the House that the Government remain strongly committed to the implementation of a breathing space scheme that is well designed and delivered at the earliest opportunity. We have already set out a clear timetable for developing the policy; the amendment provides the legislation that will allow us to implement it. Beyond enabling the introduction of a breathing space, the amendment contains many similarities with the one tabled by noble Lords on Report. For instance, it provides for details of the scheme to be set out once more detailed policy design has taken place. This is crucial, given that the Government are committed to listening to expert views put forward in the call for evidence. It also requires the Government to receive advice on the design of the scheme from the single financial guidance body, which will be important given the body's expertise and central role in supporting indebted consumers. However, noble Lords may also notice a few differences from the amendment tabled on Report.

The noble Lord, Lord Stevenson, and I are in agreement that the Government's amendment enables breathing space to be designed in a more effective way, building on, rather than duplicating, the work already commenced through the call for evidence, while still allowing for its introduction to take place swiftly.

I will outline a couple of the specific changes. First, the amendment enables the single financial guidance body to be involved in the design of the policy in a more suitable way. The Government plan to complete an extensive policy development and consultation process over the next year. As set out previously, we published a call for evidence last month on this topic, and intend to consult on a specific policy proposal in the first half of 2018. Through this process we will have established a robust blueprint of a breathing space scheme, informed by the expert views of the sector. Given this, we have agreed that it would not be the best use of the new body's time and resources to require it to redo this work in its entirety once it is set up. Instead, our amendment would require the single financial guidance body to provide advice on specific issues requested by the Government.

The body must provide this advice within 12 months of its being established, which we expect to be in late 2018. On receipt of this advice, we will make regulations to set up the scheme as soon as is practicable—and certainly within 12 months of receiving the advice. This process will enable the body to supplement, rather than duplicate, the policy work the Government will have done up to that point. It could also speed up the introduction of the scheme, given that the advice is likely to be more targeted.

Secondly, we are in agreement that the amendment provides for more flexibility in designing the eventual scheme, potentially allowing for a scheme with a wider scope. For instance, our amendment enables—but does not mandate—the scheme to extend to Wales and Northern Ireland. We will assess the preferred geographic scope of the policy through our consultation, and the amendment allows us to deliver on the outcome of this process.

These are important changes, which we have reached a clear consensus on. However, after long and exhaustive discussions with House officials we have been informed that, for these changes to remain within scope of the Bill, we must take a power to make these regulations rather than a duty. I must be clear: in our view, this wording change has no practical impact. We have been clear, here and elsewhere, that we will deliver a breathing space scheme. This was a manifesto commitment and we are already midway through an intensive policy consultation process. This is simply a necessary step to give us the power we need to establish the scheme through this Bill. The Government's position is clear. This amendment reflects the strength of our commitment to implementing a successful breathing space scheme. It sees the scheme delivered quickly and effectively and it ensures the sound design, implementation and operation of the scheme.

I turn to Amendment 33, tabled in the name of the noble Lord, Lord Sharkey. I begin by making it clear that this amendment is, with respect, neither necessary nor meaningful; it is actually entirely meaningless. As the House will have seen, the Government have tabled their own amendment to ensure that the Long Title of the Bill reflects the content following the additions made on Report. I must stress that my view remains that it is standard practice to add wording such as that tabled by the Government to the Long Title, and that it is perfectly adequate as tabled.

I also take this opportunity to remind noble Lords that the content of the Bill informs the Long Title; it is not the other way around. Indeed, the *Companion to Standing Orders* says that,

"amendments to the long title are not in order unless they are to rectify a mistake in the original title, to restate the title more clearly or to reflect amendments to the bill which are relevant to the bill but not covered by the former long title".

[Baroness Buscombe]
Clearly, it is the third of these purposes which is relevant to this instance. Any amendment to the Title must therefore reflect amendments made, or being made, to the Bill. It is for this reason that we tabled an amendment to the Long Title to accompany the amendments that we tabled in respect of debt respite. The purpose is not to enlarge the scope of a Bill by amending the Long Title.

I am afraid that I must also express my disappointment that the noble Lord, Lord Sharkey, did not feel that he could discuss his original amendment, which he has now withdrawn, with me. Had he done so, I would have pointed out to him that I did not consider that it accurately reflected the contents of the Bill. His current amendment accurately reflects the content of the Bill so—in the spirit of consensus and because, as I have described, the amendment does not affect the scope of the Bill—I am prepared to accept it. On that basis, I shall not move Amendment 34 standing in my name and shall accept Amendment 33, tabled in the name of the noble Lord, Lord Sharkey.

Lord Stevenson of Balmacara: My Lords, I thank the Minister for introducing the amendments in this group which, as she says, will primarily establish a much-needed statutory debt respite scheme. As she also said, it is necessary and important. We have signed some of the amendments in this group and are absolutely delighted to support their inclusion in the Bill.

The failure to include a breathing space in the Bill left a substantial gap in the services which the debt charities need, if they are to offer the best support to those struggling with unmanageable debt, so we have been pursuing it through the various stages of the Bill and challenging the Government to up their game and honour their manifesto commitment. Initially, I think it was clear to the whole House that the Minister was under strict instructions to agree to nothing. But it is to her considerable credit that, after listening to the arguments and consulting widely, she decided that the case had been made. She and her Bill team then went out to bat for the proposal and, from a standing start, secured support for the amendment from her government colleagues. Only those who have witnessed the turf wars that this sort of decision—to introduce a breathing space—must have precipitated can appreciate what has been going on in Whitehall over the last few weeks. I have seen that at close quarters and it is not a pretty sight. I therefore salute the hard work that the Minister and her team have put into this, and I am lost in admiration at their ability to persuade—at ridiculously short notice—her ministerial colleagues to back this amendment today.

3.45 pm

The Minister said that the way in which the Government and the Opposition have worked together to achieve consensus on a workable amendment which will enable the successful delivery of a breathing space scheme has been impressive. I agree. Actually, it is true of the whole Bill. As I have already said, I hope it sets a standard for the way we could work in your Lordships' House for the public good.

I know from personal experience that the campaign to introduce a breathing space scheme in England, Wales and Northern Ireland, which builds on the successful debt arrangement scheme in Scotland, has had a long gestation. It has been championed by StepChange, the debt charity, based on its direct knowledge of working in all the nations, including Scotland, and the idea has the support of many creditors as well as other charities involved in the debt space. I salute the excellent work done by these charities over the years.

The Minister drew attention to the many similarities that exist between her amendment, the amendment tabled by me and supported by other noble Lords on Report and the similar amendment laid, but now withdrawn, for this Third Reading. There is a story behind this, which need not detain us today. Suffice it to say that my colleagues and I have learned a great deal in the past few weeks about the rules governing the scope and admissibility of amendments to public Bills. However, having thought hard about what we could and should do and having listened to the Minister and heard her commitment to the introduction of the debt respite scheme as soon as is reasonably practicable, we concluded that the right thing to do would be to withdraw our version of the amendment and support the government amendment.

This joint amendment requires the single financial guidance body to provide advice on specific issues to do with the proposed debt respite scheme requested by the Government. The body must provide this advice within 12 months of being established. On receipt of this advice, the Government have committed to make regulations to set up the scheme as soon as reasonably practicable. Any significant delays will cause more hardship, and I am sure we all want to mitigate that as much as we can. We agree with the Government that it makes sense for the new single financial guidance body to supplement, rather than duplicate, the policy work the Government will have done up to that point, consequent on the ongoing consultation. We agree that this amendment provides for more flexibility in designing the scheme, potentially allowing for a scheme with a wider geographical scope. The people of Wales and Northern Ireland should also have the opportunity to benefit from the debt respite scheme, and this amendment provides for that.

Finally, I referred a few moments ago to the discussions that all parties have been having with House officials about what would, and what would not, be in scope of the Bill. I think the Minister also touched on this point. I observe, in passing, that there is an issue underlying this point which might with advantage be looked at by your Lordships' Procedure Committee in due course. The Minister made a very important concession in respect of the amendment tabled by the noble Lord, Lord Sharkey, who is not in his place, and we should be grateful to her for that. I do not think this is the right way to make progress on issues of this type, and it is confusing to Members of the House who are not directly involved if we do not have better rules by which we can understand how things are admitted or not admitted to the legislation before us.

I shall return to the main argument. We back this amendment. I listened very carefully to what the Minister said about why the amendment grants a power to the Government to make regulations setting up the debt respite scheme rather than placing a duty on the SFGB to introduce the scheme, which was the approach we took in our amendments. We accept that placing the duty on the SFGB was not the ideal way to proceed for a body which would not otherwise have significant operational activities in this sector, but neither we nor the Government could find a way of getting that approach in scope. We therefore decided to seek assurances from the Government that they could use a lesser power to deliver a better scheme, and I think I have heard them today. I am very pleased to have heard the Minister confirm this afternoon that the new wording will deliver the debt respite scheme. I shall quote to her what she said earlier in this debate:

"We have been clear here and elsewhere that we will deliver a breathing space scheme .... This is simply a necessary step to give us the power we need to establish the scheme through this Bill".

I believe that statement makes it crystal clear that the Government have the process in train and that Ministers have the necessary commitment and, under this Bill, will shortly have the powers they need to set up a debt respite scheme which matches the situation in Scotland, initially in England, and we hope across the rest of the United Kingdom. This debt respite scheme will ease the burden on families and their children and offer them the de jure protection they need to get their affairs in order without being threatened by their creditors. The creation of a statutory debt management plan will benefit hundreds of thousands of people who suffer from unmanageable debt. The powers created in this Bill will make a huge difference to the debt charities that work in this sector and have campaigned so long for the creation of this scheme.

The noble Baroness, Lady Buscombe, was kind enough to thank all sections of your Lordships' House for their contributions to the earlier debates and for their support for this amendment. I endorse everything she said. I am delighted to have played a small part in the process of creating this legal framework and delivering the powers needed. What we want now is for the scheme to be designed and delivered quickly and effectively. Having listened to the Minister today, I place my trust in the Government to see this through as soon as reasonably practicable.

Baroness Kramer: My Lords, my noble friend Lord Sharkey is unable to be with us at the moment because he is at the Economic Affairs Committee. I suspect that, by the time that committee finishes and he can come down and join us, we will have moved to the conclusion of Third Reading, so I am privileged to speak on his behalf, as it were.

I will talk for a moment about the debt respite scheme and then just say a few words about Amendment 33, which stands in my noble friend's name and now has the added support of the noble Baroness, Lady Buscombe. The debt respite scheme is absolutely crucial and I congratulate all parties, including the Opposition Front Bench and the Government Front Bench, and the Bill team for working through all of this. This is my opportunity to say that the Bill team has been very open to discussion.

Like others, I recognise that this Bill is very different from the fairly narrow, technical Bill that was originally conceived. This House took on board the argument that many of the issues raised, particularly those around financial inclusion, cold calling and debt respite, were not party-political controversies. All signed up to those issues, and the only question was whether there would be other vehicles in the very near future to carry through those policies. We can all see that the works are getting more and more gummed up on a daily basis, and I suspect there is real relief on all sides now that important issues such as cold calling, debt respite and financial inclusion have found their way into this Bill so that action can be taken despite whatever may be happening at a national level on the broader policies, particularly with Brexit. That is a real win for everybody in the House, including the Government and also the Minister, who has turned a technical Bill into an opportunity to make a real impact on people's lives.

On Amendment 33, which amends the Long Title, I will pick up the point that the Minister made when she introduced Amendment 1 and talked about the importance of clarity and transparency. To the general public, this Bill will not be noted because it brought together three very important bodies into a single body, although all of that matters and will itself breed quite a significant number of good outcomes; it will be remembered most because it gave the Government the power to deal with cold calling and the abuse from which much of the population suffer on a daily basis. As many noble Lords, including colleagues on the Cross Benches and the noble Viscount, Lord Trenchard, have said, the most vulnerable have been impacted most by cold-calling abuse.

The Bill will also be remembered because of the debt respite clauses. To have a Bill in which neither of those two issues appears anywhere in the Long Title would seem most peculiar to anybody trying to find the appropriate legislation tackling these issues. You would have to guess that they might be in a Bill with the more limited Title. The words "and for connected purposes" might mean a great deal to people in this House, but do not mean a great deal to people elsewhere. Making sure that the Long Title fully reflects the strengths of the Bill and that those strengths can be easily recognised is a real improvement. It will rebound very much to the Government's advantage.

Most of our exchanges have been extremely gracious, so I hope that the Minister will feel able to overcome her irritation around this one last clause. We have worked well together as a House, which has been crucially important. As I say, our thanks go very much to the Bill team, which has been a crucial part of this. I pay particular tribute to my noble friend Lord Sharkey since he is not here and able to speak for himself. He, among a number of others in the House, has contributed to a very worthwhile piece of legislation.

Viscount Brookeborough (CB): My Lords, I add my praise to the two Front Benches. I should not think they could sustain much more joint praise, but on this occasion they have moved mountains in the length of time that this has taken. I emphasise how important the respite is from the point of view that every single case is a personal case of one family. It is not a matter

[Viscount Brookeborough]
of statistics, of speaking only of "30% of the families"; every single case that is allowed to go through this debt is a tragedy.

I say on behalf of Northern Ireland, if not the devolved parts of the UK, that it is good to see that it may be extended there, especially, from my point of view, to Northern Ireland. There are many individuals who, although they may not be listening to this, will unknowingly benefit from this to a tremendous extent. I thank all parties involved.

The Earl of Listowel (CB): My Lords, I add my thanks to the Minister for her hard work and ingenuity in securing this amendment today. It has certainly moved a long way since our first discussion in Committee. She may remember that at the time I raised the issue of a particular care leaver who had a very stressful experience over two years because of the difficulties that we are addressing now. I am really grateful to her, particularly for care leavers who, after all, begin with a difficult start in their families, often have to experience independence very early in life and too often find themselves in financial difficulties. This will be particularly helpful for them. I appreciate the clarity that the Minister gave on the urgency with which the Government are moving forward on this, which was reassuring.

There is one point on which I would like clarification, and the Minister may care to write to me on this. Many care leavers are in difficulty around council tax. Some enlightened local authorities are now deciding not to charge care leavers but many still do so. When care leavers are pursued by their local authority for council tax, they can get into the position of the corporate parent aggressively pursuing their corporate child through the courts. I hope the dispensation will address that particular point.

One further point that the Minister may care to cover in correspondence: I believe that in Scotland the experience has been that six weeks may not be enough of a respite period to build a robust plan to go forward. I hope she might look at what is going on in Scotland and that we may build on that learning, perhaps looking at increasing the length of the respite period in light of the experience there.

I thank the Minister and all those noble Lords, particularly the noble Lord, Lord Stevenson of Balmacara, who took this forward, as well as the charity StepChange, which has been so helpful in all these matters.

Lord Kirkwood of Kirkhope (LD): My Lords, following on from the comments made by the noble Earl about Scotland, I hope the Minister will encourage dialogue with the authorities in Scotland that have some experience of running these schemes. I am not saying the system is perfect but it would appear a bit absurd not to take advantage of the opportunity, through ministerial joint committees and what have you, to learn as much as can be learned and extract information about the experience in Scotland. I hope that might benefit and expedite the formulation of the scheme in due course.

An important point that I would like the Minister to confirm is that the provisions of this new scheme, which I greatly welcome, apply also to public bodies, local authorities and housing associations. If it does not do that then it will not be as effective, so I hope consideration will be given to that question.

If everything that can go right does go right—if I may invite the Minister to be optimistic for a moment—how quickly does she think this could be done? I absolutely understand the commitment that she has made; she has made it clear that she is personally committed to the scheme, and I am sure she will do everything that she can to deliver it. However, we live in uncertain times, and it may be that she gets promoted on to further and better things and other Ministers come in. If that were the case, we might look to the new Minister for Financial Inclusion to continue her work.

By what milestones can we measure progress of implementation of the scheme? It is so easy for these things just to disappear slowly by desuetude and disinterest, and by the throng and press of other matters in the departmental in-tray for such things to slip considerably. Can she assure us on the efforts that will be made to ensure that it stays up to the best possible implementation timetable to get done quickly, and on what sanctions there would be if the single financial guidance body did not keep up to the timetable limits set in the Bill? We would be even more reassured that this is a useful scheme if we had some sense of how quickly it will be accessible to ordinary people in the United Kingdom.

4 pm

Baroness Buscombe: My Lords, I shall be brief. I respond first to the noble Earl, Lord Listowel. I very much welcome the opportunity to write to him on his question about council tax for care leavers. On the scheme, I say to both the noble Earl and the noble Lord, Lord Kirkwood, that the Treasury has already issued a call for evidence. I attended a meeting at the Treasury with officials from Scotland, along with Treasury Ministers and officials to discuss how it works, what the processes have been and the path and history behind the debt respite scheme in Scotland. That is already under way.

Perhaps I should repeat one brief paragraph just to reassure the noble Lord. The single financial guidance body must provide advice within 12 months of being established, and on receipt of this advice, we will make regulations to set up the scheme as soon as is practicable, and certainly within 12 months of receiving the advice. It must be no later than 12 months, but we shall make every effort to do it as soon as we can.

I should also add that the scheme can apply to public debts, but we do not want to prejudge the consultation that we are progressing. A number of questions that the noble Lord raised rightly rest with the consultation process.

Baroness Altmann: I intervene briefly to ask my noble friend for some gentle reassurance about the issue of cold calling. I am enormously grateful that we have the debt respite scheme agreed, and the new wording, on which I congratulate the department, and the new wording for the Long Title, which explicitly includes cold calling. Can my noble friend reassure us that the ban on cold calling that the Government intend to introduce will be as effective as possible and that, rather than using the ICO, which has very

broad powers, the direct regulator—in particular, on pensions, the FCA—will be responsible for enforcing the ban? Regulatory imposition and enforcement by existing regulators is surely more effective in achieving compliance than relying on enforcement of widely drawn regulation.

This weekend, a story in the *Mail on Sunday* exposed the problems of nuisance calls to vulnerable elderly people about funeral plans. It was absolutely clear how ineffective the ICO has actually been in enforcing a ban on cold calling. It merely tries to sweep up the mess afterwards. It is cited as saying,

"where we find the law has been breached we will … take … action".

Baroness Buscombe: I am so sorry to interrupt my noble friend, but there is no amendment in respect of cold calling tabled at Third Reading, and therefore we cannot speak to it. I reassure her that we have already committed to introducing legislation to ban cold calling in the other place.

Amendment 2 agreed.

Amendments 3 to 8

Moved by ***Baroness Buscombe***

3: Page 3, line 15, at end insert—

"( ) Where the single financial guidance body provides information, guidance or advice to a person in pursuance of one of the functions mentioned in subsection (1)(a) to (c), it must consider whether the person would benefit from receiving information, guidance or advice in pursuance of any other of those functions (and it must ensure that SFGB delivery partners are under a similar duty)."

4: Page 3, line 16, leave out "support and co-ordinate the development of" and insert

"develop and co-ordinate"

5: Page 3, leave out lines 21 and 22 and insert—

"(13A) In developing and co-ordinating the national strategy, the single financial guidance body must work with others, such as those in the financial services industry, the devolved authorities and the public and voluntary sectors."

6: Page 3, line 23, leave out subsection (14)

7: Page 3, line 38, leave out subsection (15)

8: Divide clause 2 into two clauses, the first (Functions) consisting of subsections (1) to (3) and (9) to (13A) and the second (Cold-calling) consisting of subsections (4) to (8)

Amendments 3 to 8 agreed.

Clause 3: Specific requirements as to the pensions guidance function

Amendment 9

Moved by ***Baroness Buscombe***

9: Page 4, line 1, leave out from "In" to "insert" in line 2 and insert "section 137FB of the Financial Services and Markets Act 2000 (FCA general rules: disclosure of information about the availability of pensions guidance), after subsection (3)"

Amendment 9 agreed.

Amendments 10 and 11

Moved by ***Baroness Buscombe***

10: Insert the following new Clause—

"Debt respite scheme: advice to the Secretary of State

(1) The Secretary of State must, within three months of the establishment of the single financial guidance body, seek advice from the body on the establishment of a debt respite scheme.

(2) A debt respite scheme is a scheme designed to do one or more of the following—

(a) protect individuals in debt from the accrual of further interest or charges on their debts during the period specified by the scheme,

(b) protect individuals in debt from enforcement action from their creditors during that period, and

(c) help individuals in debt and their creditors to devise a realistic plan for the repayment of some or all of the debts.

(3) The matters on which the Secretary of State may seek advice include (but are not limited to)—

(a) the appropriate person to administer the scheme (and the single financial guidance body may recommend the creation of a new body for this purpose);

(b) whether the scheme should apply in England only, or whether it should also apply in Wales or Northern Ireland (or both);

(c) the scope and design of the scheme, for example—

(i) the types of debtors and the types of debts it should cover;
(ii) the types of protections it should give;

(iii) the time period for which the protections should apply;

(iv) what the obligations on debtors and creditors should be during any period for which protections apply, including any period of a repayment plan;

(v) the consequences of a failure by a debtor or a creditor to comply with a repayment plan;

(d) how the scheme should work, for example—

(i) how an application should be made for the protections given by the scheme;

(ii) suitable arrangements to keep creditors informed;

(iii) whether there should be a central register of persons admitted to the scheme;

(e) how the scheme should be implemented.

(4) The single financial guidance body must provide the advice sought within 12 months of its establishment.

(5) The Secretary of State must publish the advice."

11: Insert the following new Clause—

"Debt respite scheme: regulations

(1) As soon as reasonably practicable after receiving advice from the single financial guidance body under section (Debt respite scheme: advice to the Secretary of State), the Secretary of State must consider whether to make regulations under this section.

(2) After receiving advice from the single financial guidance body under section (Debt respite scheme: advice to the Secretary of State), the Secretary of State may make regulations establishing a debt respite scheme.

(3) The regulations must take the advice into account.

(4) The regulations may provide for the scheme to apply—

(a) in England only,

(b) in England and Wales,

(c) in England and Northern Ireland, or

(d) in England, Wales and Northern Ireland.

(5) Regulations under this section may—

(a) make different provision for different purposes,

(b) make different provision for different areas,

(c) make incidental, supplemental, consequential, transitional or saving provision, and

(d) apply to obligations entered into, or debts due to be repaid, before the regulations come into force.

(6) Provision under subsection (5)(c) may amend any provision made by or under—

(a) an Act of Parliament,

(b) in the case where the regulations provide for the scheme to apply in Wales, a Measure or Act of the National Assembly for Wales, and

(c) in the case where the regulations provide for the scheme to apply in Northern Ireland, Northern Ireland legislation.

(7) Regulations under this section are to be made by statutory instrument.

(8) An instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of —

(a) each House of Parliament,

(b) in the case where the regulations provide for the scheme to apply in Wales, the National Assembly for Wales, and

(c) in the case where the regulations provide for the scheme to apply in Northern Ireland, the Northern Ireland Assembly."

Amendments 10 and 11 agreed.

Clause 14: Disclosure of information

Amendment 12

Moved by ***Baroness Buscombe***

12: Page 12, line 29, leave out subsection (9)

Amendment 12 agreed.

Clause 19: Interpretation of Part 1

Amendment 13

Moved by ***Baroness Buscombe***

13: Page 15, line 4, at end insert—

"the "devolved authorities" means— (a) the Scottish Ministers,

(b) the Welsh Ministers, and

(c) the Department for Communities in Northern Ireland;"

Amendment 13 agreed.

Clause 20: Transfer to FCA of regulation of claims management services

Amendment 14

Moved by ***Baroness Buscombe***

14: Page 15, line 32, leave out "England or Wales" and insert "Great Britain"

Baroness Buscombe: My Lords, I announced on Report in response to amendments tabled by the noble Baroness, Lady Meacher, the Government would bring forward amendments to introduce an interim fee cap in respect of PPI claims management services. Amendments 25, 26, 27, 29 and 30 honour that commitment—and I am sorry to see that the noble Baroness is not in her place.

As noble Lords are aware, this Bill already puts a duty on the FCA to cap fees charged in respect of financial services claims. This will ensure fair and proportionate prices for consumers using these services. However, as we have previously discussed, the implementation of the new regulatory regime and an effective, robust cap will necessarily take some time. This is a particular concern, given that the FCA's PPI claims deadline may have passed by the time the FCA's fee cap is in place. That is why the Government are introducing an amendment to set a fee cap at 20%, excluding VAT, of the claim value. The interim fee cap will apply to both CMCs and legal services providers that carry out claims management services in relation to PPI claims, to be enforced by the relevant regulators. It will be enforced by relevant regulators from two months after the Bill receives Royal Assent, until the FCA is in a position to implement its own cap. This cap will complement the range of measures in relation to PPI and other financial claims that the claims management regulation unit has announced. These include banning upfront fees and banning charges, where it is identified that the consumer does not have a relationship or relevant policy with the lender, as well as ensuring that all cancellation charges are reasonable and that consumers are provided with an itemised bill setting out details of what they relate to. This package of measures will support the Government's aim to ensure that the claims management sector works in the interests of consumers by protecting them from excessive fees.

On Report, I also committed to tabling a government amendment to extend the FCA regulation of claims management to Scotland, should the UK and Scottish Governments agree that position. I am pleased to be able to confirm that the Scottish Government have now written to the UK Government to confirm agreement to extending regulation there. It highlighted that the situation in Scotland has changed since this issue was first discussed earlier this year. Legislation is currently progressing through the Scottish Parliament that will allow Scottish solicitors to offer increased funding options to clients on a no-win no-fee basis. As a result of these changes, Scottish solicitors will no longer need to set up CMCs to offer damages-based agreements to clients, and the CMC landscape is expected to change significantly.

To ensure that CMCs are not able to take advantage of this potential gap in regulation by targeting Scottish consumers, the UK and Scottish Governments have now agreed that FCA claims management regulation should extend to Scotland. This will ensure that there are appropriate regulatory standards in place to deal with CMC practices across Great Britain. These amendments follow up on my commitment on Report and do just that, extending FCA regulation of CMCs to Scotland, which will ensure that Scottish consumers are protected in the same way as those in England and Wales.

I note that the constitutional position of this issue has not been entirely straightforward as CMC regulation clearly concerns a mix of reserved and devolved matters. The regulation of the legal profession in Scotland is of course devolved, whereas matters of competition and aspects of consumer protection are reserved. It is the UK Government's view that CMC regulation concerns reserved matters of competition and consumer protection. The Scottish Government have confirmed that they will seek the legislative consent of the Scottish Parliament for the CMC provisions as part of the wider legislative consent Motion for this Bill.

For the purposes of record, I should note that the UK Government's view is that only Clause 20(4) relating to consumer advocacy is relevant to the legislative consent process, although I am aware that the Scottish

Government might take a broader interpretation of how much of this is covered by the LCM. Nevertheless, the crucial issue here is that we have agreement that FCA regulation of CMCs should cover Scotland. I believe that this represents a sensible outcome which will benefit and protect consumers across Great Britain.

I am sure your Lordships will agree that the introduction of an interim restriction on charges in respect of CMCs is a positive step forward in ensuring that the claims management sector works in the interests of consumers. I am sure you will also agree that it is desirable to extend FCA regulation of CMCs to Scotland, given the change in circumstances there. I beg to move.

Baroness Kramer: My Lords, I apologise, as when I last spoke, I attributed to the noble Viscount, Lord Trenchard, a very eloquent speech that was made on cold calling and the way it targets vulnerable people, when it was the noble Viscount, Lord Brookeborough, who made that speech. I apologise to both parties. If I have any excuse, it is that I confuse my own children, and one of them is male and the other is female, so it is even more embarrassing.

As regards this group of amendments, my only regret is that the cap on fees is set at 20%. It would have been better to have a lower cap. However, we congratulate the Government on the underlying principle of taking temporary action because it is very likely that by the time the FCA gets its grip on this issue we will be beyond the reach of future PPI claims. However, other than that, I once again thank the Minister for being responsive to the issues that have been raised all around the House, including this one and those of cold calling, debt respite and financial inclusion. This is a very important move by the Minister and her name will be attached to these issues well into the future.

Baroness Altmann: My Lords, I too once again thank the Minister and all parties who have worked so hard on this Bill. I thank the noble Earl, Lord Kinnoull, who initially raised the issue of Scotland. It is excellent that the whole of Great Britain is included in the Bill. I thank the department for all the hard work that it has done to achieve this.

I too am delighted to see a cap on the PPI claims management fee. Like the noble Baroness, Lady Kramer, I would very much have liked the Government to agree that the parties responsible for the mis-selling would pay the fee rather than taking it out of the compensation that is paid to the customer. I understand that there may be an issue over the profitability of the claims management company itself but perhaps a compromise would be to split the 20% so that the customer gets 90% of what is due and the financial firm that has done the mis-selling perhaps pays 10% as well to the claims management firm. Having said that, I certainly welcome a 20% cap. I once again thank the noble Lords, Lord Stevenson, Lord Sharkey and Lord McKenzie, and the noble Baronesses, Lady Kramer and Lady Drake, the noble Earl, Lord Kinnoull, and all other noble Lords who have made such great improvements to the Bill.

The Earl of Kinnoull (CB): My Lords, I cannot resist speaking briefly because of the good news in this group on the Scottish side. I pay tribute to and thank the Minister and her colleague, the noble Lord, Lord Young of Cookham—he of the very early morning email, which I received so often during the process of the Bill and which made me feel jolly lazy. I also pay tribute to and thank the noble Baroness, Lady Altmann, who added her name to my Scottish amendments; they were of course badly drafted, and I thank the parliamentary draftsman for correcting all that.

4.15 pm

However, this set of amendments is special for another reason: it is a rare example of good co-operation between the UK and Scottish Governments. In fact, in this Chamber last night we debated the mechanics of devolution and how the UK Government and the devolved Administrations work. This is a wonderful example of how it should work, and it has worked to the advantage of our fellow citizens. I am therefore delighted, I very much hope that this will be oft repeated, and I thank the Minister again.

Lord Hunt of Wirral (Con): My Lords, I declare my interests as set out in the register, as I have just entered the 50th year of my partnership in the global legal firm DAC Beachcroft. I also chair the British Insurance Brokers' Association. Colleagues will recall that I have made a number of speeches about the need to regulate the claims management sector. Further reform is urgently needed, but these amendments are a step in the right direction and I welcome them.

One of the biggest problems posed by CMCs is the potential for consumers to lose a large proportion of their damages in fees, despite the fact that the level of expertise required for a CMC to manage claims is remarkably low. The regulation of these firms should therefore be consistent across the whole sector. I will just mention two significant benefits that come from what the Government are now doing. First, we will have a robust authorisation regime based on understanding the business models of individual CMCs, which will prevent those firms that do not offer good value for consumers operating. Secondly, we will have personal accountability for senior managers of CMCs to ensure that when a firm is struck off, its directors cannot simply resurface as a new CMC.

The FCA now has the power to cap under these amendments, but it should urgently consider extending the cap to other claims to address the drastic spike in claims related, for instance, to gastric sickness while on holiday, to which the noble Earl, Lord Kinnoull, drew attention in earlier debates. It is no coincidence that there has been this massive surge in claims, just as CMCs prepare for the deadline for bringing PPI claims and the introduction of measures to tackle the high number of whiplash claims. We are therefore dealing with quite a range of possible actions that the Government need to take.

I was disappointed, not by anything my noble friend Lady Buscombe has ever said or done, but because the Government published a consultation response last week entitled *Cutting Costs for Consumers in Financial Claims* which was completely silent on any plans for action in the sector. By need for action I mean the need to control charges in the personal injury sector,

[LORD HUNT OF WIRRAL]
especially as the Government move forward with long overdue plans for whiplash reform. Question 20 in the original consultation paper was:

"Is there a need to consider further fee controls in other regulated claims sectors such as Personal Injury or Employment in future?".

I do not know what the replies to that question were but, sadly, there was complete silence in response. I just hope that, as the FCA prepares to regulate this sector, it will bear in mind at the height of its agenda the customer/consumer detriment from the actions of CMCs, which we have debated many times in this House. At last, it appears that action is being taken, but it will have to go much wider than these amendments, although they are a very good start.

Baroness Buscombe: Perhaps I may respond quickly to my noble friend Lord Hunt. Both we and the Financial Conduct Authority are aware that our plans for whiplash reform could have an impact on this market. I reassure him that the FCA will certainly keep this sector under review and will monitor developments closely during the implementation phase.

Lord McKenzie of Luton (Lab): My Lords, given the strong consensus that has emerged from the noble Lords who have spoken on these amendments—the noble Baronesses, Lady Kramer and Lady Altmann, the noble Earl, Lord Kinnoull, and the noble Lord, Lord Hunt—I can be brief. We support these amendments and we also support the provisions in the Bill, particularly in relation to a senior manager regime. That is very important.

Amendments 14 to 24 respond to the Scottish Government's request for the regulation of CMCs to be extended to Scotland, and they will also help to negate the concerns that have been expressed about cross-border planning.

With regard to Amendment 25, although she is not here today, we should place on record our thanks to the noble Baroness, Lady Meacher, for leading the charge on this issue. As others have noted, the cap has been set at 20% exclusive of VAT, which is at the upper end of the range on which the Government consulted. However, we should see that in context. Currently it is suggested that the average fee rate for CMCs is some 37% of gross revenue, which is almost double the level at which the cap has been set.

It may be appropriate to remind ourselves of the scale of PPI, which I know will be coming to an end in August. I think that banks' finance companies have paid out more than £26 billion in compensation over recent years. That is an extraordinary amount of money, and I wonder what that injection of funding to the consumer has done to the economy. It is important that the cap bites as soon as possible. Can the Minister confirm that the cap will apply to charges arising after the entering into force of Clause 21—just two months after this legislation comes into force—notwithstanding that the claims to which they relate may have preceded that? Can she confirm that it is not the date of the claim that is relevant for these purposes but the date when the compensation is paid?

Amendment 29 would appear to limit the application of the cap so that it does not apply to Scotland in respect of charges relating to claims prior to the transfer of regulation to the FCA. Perhaps the Minister could confirm that my understanding is correct. It would also seem to deny the application of Schedule 4 to Scotland. This schedule is concerned in part with transfer schemes in relation to the FCA. Perhaps the Minister could say what, if any, restructuring in Scotland might be affected by this change and how it would be affected if Schedule 4 were not applied to it.

Overall, we support these important amendments and look forward to the Minister's reply.

Baroness Buscombe: I thank the noble Lord, Lord McKenzie. I am so afraid of making a mistake at this late stage that I would prefer to write to him in reply.

Amendment 14 agreed.

Amendments 15 to 24

Moved by ***Baroness Buscombe***

15: Page 15, line 42, leave out "England or Wales" and insert "Great Britain"

16: Page 16, line 6, leave out "England and Wales" and insert "Great Britain"

17: Page 16, line 8, leave out "England and Wales" and insert "Great Britain"

18: Page 16, line 11, leave out "England and Wales" and insert "Great Britain"

19: Page 16, line 15, leave out "England and Wales" and insert "Great Britain"

20: Page 16, line 16, leave out "England and Wales" and insert "Great Britain"

21: Page 16, line 20, leave out "England and Wales" and insert "Great Britain"

22: Page 16, line 22, leave out "England and Wales" and insert "Great Britain"

23: Page 17, line 7, leave out "England or Wales" and insert "Great Britain"

24: Page 17, line 12, leave out "England or Wales" and insert "Great Britain""

Amendments 15 to 24 agreed.

Amendments 25 to 27

Moved by ***Baroness Buscombe***

25: Insert the following new Clause—

"PPI claims and charges for claims management services: general

(1) This section and sections (PPI claims: interim restriction on charges before transfer of regulation to FCA) and (PPI claims: interim restriction on charges after transfer of regulation to FCA) make provision for a fee cap to apply in certain circumstances to charges for regulated services provided in connection with a PPI claim.

(2) The following provisions explain terms used in those sections.

(3) The fee cap applicable to the amount charged for regulated services provided in connection with a PPI claim is 20% of the amount recovered for the claimant in satisfaction of the claim.

Accordingly, where nothing is recovered (whether or not a claim has been made or concluded) the fee cap is zero.

(4) But the charging of a reasonable amount for work done for the claimant is not to be regarded as exceeding the fee cap for a PPI claim if—

(a) the amount is charged for regulated services provided in connection with the claim,

(b) no other amount is charged for those services,

(c) the claimant has terminated the agreement governing the provision of such services (whether before or after the making of a claim), and

(d) the termination was not achieved by the cancellation of the agreement during a cooling off period available to the claimant by right (whether conferred by the agreement or otherwise).

(5) References to a claim are to a claim (however described) seeking compensation, restitution, repayment or any other financial remedy or relief, whether or not the claim is made or could be made by way of legal proceedings.

(6) References to the amount charged for regulated services provided in connection with a PPI claim are references to a sum comprising all amounts charged for such services in connection with the claim (whether or not charged under a single agreement), exclusive of VAT.

(7) References to the amount recovered for the claimant, in relation to a PPI claim, include a reference to any amount which (instead of being paid to or to the order of the claimant)—

(a) is set off against a debt due from the claimant to the person against whom the claim is made, or

(b) is paid to any person other than the claimant (whether a person providing regulated services in connection with the claim or any other person) with a view to discharging the whole or part of a debt due from the claimant.

(8) In this section references to regulated services are—

(a) so far as relevant for the purposes of section (PPI claims: interim restriction on charges before transfer of regulation to FCA), to be read as referring to regulated claims management services, and

(b) so far as relevant for the purposes of section (PPI claims: interim restriction on charges after transfer of regulation to FCA), to be read as referring to any service which is a regulated claims management activity.

(9) "PPI claim" means a claim relating to the selling of payment protection insurance (whether it concerns amounts paid by the policyholder or otherwise).

(10) "Regulated claims management services"—

(a) does not include any reserved legal activities of the kind mentioned in section 12(1)(a) or (b) of the Legal Services Act 2007 (exercise of a right of audience or the conduct of litigation), but

(b) otherwise, has the same meaning as in the Compensation Act 2006 (see section 14 of that Act).

(11) "Regulated claims management activity" has the same meaning as in the Financial Services and Markets Act 2000 (see the definition inserted by this Act in section 417(1) of that Act).

(12) "Section 22(1B) specified activity provisions" means provisions of an order made under section 22(1B) of the Financial Services and Markets Act 2000 (as inserted by this Act) which specify a kind of activity as a regulated activity within the meaning of that Act.

(13) "The FCA" means the Financial Conduct Authority."

26: Insert the following new Clause—

"PPI claims: interim restriction on charges before transfer of regulation to FCA

(1) A regulated person —

(a) must not charge a claimant, for regulated claims management services provided in connection with the claimant's PPI claim, an amount which exceeds the fee cap for the claim, and

(b) must not enter into an agreement that provides for the payment by a claimant, for regulated claims management services provided in connection with the claimant's PPI claim, of charges which would breach, or are capable of breaching, the prohibition in paragraph (a).

(2) A breach of either of those prohibitions is not actionable as a breach of statutory duty; but—

(a) any payment in excess of the fee cap for a PPI claim is recoverable by the claimant, and

(b) any agreement entered into in breach of subsection (1)(b) is not enforceable to the extent it provides for a payment that breaches or is capable of breaching the prohibition in subsection (1)(a).

(3) In subsection (2) "payment" means a payment of charges for regulated claims management services provided in connection with the claim.

(4) A relevant regulator—

(a) must ensure that it has appropriate arrangements for monitoring and enforcing the prohibitions in subsection (1) as they apply to the regulated persons for whom it is the relevant regulator;

(b) may make rules for the purposes of doing so (which may include provision applying, in relation to breaches of a prohibition in subsection (1), functions the relevant regulator has in relation to breaches of another restriction).

(5) For the purposes of this section— (a) "regulated person" means—

(i) a person who falls within any category of regulated person specified in column 2 below, or

(ii) any person not within sub-paragraph (i) who, by virtue of article 4 of the Compensation (Exemptions) Order 2007 (S.I. 2007/209), is not prevented by section 4(1) of the Compensation Act 2006 from providing regulated claims management services;

(b) "relevant regulator" means a person listed in column 1 below; and

(c) the regulated persons for whom a person listed in column 1 below is the relevant regulator are described in the corresponding entry or entries in column 2.

Relevant regulator	Regulated persons
The Regulator	Persons authorised to provide regulated claims management services under section 5(1)(a) of the Compensation Act 2006.
The General Council of the Bar	1. Persons who, or licensable bodies which, are authorised by the General Council to carry on a reserved legal activity. 2. European lawyers registered with the General Council under the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119).
The Law Society of England and Wales	1. Persons who, or licensable bodies which, are authorised by the Law Society to carry on a reserved legal activity. 2. European lawyers registered with the Law Society under the European Communities (Lawyer's Practice) Regulations 2000. 3. Foreign lawyers registered with the Law Society under section 89 of the Courts and Legal Services Act 1990.
The Chartered Institute of Legal Executives	Persons authorised by the Institute to carry on a reserved legal activity.

(6) In column 1 "the Regulator" means the person designated under section 5(1) of the Compensation Act 2006, or, if no person is so designated, the Secretary of State.

(7) In column 2 "reserved legal activity" has the meaning given by section 12 of the Legal Services Act 2007.

(8) This section applies as follows—

(a) the prohibition in subsection (1)(a) applies only to charges imposed under an agreement entered into during the first interim period, and

(b) the prohibition in subsection (1)(b) applies only to agreements entered into during that period.

(9) In subsection (8) "the first interim period" is the period—

(a) beginning with the day on which this section comes into force, and

(b) ending with the day before the day on which the first section 22(1B) specified activity provisions come into force for (or for purposes which include) the purposes of the general prohibition in section 19 of the Financial Services and Markets Act 2000."

27: Insert the following new Clause—

"PPI claims: interim restriction on charges after transfer of regulation to FCA

(1) The rule specified in subsection (2) is to be treated for the purposes of the Financial Services and Markets Act 2000 as if—

(a) the rule were a general rule made by the FCA under section 137A of that Act, and

(b) this section were contained in that Act;

and accordingly functions conferred on the FCA by that Act which apply in relation to general rules made under section 137A apply to that rule as they apply to other general rules made under that section.

(2) The rule is that an authorised person—

(a) must not charge a claimant, for a service which is a regulated claims management activity provided in connection with the claimant's PPI claim, an amount which exceeds the fee cap for the claim; and

(b) must not enter into an agreement that provides for the payment by a claimant, for a service which is a regulated claims management activity provided in connection with the claimant's PPI claim, of charges which would breach, or are capable of breaching, the prohibition in paragraph (a).

(3) A breach of either of those prohibitions is not actionable as a breach of statutory duty (despite section 138D(2) of the Financial Services and Markets Act 2000); but—

(a) any payment in excess of the fee cap for a PPI claim is recoverable by the claimant, and

(b) any agreement entered into in breach of the prohibition in subsection (2)(b) is not enforceable to the extent it provides for a payment that breaches or is capable of breaching the prohibition in subsection (2)(a).

(4) In subsection (3) "payment" means a payment of charges for a service which is a regulated claims management activity provided in connection with the claim.

(5) The rule in subsection (2) applies as follows—

(a) the prohibition in paragraph (a) applies only to charges imposed under an agreement which is entered into during the second interim period, and

(b) the prohibition in paragraph (b) applies only to agreements entered into during that period.

(6) In subsection (5) "the second interim period" is the period—

(a) beginning with the day on which the first section 22(1B) specified activity provisions come into force for (or for purposes which include) the purposes of the general prohibition in section 19 of the Financial Services and Markets Act 2000, and

(b) ending with the day before the coming into force of the first relevant general rule made by the FCA (whether for all purposes or for any specific purpose).

(7) In subsection (6)(b) "relevant general rule" means a general rule that—

(a) is made under subsection (1) of section 137FD of the Financial Services and Markets Act 2000 (as inserted by this Act), and

(b) applies to, or to any description of, PPI claims (whether or not it also applies to anything else).

(8) In this section "authorised person" has the same meaning as in the Financial Services and Markets Act 2000 (see section 31(2) of that Act)."

Amendments 25 to 27 agreed.

Clause 22: Extent

Amendments 28 and 29

Moved by ***Baroness Buscombe***

28: Page 19, line 20, at end insert—

"( ) Sections (Debt respite scheme: advice to the Secretary of State) and (Debt respite scheme: regulations) extend to England and Wales and Northern Ireland."

29: Page 19, line 24, leave out subsection (3) and insert—

"(3) The following provisions in Part 2 extend to England and Wales—

(a) section 20(12) and Schedule 4;

(b) section (PPI claims: interim restriction on charges before transfer of regulation to FCA).

(3A) The other provisions in Part 2 extend to England and Wales and Scotland."

Amendments 28 and 29 agreed.

Clause 23: Commencement

Amendments 30 to 32

Moved by ***Baroness Buscombe***

30: Page 19, line 38, at end insert—

"( ) Sections (PPI claims and charges for claims management services: general) to (PPI claims: interim restriction on charges after transfer of regulation to FCA) come into force at the end of the period of two months beginning with the day on which this Act is passed."

31: Page 19, line 40, at end insert—

"( ) Regulations under subsection (2) must provide for sections (Debt respite scheme: advice to the Secretary of State) and (Debt respite scheme: regulations) to come into force on the same day as section 1(1)."

32: Page 20, line 5, at end insert ", and ( ) different provision for different areas."

Amendments 30 to 32 agreed.

In the Title

Amendment 33

Moved by ***Baroness Kramer***

33: Line 1, after "body" insert "(including provision about cold-calling and a debt respite scheme)"

Amendment 33 agreed.

Amendment 34 not moved.

A privilege amendment was made.

4.25 pm

Motion

Moved by ***Baroness Buscombe***

That the Bill do now pass.

Baroness Buscombe: My Lords, I would like to take a moment to reflect on the Bill and its passage through your Lordships' House. This is important legislation that will benefit members of the public and provide a sustainable legislative framework for public financial guidance and the regulation of claims management companies in the future. It has improving financial capability at its heart and I am proud to be associated with it.

At Second Reading I said that I hoped we would have constructive engagement as the Bill progressed through this House. Your Lordships have not disappointed. The Bill has rightly been accorded due and diligent attention from noble Lords across the House, and I would like to thank all those who have engaged on the Floor of the House and also in the many meetings we have had outside.

I would like also to thank my noble friend Lord Young of Cookham for all his help and assistance as the Bill has progressed. He has been a tower of strength and a more than able co-pilot throughout.

Finally, but importantly, I would like to thank the Bill team and officials across the Department for Work and Pensions, Her Majesty's Treasury, the Department for Digital, Culture, Media and Sport, and the Ministry of Justice. Many of them have put in incredibly long hours to support my noble friend and me during debates, facilitate briefing meetings and provide the updates, letters and briefings that many noble Lords have received. I may add that other noble Lords, in particular the noble Lord, Lord Stevenson, referenced the cross-departmental support we have had. It has been amazing and has made an enormous difference to the outcome of the Bill.

Throughout the passage of the Bill we have listened to the arguments and suggestions made by noble Lords, and, in many cases, have agreed and brought forward amendments that strengthen it. I think we can all agree that this Bill leaves here in good shape, and I believe that this is in no small part due to the helpful and constructive manner in which all sides of the House have engaged with it.

Lord McKenzie of Luton: My Lords, I will say just a few words. I start by thanking the noble Baroness, Lady Buscombe, for her kind words. We are grateful again for the open-minded manner in which she and her co-pilot, the noble Lord, Lord Young, have approached the Bill. I never had the opportunity to ask him whether Luton Airport was on the flight path, but I will try to on a future occasion.

Invariably it is said at the end of a Bill process that the House of Lords has improved the Bill from its starting point. While tenuous in some instances, it is definitely true with this Bill. Support across the Chamber has enabled the framework for a debt respite scheme; consumer protection on cold calling; strengthening access to information and guidance on accessing pensions; a duty of care on setting standards; requiring that pensions guidance functions are provided freely and impartially; strengthening offences of mimicking; as well as securing the dashboard. These changes have come about because, broadly, we have had a shared analysis of what the Bill could achieve; a shared analysis with the Lib Dems and Cross-Benchers as well as with the Government, including the noble Baroness, Lady Altmann.

We are very grateful for the proactive approach of the Bill team, which went above and beyond in trying to fit our amendments into the confines of the scope of the Bill. I do not know how many variations of the debt respite provisions the team had to cope with, but there were many. I offer my thanks to the Lib Dems for their joint working on some key areas, among them the noble Lords, Lord Sharkey and Lord Kirkwood, and the noble Baroness, Lady Kramer.

Finally, I thank my colleagues, my noble friend Lady Drake, our pensions supremo who unfortunately is not in her place today, and of course my noble friend Lord Stevenson for his experience and passion on matters of the debt space. It has made my role a good deal easier.

Bill passed and sent to the Commons with amendments.

Sanctions and Anti-Money Laundering Bill [HL]

Committee (1st Day)

Relevant documents: 7th Report from the Delegated Powers Committee and 8th Report from the Constitution Committee

4.31 pm

Clause 1: Power to make sanctions regulations

Amendment 1

Moved by ***Lord Judge***

1: Clause 1, page 1, line 8, leave out "appropriate" and insert "necessary"

Lord Judge (CB): My Lords, the noble Lord, Lord Pannick, and I are bringing forward Amendments 1 and 23 in relation to Clauses 1 and 7. I will get this out of the way. We are both members of the Constitution Committee. We do not speak for the committee, but we do highlight its recent report on the Bill and we shall rely heavily on it; perhaps we should invite the Committee to spend some time studying it closely.

The second preliminary matter is this. I acknowledge the letter sent by the Minister to the noble Lord, Lord Pannick, which was copied to me. I acknowledge his kind invitation to see if we could organise a meeting. Unfortunately, for personal family reasons I could not manage those dates, but I will begin by thanking him for his customary courtesy.

At Second Reading I described the Bill as a "bonanza of regulations". In truth, on reading it again I can still find nothing of true substance in it except regulation-making powers. Clause 1 deals with regulations—and then on and on we go. Let me throw in, just casually, Clauses 14, 35 and 44. Good old Henry VIII comes

[Lord Judge]
stumbling in crush all the regulations that have been made and to make any others he wishes. We really should rechristen this Bill the "Sanctions and Anti-Money Laundering (Regulation Bulk Buy) Bill".

Everyone who spoke in the Second Reading debate acknowledged that the asserted objectives were desirable. Compliance with our treaty obligations with the United Nations and other countries is admirable. Arrangements currently exist in this field which at the moment are governed on the basis of EU law; they are part of our law but they have come through to us on the basis of the 1972 Act. No one has yet said that those powers are inadequate, yet the Bill is not simply bringing what I shall describe as EU law into domestic law and preserving it—rather, it goes much further. It vests more far-reaching powers in the Minister to rule by regulation on these issues and, beyond fulfilling our treaty obligations, it throws in powers to deal with terrorism. Terrorism is criminal activity that is already subject to vast tranches of primary legislation, so we are producing a Bill that is bung-full of regulations and nothing else in order to enable our international obligations to be fulfilled—but more so—while at the same time extending these powers to criminal activity that is already governed by statute.

I recognise that legislation by regulation is unavoidable, and that some regulation is inevitable and justifiable. However, in the context I have endeavoured to paint—I could have gone on for hours, but I will not—I remind your Lordships that the Constitution Committee said on this issue:

"Given that the purpose of the Bill is to address the need for domestic powers to impose, amend and revoke sanctions after Brexit, it is important to ensure that there are sufficient safeguards and there is adequate parliamentary scrutiny to make the delegated powers constitutionally acceptable".

While I have page 4 open, I will draw attention to some of the phrases in different paragraphs, such as "constitutionally inappropriate for Ministers". The committee recommends,

"this important limitation on ministers' powers".

It states:

"Clause 11 raises constitutional concerns".

Then, on page 5, the committee says that it is,

"concerned about the breadth of the power conferred",

and,

"deeply concerned that the power in … may be used".

This is not an emotional reaction by the Constitution Committee; it is simply an examination of the reality of the legislation and a short summary of where it leads us.

In that context, I will make a short point in relation to the proposed amendment: throughout the Bill, should we not proceed on the basis that the greater the apparent imperative to proceed by unconstrained regulation, the greater the corresponding imperative to provide for the fullest possible parliamentary scrutiny, always achieved by careful primary legislation?

Clauses 1 and 7 go to the heart of the Bill. In the remarkable context that I endeavoured to summarise a few minutes ago, I hope to identify the purpose of the amendment. It is utterly simple: I hope it will make these two clauses more attractive. The relevant word in these clauses is "appropriate". I think we can assume that no Minister would try to make regulations that he or she did not think were appropriate; I think we can also agree that any regulations made consequent on the Act should be an exercise in what is appropriate. However, in this context in the Bill, "appropriate" is far too vague, easily dependent on ministerial discretion and subjective.

If we are to allow powers such as these to be exercised by regulation, the exercise should always be both appropriate and necessary. If it is necessary, it will almost always be simultaneously appropriate; however, if it is only appropriate, it will not always be necessary. Hence the amendment: by strengthening the language of a single word, we will impose a greater responsibility on the Minister—not our present Minister but the Minister to come and Ministers to follow for years yet—and he or she will be less likely to make an ill-judged, mistaken decision about the exercise of these extravagant powers, when simultaneously the opportunity to correct errors is significantly diminished. I beg to move.

Lord Pannick (CB): My Lords, I want to add some footnotes to the powerful speech of the noble and learned Lord, Lord Judge. As your Lordships know, this is the first substantive Bill to be brought forward in this House to address the consequences of Brexit. As the Minister explained at Second Reading, domestic powers are needed to impose sanctions to replace the powers currently enjoyed under EU law. In relation to these amendments, it is important to say—as is repeatedly pointed out—that there is a disturbing irony when a Brexit that is said to be justified by a desire to restore to Parliament powers currently enjoyed in Brussels results in Ministers seeking to confer extensive powers on themselves.

That is a topic to which the House will no doubt return when the European Union (Withdrawal) Bill reaches us, but for today, these amendments seek to identify the unjustifiable breadth of the powers that Ministers seek to confer on themselves in the context of the Bill. I pose this question to the Minister: why should the Committee be satisfied that Ministers should take powers that are unnecessary? That is the question. It is not sufficient that the powers are appropriate; they need to be necessary, because a Minister in this context should not have a power that is unnecessary.

The noble and learned Lord mentioned the report of the Constitution Committee. I also draw attention to the report on the Bill published last Friday by the Delegated Powers and Regulatory Reform Committee. I draw the Committee's attention to paragraph 18, which I will quote because it is so powerful. It says:

"As drafted, clause 1(1) allows the Minister to make sanctions regulations where the Minister considers that doing so is 'appropriate' to achieve one of the purposes listed in that clause. In the light of the width and significance of the powers, we take the view that the Minister should only have power to make sanctions regulations if doing so is considered 'necessary' to achieve the purpose for which they are made".

I hope the Minister will reflect on that advice from that committee, as well as that of the Constitution Committee.

I expect the Minister will respond by seeking to placate the Committee—he is very good at that sort of thing—with reassurances about the Government's benign intentions in this context. If I may get my retaliation in first, the answer to that contention is given again by the Delegated Powers and Regulatory Reform Committee. It is in its report published on 28 September this year on the European Union (Withdrawal) Bill, but it is a general point. At paragraph 10, the report says that the committee judges,

"powers on how they might be used and not just on how the Government indicate that they intend to use them".

That must be right. That is the approach we should adopt in this Committee.

The noble Lord is, if I may say so, the acceptable face of ministerialism, but who knows the identity of the Minister who will perform this role in a year's time or five years' time? I say respectfully to those on the Government Benches that they ought to bear in mind that it may not be a Minister from their party performing this role in a year or five years' time. It is important to adopt a non-partisan approach to this issue. It is not good enough that the Minister has benign intentions, as I know he has; we have to look at the extent of the powers being given. I strongly support the noble and learned Lord's amendments.

4.45 pm

Baroness Northover (LD): My Lords, I too will speak to Amendments 1, 23 and 1A, which is in my name and that of my noble friend Lady Sheehan. As the Constitution Committee and the Delegated Powers Committee have made clear, and as we have just heard, the Bill, though described by the Minister at Second Reading as simply "technical", proposes to give wide powers to Ministers—I see the Minister's rueful smile; I suspect he regrets using that phrase—in the event that the UK decides to leave the EU and sanctions and money laundering arrangements have to be set in place. I was struck as he used that expression that, when he heard from the noble and learned Lords, Lord Judge and Hope, and the noble Lord, Lord Pannick, this might sum up how he now feels.

The case for Amendment 1 has already been cogently made by the noble and learned Lords and the noble Lord. I also want to quote the Delegated Powers Committee, because it is worth the Minister being aware that there is, I am sure, cross-party support for its very sombre conclusions about this first Brexit Bill we are considering in the Lords. The committee states that,

"clause 1(1) allows the Minister to make sanctions regulations where the Minister considers that doing so is 'appropriate' to achieve one of the purposes listed in that clause … we take the view that the Minister should only have power to make sanctions regulations if doing so is considered 'necessary' to achieve the purpose for which they are made".

That theme runs right the way through the reports of both the Delegated Powers Committee and the Constitution Committee. I am sure the Minister will take note of this advice and the widespread agreement with those committees across the House. I hope he will not only accept the amendment but apply the same logic through the rest of the Bill.

The noble and learned Lord, Lord Judge, made it clear that the Constitution Committee and the Delegated Powers Committee are concerned about parliamentary involvement right the way through the Bill. The Delegated Powers Committee has also noted various other areas about which it is concerned, and that is the subject of our Amendment 1A. It states:

"In our view, an appropriate Minister should only be allowed to make sanctions regulations for a purpose other than compliance with an international obligation, where there are compelling reasons for the Minister's belief that carrying out the purpose will achieve one of the objectives listed in clause 1(2)".

One would almost think that one did not have to state this, but it is very clear from this legislation that we do.

The committees request that we fully scrutinise this Bill and insist on full parliamentary involvement. In other areas, the Delegated Powers Committee seeks the affirmative procedure; in another, the Constitution Committee states that we should consider,

"whether the consent of the devolved legislatures should be required when this power is used to amend or repeal legislation enacted by them".

All these issues need to be considered.

In sum, the Constitution Committee states that,

"given that the purpose of the Bill is to address the need for domestic powers to impose, amend and revoke sanctions after Brexit"—

assuming Brexit happens—

"it is important to ensure that there are sufficient safeguards and there is adequate parliamentary scrutiny to make the delegated powers constitutionally acceptable".

That point has been made by the noble and learned Lord and the noble Lord from the Cross Benches. I am sure it will be repeated throughout the Committee stage. That is what we need to hold on to as we see this Bill through.

Lord Lennie (Lab): My Lords, I say for the record and from the outset, and for the avoidance of any doubt in the mind of the Minister, that we on this side of the House recognise the importance of such a Bill coming into being. We are leaving the EU. The Government's position is that EU jurisprudence will no longer apply and therefore the Bill becomes an imperative. That is not the same thing as saying that everything in the Bill is rosy and we support it all, and that is why we are here. We strongly support the case made by the noble and learned Lord, Lord Judge, the noble Lord, Lord Pannick, and the noble Baroness, Lady Northover.

This amendment is the starting point of the Bill: it concerns the power for a Minister to act. Should it be when the Minister considers it appropriate or should it be when it is provably necessary to do so? One is an opinion, the other an evidential absolute. Does it weaken the Government's position? No, it makes it more robust to have "necessary" replacing "appropriate". Will it inhibit the Government? No, it will make for greater certainty as other clauses in the Bill are debated. Does it strengthen the Bill? We believe that it does: it will become more bullet-proof and less able to be challenged.

On Friday, as the noble Lord, Lord Pannick, said, the Delegated Powers Committee considered this and concluded:

"In the light of the width and significance of the powers, we take the view that the Minister should only have power to make sanctions regulations if doing so is considered 'necessary' to achieve the purpose".

[Lord Lennie]

That is where this amendment ends. Does the Minister accept this? Will he reflect on this and come back on this point?

Lord Faulks (Con): My Lords, the noble Lord, Lord Lennie, was very quick off the mark: the noble Lord, Lord McNally, and I wanted to make brief interventions. It seems that the case made for these amendments is a pretty strong one, but of course I will listen with great interest to what the Minister has to say. It might be said, I suppose, that the amendment put forward by the noble Baroness, Lady Northover, is more or less understood by the other two amendments. I simply say to the Minister that it might be helpful if he could give some example, prospectively, of where a Minister might think this action "appropriate" but not "necessary". That would help to clarify the Committee's thinking.

Lord McNally (LD): My Lords, I agree that the noble Lord, Lord Lennie, was a bit quick off the mark. Just have a glance behind you occasionally—you might find that somebody wants to come in.

I was rather diffident about putting my name to such illustriously signed amendments. My noble friend Lady Northover spoke about the noble Lord, Lord Pannick, and the noble and learned Lord, Lord Judge. I am not sure that I would trust the country solicitors "Judge and Pannick" or "Pannick and Judge"; I am not sure whether it is best to panic after you have judged or judge before you panic. Nevertheless, any sensible Minister who sees those names on an amendment thinks very hard about it. Of course, as the noble Lord, Lord Lennie, said, this will be a very necessary Bill if the Government succeed in their Brexit aims, but that does not mean that every Bill that comes before us has to be given a nod through because of the pressures of the Government's own making. There is a real danger.

I can almost imagine the discussions in the Cabinet Office: "How on earth do we get this shedload of legislation through?". Then somebody says, "The only way you can do it, Ministers, is by lots of Henry VIII clauses and lots of powers by secondary legislation". "Okay, we will do it that way." The irony of that, as I have said before from these Benches, is that an exercise that was intended to return sovereignty to this Parliament is becoming an exercise in returning power on an unprecedented scale to the Executive. I fear that, unless the Government come up with some new and ingenious proposals for dealing with this flood of legislation short of these broad powers, they will run into trouble time and again.

Of course, we want to get the bad guys, and there is always a temptation, especially if you are the Minister, to go for the Eliot Ness solution—how do we kick down the door and get at the bad guys?—but we cannot ignore a report such as that referred to by the noble and learned Lord, Lord Judge. Go through every page of it. There is reference to the Henry VIII powers, but then:

"We do not consider it appropriate for ministers to have powers … We are concerned about the breadth of the power … We are deeply concerned that the power in clause 16",

et cetera. It goes on right through the report. This is a really serious warning to Ministers and to Parliament from a very well-respected committee.

Of course, Whitehall does not have a pure record on this. Even in the days when we were simply transferring European law into our own law, there was a well-established practice in Whitehall to do a bit of gold-plating on the way and dig in a few regulations that people had wanted to get anyway. We have to resist this gold-plating. As I say, when someone such as the noble Lord, Lord Pannick, talks about "unjustifiable breadth", and someone such as the noble and learned Lord, Lord Judge, talks about "a bonanza of regulations" and "extravagant powers", it is not only the Committee that would be wise to take note; the Minister should as well.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I had been waiting for the noble Lord, Lord McNally, to speak, so have come in rather later than perhaps I should have. The arguments advanced by the noble Lord, Lord Pannick, and the noble and learned Lord, Lord Judge, are compelling. I would throw one other word into the mix: "expedience". Under the Bill as drafted, it might be thought appropriate because it is expedient to make a provision, but that is not good enough here. These powers are so draconian that nothing short of necessity alone could justify their exercise. Therefore, I echo what the noble Lord, Lord Faulks, said: unless the Minister can give a convincing illustration of a regulation which is justifiably expedient but short of necessity, we cannot possibly allow the Bill to go forward in its present form.

Baroness Sheehan (LD): My Lords, my name is attached to Amendment 1A. I wish to reinforce what has been said by my noble friend Lady Northover. The regulations that the Minister will have powers to impose through Clause 1 will have far-reaching consequences on "designated persons", "prescribed persons" and "involved persons", as affected individuals or entities are variously referred to throughout the Bill. Therefore, it is only right that the power to create a regulation should entail a more onerous thought process than consideration by the "appropriate Minister". I agree that "compelling reasons" would be a more fitting foundation for making such momentous decisions.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, first, I thank all noble Lords who have spoken in the debate. A small point was made about what I said in my opening remarks at Second Reading about the Bill being technical. Maybe I should defend that by saying that every Bill is technical in some way and perhaps that was what I was alluding to. But I thank the noble Lord, Lord McNally, for whom I have great affection, for highlighting that point, and we live and learn through our experiences at the Dispatch Box and in the House.

As I said at Second Reading, this is a Bill that we need to get right—a point that was acknowledged by all noble Lords who have spoken. I stated that right from the outset, as I do again today, at the start of Committee. That is why I will put on record my immense thanks to noble Lords from all sides of the House who have engaged very constructively on this important Bill. I assure noble Lords that that will continue to be the case as the Bill progresses through your

Lordships' House. I thank all noble Lords—in particular the noble Lord, Lord Lennie—for recognising why we require this legislation.

After we leave the European Union we will need the Bill to ensure that we can continue to impose, amend and lift sanctions, and change our anti-money laundering framework. As noble Lords know, sanctions form part of the range of foreign policy tools that we can use in response to threats such as terrorism to the UK and UK interests. The Government fully recognise that sanctions are not to be used lightly—I assure noble Lords of that fact—and impose significant restrictions on individuals and entities. They should be imposed only after careful consideration of the political context, the desired impact and, of course, the potential risks. The Government also believe strongly that sanctions are a tool for changing unacceptable or threatening behaviour. They should not be used punitively as a substitute for criminal justice measures. A good recent example of the value of sanctions is the way that they encouraged Iran to accept constraints on its nuclear programme.

5 pm

I turn to the amendments. As the noble and learned Lord, Lord Judge, and the noble Lord, Lord Pannick, have so eloquently set out, Amendment 1 proposes changing the circumstances in which a Minister can make sanctions regulations, from where they consider it "appropriate" for the purposes set out in the Bill to where they consider it "necessary" for those purposes. I am thankful to them both for saying that, although they accept that I am currently at the Dispatch Box, they cannot plan for the future. I am not quite sure about the timescales of one year to five years, or the potential for others to lead from a different party. We remain determined on these Benches to ensure that we continue to make things work as we move towards the UK leaving the European Union. However, I also emphasise to all noble Lords that "appropriate" was chosen very carefully. My noble friend Lord Faulks talked of examples of when it might be appropriate but not necessary. For example, if one of our close allies had imposed sanctions and we sought to support them, it might be hard to demonstrate that this was strictly "necessary"; it would be a question of judgment based on UK foreign policy goals.

The UK currently plays a central role in negotiating global sanctions, as noble Lords will be aware, not only at the UN—where the UK is of course a permanent member—but in situations where the UN has chosen not to act but we consider that an international response is still warranted. This has often involved the UK working in close co-operation between the EU and the United States with the support of others, including the likes of Canada, Australia, Switzerland and Norway. An example is where the UK played a key role in negotiating the sanctions in respect of Syria.

It is important that the Government have the necessary discretion to act in the field of foreign and security policy, including in the context of unpredictable, fast-moving events. As we saw in recent years in the western response to Russia's actions in Ukraine, for example, foreign policy is an exercise in managing risks based on the Government's best assessment of the situation using the range of tools available—from strong words, yes, to military intervention. There may be differing views on which tools are most appropriate but, in the end, we believe it is for Governments to make these judgments and then be held appropriately accountable by Parliament.

It is also important to note that "appropriate" in Clause 1 does not give Ministers unrestricted discretion to impose whatever sanctions they may wish or like. Sanctions may be not just "appropriate" per se but appropriate for one of the specific purposes set out in the Bill. This includes being appropriate for the purposes of compliance with a UN obligation, which I will address further when we debate Amendment 23, or for one of the other purposes mentioned in Clause 1(2). It places the Minister's decision firmly in the context of those purposes. This position is also consistent with the current position under the EU treaties. The Lisbon treaty allows the EU to use sanctions if they are made in accordance with the EU's common security and foreign policy. It sets out the objectives of that policy and requires the EU to pursue its objectives by appropriate means. So, as with other parts of the Bill, we are seeking continuity with current practice in the EU.

It is also important to note that the Bill contains a range of measures designed to ensure that the sanctions are used appropriately. In cases where the UK has chosen to put in place sanctions and the UN has not done so, the made affirmative procedure will apply, ensuring that both Houses of Parliament have a vote. In this way, not only the Government but Parliament will decide whether the sanctions themselves are "appropriate".

The Bill provides a number of other in-built protections. In particular, it provides for an annual review of each sanctions regime against the purpose it was put in place to achieve, which will involve looking at the current global picture. It also provides for a broader triennial substantive review of all the designations under the regime. Further, the Bill provides safeguards to ensure that the Government do not act unreasonably when imposing sanctions on individuals, including evidentiary thresholds and opportunities for reassessments and challenges.

Baroness Kramer (LD): Perhaps I may ask the Minister a question to address a lack of clarity. A moment ago, he basically said that one of the checks would be that either or both Houses of Parliament could vote against the SI brought forward by the affirmative procedure. The last time I was in this House and we on these Benches sought to do so with an SI, the consequence was a review on removing the powers of the House of Lords to act under such circumstances. Indeed, I have frequently heard language suggesting that to vote against an SI is a complete overreach of powers. Is this a change in the Government's position? Is there any way in which this could be enshrined? It is rather fundamental to the discussions we will have not just today but on future occasions.

Lord Ahmad of Wimbledon: As the noble Baroness will know, I have stated the position as it is. Of course it is within the powers of both Houses to vote against—that is the whole point of having statutory instruments

[Lord Ahmad of Wimbledon]
that are presented to both Houses. This is not just about the House of Lords; I mentioned the House of Commons as well.

Baroness Kramer: Can I just confirm that the Government's response to any such move would be exactly as we saw before? That is an important piece of information for this House to know. I believe that that is what the Minister has just confirmed.

Lord Ahmad of Wimbledon: I have stated that the position is as it is now. I know the noble Baroness is seeking to develop arguments that we have had on a previous occasion, but what I have stated is the position as it exists. The noble Baroness talked about it being enshrined in law. Currently, that is how affirmative instruments and statutory instruments work. I am sure she is fully cognisant of that fact.

The noble Lord, Lord Lennie, said that the amendment would not inhibit the Government in any way. But as I was saying—to give further explanation and clarity, if I may—changing "appropriate" to "necessary" would effectively force the Government to use sanctions only as a last resort. Let me assure noble Lords that by saying that I do not mean that sanctions are never our first option. It is important that the Government of the day have some flexibility in deciding when and how sanctions should be deployed. We would not want to find ourselves in a situation where we could not use sanctions in the early stages of a crisis and instead had to allow it to escalate until the necessity of sanctions could be demonstrated.

Moreover, sanctions work best when agreed multilaterally. To be required to demonstrate that other options have been exhausted and sanctions are therefore necessary would leave the UK more constrained than our allies and international partners in our ability to agree and deploy sanctions. It would be a high bar to meet, especially in cases where we may wish to impose sanctions as part of a multilateral agreement with allies in areas where there is no direct risk to UK citizens or direct impact on UK interests. Too high a bar could prevent the UK acting in these areas. This could not only reduce the ability of the UK to continue to play a central role in international affairs but reduce the effectiveness of the sanctions measures themselves. For example, financial sanctions against Russia—

Lord Pannick: I am puzzled by this point. The amendment is concerned, under Clause 1(1), with the circumstances in which regulations may be made, but it does not affect the broad discretion embodied in Clause 1(2), which defines purposes. Clause 1(2) states:

"A purpose is within this subsection if the appropriate Minister … considers"—

so it is a matter entirely for the Minister—

"that carrying out that purpose would",

for example,

"further a foreign policy objective of the government of the United Kingdom".

So, as I understand it, my noble and learned friend Lord Judge's amendment would in no way inhibit the complete discretion of the Minister to decide matters of purpose and to decide what is or is not in the foreign policy objectives of the Government; for example, that sanctions should be imposed, in general terms. All the amendment does is to say that the Minister has to be satisfied that it is necessary to impose these regulations once the foreign policy objective has been determined—and it is to be determined by the Government. With great respect, I do not understand the point that the Minister is making.

Lord Ahmad of Wimbledon: The point I was making was about the implication in the current wording of "appropriate". This is not an open invitation for a Minister to impose sanctions, and the appropriateness of imposing sanctions is qualified in the context in which they must be applied. That was why I referred to the specific section that I did.

I think I have made the point already that the concern would remain. Several noble Lords have referred to the Constitution Committee and the Delegated Powers Committee. We have received those reports as well, and I assure noble Lords that I am not dismissing them. We are reflecting very carefully on the representations made by both committees because it is important that we respond carefully and after detailed consideration of what is being put forward. As I said right at the start of my remarks, I will reflect very carefully and will very much bear in mind the voices and experience of those who have tabled these amendments. We certainly remain of the thinking that the current wording, with the balances and the qualifications in the context of the legislation as presented, means that this is not an open invitation for a Minister to apply a sanction. However, in the context of the two reports, I will of course look again at the basis on which perhaps we can look to qualify, and provide greater certainty in respect of, the language used.

Amendment 1A, tabled by the noble Baronesses, Lady Sheehan and Lady Northover, would require there to be a "compelling" reason why sanctions are appropriate for the purposes set out under subsection (2), which relates to non-UN sanctions. I agree with the sentiment behind this amendment and note that it reflects a specific recommendation of the Delegated Powers Committee. However, adding the requirement for a "compelling" reason might also give rise to some of the difficulties I have already highlighted in respect of the previous amendment.

As I said, we think that in matters of foreign affairs and security policy the Government should have discretion about when it is appropriate to act. This amendment would effectively remove some of that discretion. We also believe that it could restrict our ability to work with international partners to ensure that sanctions are effective. In some cases, sanctions may be more compelling for our international partners than for the UK, but it would undermine the effect of sanctions if we were not able to participate or agree to them being applied multilaterally. I am sure that all noble Lords will recognise that perspective. If the UK was unable to act, this could in turn undermine the UK's relationships with our international partners.

Amendment 23 deals with a similar issue, but in relation to UN sanctions only. I think there is agreement on all sides of the Committee that it is appropriate that the UK can continue to comply with its international obligations, so I doubt there is much between us on

this issue. We think "necessary" would in many cases be acceptable in that place in the Bill. However, we also think it is important that where the UN provides some flexibility about how to implement obligations, the Government should have the flexibility to decide how best to do so. The word "appropriate" provides that flexibility.

It should be noted that the power here is broadly consistent with the equivalent provision in Section 1 of the United Nations Act 1946, which enables Ministers to,

"make such provision as appears to",

them,

"necessary or expedient for enabling",

measures in UN Security Council resolutions "to be effectively applied". It should also be noted that the word "appropriate" does not enable Ministers to do whatever they want. The noble and learned Lord, Lord Hope, referred to the Ahmed case, which I know he knows well. That demonstrated that the courts will take a robust approach to scrutinising the exercise of the Executive's powers.

I have already alluded to the fact that we have received the reports of both the Constitution Committee and the Delegated Powers Committee. I put it on record that we will consider both committees' recommendations very carefully. I have also listened carefully to the contributions during the course of this short debate, and I am sure we will explore the issues further as we scrutinise the Bill in Committee.

It says here, "I hope I have been able to convince noble Lords", but, from looking around the Chamber, I think that would be a rather hopeful word to use at this juncture. Perhaps I have provided noble Lords with a degree of reassurance with some of the explanations that I have given about the context in which the sanctions would apply, but I respect and understand that there would be a need for continued parliamentary scrutiny and for ensuring, as I am sure all noble Lords appreciate, that the UK continues to comply with international law and maintains a leading role in international affairs after the UK's exit from the EU.

As I said, we will continue to consider very carefully the recommendations of the two committees, and I am sure we will return to this issue in discussion with noble Lords. Again, there are important issues of discussion here. Both in the course of the Committee stage of the Bill and in the meetings that we are having beyond the Chamber, I am sure we will reach a means of moving forward constructively on this basis. The ultimate purpose and objectives of the sanctions regime are something that I know all noble Lords respect. Based on that, I hope the noble Lords will be minded at this juncture to withdraw the amendment.

Lord Thomas of Gresford (LD): My Lords, I am pleased to hear the Minister confirm that this House has the power to vote down statutory instruments. Indeed, if the Government continued to pursue policy goals through secondary legislation, that procedure would become much more widely used than it has been in the past without the suggestion that the British constitution was being undermined.

The Minister has said that these powers have been taken in the pursuit of Foreign Office goals. A memorandum from the Foreign and Commonwealth Office, dated 19 October last, was sent to the Delegated Powers and Regulatory Reform Committee. Paragraph 52 says, under the heading "Justification for taking the powers":

"The Government therefore considers it necessary and appropriate to provide framework powers that enable detailed sanctions regimes to be set out in secondary legislation".

If the justification for taking the powers must be necessary and appropriate, why is the same test not to be applied to the exercise of those powers?

Lord Ahmad of Wimbledon: I thank the noble Lord for his late but important contribution. As I said to the noble Baroness, Lady Kramer, I was stating the position as is, regarding the context in which both Houses of Parliament can vote on statutory instruments. In the case of your Lordships' House, it is clearly laid out in the *Companion* as well. Let us also put this into context: if a sanctions regime were being proposed and it were voted down in both Houses, the sanction itself would fall and would not apply. The context is not something that can be ignored. In the context of the second question, the noble Lord—

Baroness Kramer: May I ask for a clarification? The Minister just said the context could not be ignored. Is his conclusion that it is inappropriate for a statutory instrument related to sanctions ever to be voted down by either House? Is that the conclusion that we are to draw from his comment?

Lord Ahmad of Wimbledon: Perhaps I can read into what the noble Baroness seeks on this occasion. This is not an issue about both Houses or affirmative instruments. The position I have given is not the Government's position; it is the position as it stands now. If she needs further elaboration, I respectfully refer her to the House of Lords *Companion*.

To return to the noble Lord's final question, if I may, I will write on the specific issue that he raised for the purpose of clarity for all Members of your Lordships' House.

Lord Thomas of Gresford: The noble Lord said that my intervention was late. This is Committee, and the advantage of Committee is that Members may reply to the Minister after he has made his contribution.

Lord Ahmad of Wimbledon: As ever, as I said, we live and learn. The noble Lord is of course right in this context: during Committee, any noble Lord can speak and intervene as appropriate.

Lord Judge: If I am allowed to speak, the reality is that neither House rejects subordinate legislation, even if it includes a provision which everybody thinks is lousy, because if you try to do that, the whole instrument falls, and there may be 77 regulations within it with which you agree. Our processes do not in reality admit of proper challenge to secondary legislation. But that is a battle for another occasion, perhaps when we come to Henry VIII.

I respectfully suggest to the Minister that the word "necessary" does not mean the same as "last resort". If, when deciding whether to exercise these powers, he believed that he was acting in order to implement a

[Lord Judge]
treaty obligation or in accordance with a necessary stage in our foreign policy, that would be amply covered by the word "necessary".

I was going to say that I will allow the Minister to reflect—that is very generous of me; the Minister is allowed as much time as he likes. What I meant was that when he has had time to reflect, I shall reflect on his reflections and return to the issue on Report. I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 1A not moved.

Amendment 2

Moved by ***Baroness Northover***

2: Clause 1, page 2, line 7, leave out paragraph (d)

Baroness Northover: I shall speak also to Amendments 3 and 4 in my name and the other amendments in the group. Amendment 2 once again addresses the wide and poorly defined powers in the Bill. The amendment, which is also in the name of my noble friend Lady Sheehan, would delete Clause 1(2)(d). It is to seek clarification from the Minister how a purpose which includes to,

"further a foreign policy objective of the government of the United Kingdom",

might be applied. This is something to which the noble Lord, Lord Pannick, and my noble friend Lord Thomas just referred. Remember that we need to read the Bill in the light of it being, as the noble and learned Lord, Lord Judge, said, a bulk buy of regulations.

For example, the Government of the United Kingdom have had a number of foreign policy objectives with which one would not want disagreement to result in sanctions. Thus, for example, might someone risk being sanctioned because they opposed the invasion of Iraq or objected to selling arms to some dubious regime? That might be ridiculed as of course not intended here, but we need to probe the unintended consequences, given the wide scope of the Bill. Given that we know that the Human Rights Act cannot be counted on for protection, as this Government have at times wished to repeal it, and that members of the party opposite have also made it clear that they do not wish to be bound by the European Convention on Human Rights, despite the UK playing a leading role in drafting it, what protection can the Minister offer?

In addressing Amendments 2 and 4 in my name, and that of my noble friend Lady Sheehan, I pay tribute to the work of Amnesty International in briefing us, and for its work around the world. This returns us to seeking to improve the Bill, as we normally do in this House—and the concern here is to include human rights breaches in the definition of purpose in this clause and ensure that the Government have the means to prevent the violation of sanctions regulations. I note that the noble Lord, Lord Collins, has further proposals in this regard. I make it clear that we also feel that they would strengthen the Bill—for example, the amendments that would ensure that sanctions were in compliance with international humanitarian and human rights law and would provide for a humanitarian impact assessment before sanctions were introduced so that their impact can be properly gauged. I am well aware, as a former DfID Minister, of the impact on NGOs working in Syria, for example, in the restrictions on them due to the sanctions regime that was in place.

I look forward to hearing what the Minister says, and I beg to move.

Baroness Sheehan: My Lords, I rise to speak to Amendment 3 which, as my noble friend Lady Northover said, adds to the list of purposes for making regulations under Clause 1 to include human rights breaches, as well as prevention of acts contravening the international law on armed conflict and prevention of internal repression in any country. That those purposes are not mentioned is a grave omission and cannot be encompassed in subsection (2)(d), which says that the purpose would,

"further a foreign policy objective of the government of the United Kingdom".

To give our amendments the force that we as a civilised country intend, they must be spelled out in the Bill. That is the basic thrust of my argument as to why I hope that the Minister will give serious consideration to Amendment 3.

However, on a more technical note, can the Minister give consideration to the fact that there is an unexplained gap between this Bill and the Export Control Act 2002? That Act has a specific section called "Relevant Consequences", which sets the conditions whereby the Government can act. Clause 1 of the Bill and the relevant consequences of the 2002 Act are aligned with the exception of human rights and international humanitarian law provisions, which are in the 2002 Act but do not feature in the Bill before us. That is a serious omission; trade sanctions and, specifically, arms embargos, are largely triggered because of the humanitarian concerns over the provision of weapons in these cases, and the very serious and grave violations of international humanitarian law that arise as a consequence. The amendments would give powers to the Government to impose sanctions on these grounds and ensure direct consistency on the two Acts when dealing with issues around trade and arms embargos.

Amendment 4, also in my name, would add the provision,

"prevent the violation of sanctions regulations made under this Act".

That addition may seem unnecessary, but it would give consistency with the corresponding sanctions mechanisms agreed at UN and EU level and would require the Government to take action to prevent breaches of sanctions.

I have another passing point. On the front page of the House of Lords Library briefing to the Bill, a sentence reads:

"The Government agrees that there is a mutual interest in continued collaboration with European partners in this area, and has suggested that the UK and EU could cooperate on sanctions listings and align policy in future where appropriate".

I have not spotted many government concessions in the Bill to demonstrate the importance of aligning sanctions regimes with those of international partners, so this small amendment would go a little way to meeting the Government's own stated position of working collaboratively going forward, should Brexit take place.

5.30 pm

Lord Faulks: My Lords, I regard this amendment with considerable interest and look forward to hearing what the Minister says about it. The noble Baroness, Lady Northover, said that one of the reasons for inserting the words,

"the prevention of acts breaching human rights",

was because the Government might in due course consider repealing the Human Rights Act or even departing from the convention. The Minister may confirm that it has always been the Government's policy to protect human rights through a huge number of treaty obligations, whatever might be the position vis-à-vis the European convention. I am a little concerned that these amendments appear to constrain foreign policy objectives, which necessarily have to vary from time to time according to the particular objective that is sought. For the most part, they will comprehend and include the matters included in the amendment but it would be unwise to constrain foreign policy through these sorts of amendments.

Lord Collins of Highbury (Lab): I did not want to tempt myself to get up too soon. I appreciate what the noble Lord has just said but I was struck by what the noble and learned Lord, Lord Judge, said—namely, that when using these powers the Government should proceed only with the fullest scrutiny. The amendments in this group, particularly those in my name and that of my noble friend, are designed not to limit the Government's powers but to ensure that we scrutinise the Government's actions. We want clarity on our commitment to humanitarian law and that we are implementing the international treaties to which we are signed up.

I am sure that the Minister will again ask whether these amendments are necessary, as he did on the first group of amendments. It could be argued that they are not. However, I argue that it is important that we state our beliefs in fundamental values, particularly human rights, democracy, the rule of law and good governance. A number of our allies and friends do not comply with those principles and we should be seen to be doing so. That is why we have tabled these amendments. We do not seek to limit but rather to empower Parliament and others to be able properly to scrutinise the powers that are used and measure them against the principles set out.

Amendment 7 asserts that when these powers are used the appropriate Minister must set out how sanctions are consistent with the UK's objectives. Again, this is to enable effective scrutiny. The problem with executive powers is that often Governments simply assert them; they do not allow for proper scrutiny to measure their actions against the principles we set out. I hope that the Minister will put up a cogent argument. If he simply says, as the noble Lord did, that these amendments might be restrictive and are not necessary, I ask him to look carefully at Amendment 7 and ask what mechanisms can help improve scrutiny of the exercise of these powers and how we ensure that we can scrutinise them.

We heard in the previous debate that everything is going to be hunky dory because the House of Commons and the House of Lords will have a vote on statutory instruments, but we know that is a case of take it or leave it. As the noble and learned Lord, Lord Judge, said, you can agree with 90% of something but how do you measure the other 10%? I want the reasoning to be set out more fully, not just in terms of having a vote on statutory instruments. I hope noble Lords will understand that we do not seek to include these words simply to make us feel better and that we are not doing so unnecessarily. We seek to include them to aid proper scrutiny of the powers exercised by the Executive.

Lord Judd (Lab): Before my noble friend sits down, does he agree that one of the reasons that British standing in the world is diminishing is that there is the growing feeling that we use all the right words about human rights and the rule of law but are pretty slow to add muscle to ensure that something is done? I believe the time has come when our credibility rests on making sure that we not only make the right statements in principle but have the arrangements in place for proper scrutiny and ensuring that action is taken.

I pick up the liberal position. Speaking as a former defence Minister, overseas development Minister and Foreign Office Minister, I have in my more senior years come to the firm conclusion that sooner or later we have to change our ruling culture on the export of arms. Arms have become lethal, highly dangerous and destabilising. As you get older, you can become a bit more irresponsible in the best sense in terms of holding inconvenient beliefs. I believe that the only people to whom you should export arms are those with whom you are in a close, specified alliance—NATO, for example—or where there is an identifiable, specific reason for doing so to increase stability in a particular place. Anything else is a liability, given all the problems with end-use. I do not doubt the current Minister's commitment to human rights but we need to be able to demonstrate that this is not just a case of wishful thinking but an issue about which we are serious.

Lord Collins of Highbury: I thank my noble friend for his intervention and wholeheartedly agree that actions speak louder than words. However, at this stage, we are discussing how we can ensure the effective scrutiny of these powers. What are we measuring them against? That is important. Earlier, noble Lords said that we could not just rely on the words used. We all admire the Minister's good intentions but this issue concerns the future. I place on record that the next Labour Government will put human rights centre stage in all their actions. We will certainly take up my noble friend's point but that is not what we debating. I do not want to make an election manifesto call just yet but I want the Minister to consider the mechanisms that can be included in the Bill to enable us properly to measure the use of executive power.

Lord Ahmad of Wimbledon: My Lords, in response to the noble Lord, Lord Collins, I was allowing for any noble Lords to speak, but of course we will continue to debate these issues. To pick up on the point made by the noble Lord, Lord Judd, to whom I listened carefully, it is fair to say that sometimes we can be critical within the Chamber, whoever is in power or in opposition. One thing I have seen in my short time as a Foreign Office Minister but also as a Minister for Human

[Lord Ahmad of Wimbledon]

Rights, whether at the UN, in Geneva or travelling around the world—irrespective of which Government of whatever colour has led our great country—is that not only do we see respect for human rights as being at the heart and centre of what we do but many around the world respect the UK for it and hold it up as a beacon. I assure the Committee that the Government do not take their human rights responsibilities lightly. My noble friend Lord Faulks alluded to the fact that not just here but in other places, in different parts of legislation, we ensure adherence to that. In this regard I am proud that, whether at the Human Rights Council, as we have recently seen, through various universal periodical reviews that are taking place with countries, or on quite specific issues, whether human rights on freedom of religion or belief, the protection of LGBT communities, or on gender equality and ensuring that women's rights are represented, throughout my life the UK has been a bastion and a beacon for human rights. That should and will remain a cornerstone of British foreign policy in years to come.

I thank noble Lords for their amendments. It is right that we again emphasise that we should look carefully at the purposes for which sanction regulations may be created. It may be helpful if I say something about the purposes set out in Clause 1(2). These are designed to cover situations and purposes where the UK is not implementing a UN or other international obligation. The list of purposes has been designed to ensure that we can continue to implement sanctions for the full range of purposes for which we use them now as part of the European Union. The EU is able to adopt sanctions for any purposes of its common foreign and security policy. The reference to "foreign policy objectives" in Clause 1(2) seeks to provide the same type of scope when the UK has left the European Union. This is why the amendment tabled by the noble Baronesses, Lady Northover and Lady Sheehan, would, as my noble friend Lord Faulks highlighted, potentially restrict our options. It seeks to remove the ability to impose sanctions to,

"further a foreign policy objective of",

the UK.

I appreciate and accept that Amendments 3, 4, 5 and 6 aim to define UK national security and foreign policy objectives in more specific terms. I have little difficulty with the language as such. However, we may risk missing important objectives of UK national and foreign policy that might justify the use of sanctions in the future. For example, this may limit our ability to act with our international partners in the future to tackle serious threats to the national interest.

Noble Lords may recall that in 2015 the Government published a national security strategy, which provides a clear overview of Her Majesty's Government's objectives in the national security sphere. The practice has been to update this strategy every five years, as this can act as an indication of some of the purposes of sanctions as set out in the Bill. I assure noble Lords that the Government will not have unlimited discretion. As I set out in the previous debate, the Bill contains a number of checks and balances on the Government's action, including scrutiny by Parliament and court challenges.

On the additional purposes that have been suggested, I note that these reflect our current practice. For example, preventing grave breaches of human rights and international humanitarian law are already among the purposes of UN sanctions against the Democratic Republic of the Congo and EU sanctions against Iran. I am satisfied that we would continue to impose such sanctions based on the purposes of the Bill as drafted, and that is certainly our intention.

5.45 pm

The noble Lords, Lord Collins and Lord Lennie, have proposed adding a purpose related to the prevention of serious organised crime and trafficking. I appreciate the need to clamp down on these activities and agree with the noble Lords' sentiments that they must be prevented where possible. Sanctions may not always be the appropriate tool for this; it may be that law enforcement agencies should investigate and apply the criminal law. We need to look at whether they have all the tools available to allow them to do this. But I hope I can reassure the House that should serious organised crime or trafficking affect our national security, should we wish to pursue it as a matter of foreign policy, or should we enter into international agreements to impose sanctions to stamp it out, the powers in the Bill are already wide enough to impose sanctions in this space.

The noble Baronesses, Lady Northover and Lady Sheehan, also mentioned violations of sanctions. I assure the noble Baronesses that the Government take this very seriously. As they will know, the Policing and Crime Act, which passed through this House earlier this year, included new penalties for those who breach financial sanctions.

The noble Baroness, Lady Sheehan, also referred to the Export Control Act 2002, which specifically references the important issue of international humanitarian law. I assure her that the 2002 Act and the Bill are consistent: sanctions, including trade sanctions, may be imposed under the powers in the Bill with regard to breaches of international humanitarian law.

On Amendment 7, I say at the outset that I wholeheartedly agree that sanctions should be deployed as part of a wider foreign policy strategy and that Parliament must have the information it needs—as the noble Lord, Lord Collins, said—when deciding whether to bestow on the Government of the day the power to use those sanctions to address a particular foreign policy challenge. This is the thrust of the point behind these amendments. When laying sanctions regulations before Parliament, the appropriate Minister will have to set out the purposes of those sanctions, enabling Parliament to scrutinise whether sanctions are the right tool for the purpose. The Government will need to be clear on the desired outcomes of a sanctions regime, the key milestones, how progress will be monitored and how co-operation with allies will work. Parliamentarians should be able to ask any question they need to challenge the Government on their rationale.

Equally, however, we need to acknowledge that the international context in which sanctions are used is complex and dynamic. I know noble Lords accept this principle. It is simply not possible for the Government to predict or determine in detail how events will unfold. Nor would it be wise to lay out publicly the full details

of our diplomatic strategy. I am sure that all noble Lords accept the principle that the Government need some room to handle sensitive foreign policy and national security issues with appropriate discretion. While Ministers obviously need to secure the confidence of Parliament when deploying sanctions, they must also be able to exercise their discretion in pursuit of the UK's objectives and in the face of unpredictable and rapidly changing circumstances.

As I hope I have demonstrated, while I appreciate the sentiments behind these amendments, the Government do not consider them necessary, and in some cases, as has been said, they could restrict the ability of the UK to continue to play a significant role in the negotiation and use of sanctions. This could not only undermine the UK's role in international affairs but weaken the impact of international sanctions as a tool for solving some of the most pressing issues of the day. With that explanation, I hope the noble Baroness may be minded to withdraw the amendment.

Baroness Northover: My Lords, I am grateful to everyone who has contributed to this mini debate. In some ways, I was surprisingly unreassured by what the Minister said; I was expecting to be much more reassured than I am. I was struck by the difference in his language. He mentioned that the EU uses sanctions for "foreign and security policy", but the Bill talks only about "foreign policy", which is a much more restricted meaning. He mentioned Iran, but it was the nuclear programme and the threat of it that led to sanctions, which is about security rather than foreign policy per se.

Lord Ahmad of Wimbledon: I suggest to the noble Baroness that foreign policy and security are the primary responsibility of any Government. Of course, security is a key feature of foreign policy, and I also referred to the Government's national security strategy.

Baroness Northover: Indeed, security, and not just foreign policy, is a first aim of the whole of government. However, I find myself concerned about the language here and about the scope in the Bill for using this provision. I shall certainly think about this but, in the meantime, I beg leave to withdraw.

Amendment 2 withdrawn.

Amendments 3 to 7 not moved.

Amendment 8

Moved by ***Lord Collins of Highbury***

8: Clause 1, page 2, line 13, at end insert—

"( ) Regulations under this section must be accompanied by the publication of a humanitarian impact assessment, and such an assessment must be conducted—

(a) according to the methodology set out in Chapter 5 of the UN Inter-Agency Standing Committee's Sanctions Assessment Handbook: Assessing the Humanitarian Implications of Sanctions, published in 2004,

(b) in advance of the relevant sanctions regulations being made,

(c) again within six months of the date on which the relevant sanctions regulations come into force, and

(d) at any time thereafter when the relevant sanctions regulations are subject to any substantial revisions or alterations."

Lord Collins of Highbury: The purpose of this amendment is to reflect on the discussions that we have had with many NGOs actively engaged in humanitarian support. I had not fully appreciated the difficult circumstances that can arise when they operate in countries affected by sanctions. This is not just a technical matter; people's lives are put at risk and the ability to travel across certain countries can be impeded. Therefore, it is very important that the impact of any proposed sanction is fully understood by the NGOs.

We also fully support the amendment in the names of the noble Baronesses, Lady Northover and Lady Sheehan, which would ensure the provision of impact assessments. We are very keen to ensure the provision of impact assessments to cut down the time between sanctions coming into effect and licences being granted. I have no doubt that the Minister will say that there is a process and that the Government are dealing with the NGOs' concerns, but this is a mechanism that can better help the planning and implementation of their humanitarian projects. I beg to move.

Baroness Northover: My Lords, I shall speak to Amendment 9, which stands in my name and that of my noble friend Lady Sheehan, and I support the amendment in the names of the noble Lords, Lord Collins and Lord Lennie.

The Minister made clear at Second Reading and in our discussions—I welcome this—that he is open to the possibility of trying to ensure that NGOs working in humanitarian disaster areas and very challenging situations have greater assistance in doing their work when sanctions get in their way. As I just mentioned, I recall from my work as a DfID Minister that sanctions could have a significant impact on the work of NGOs when they sought to assist in Syria.

As the noble Lord, Lord, Collins, pointed out, it is essential that we review current and future sanctions so that we can identify any disproportionate impacts. I know that was the case in Syria, where there were different arrangements for our NGOs compared with those for American NGOs, for example. We need to be able to assess the impact of sanctions and make adjustments accordingly. Therefore, our Amendment 9 speaks of consultation with stakeholders, who are obviously in a very good position to inform the Government of any unintended consequences, so that those consequences can be addressed.

Our amendment is a probing one. As I said, the Minister has said that he is open to ensuring that licences for NGOs are more fit for purpose than has been the case in the past. We are seeking to move the Minister further along that line so that that is not just a possibility but is put in a more concrete form and more specifically, so that we can see the changes that the noble Lord, Lord Collins, and I have outlined.

Baroness Sheehan: My Lords, Amendment 9 is broad enough to cover a range of activities—not just humanitarian assistance but peacebuilding, reconstruction and development assistance. It would also enable a range of stakeholders—for example, banks, businesses that supply goods or services in sanctioned countries and other experts—to be included in any discussions.

[Baroness Sheehan]

Consultation is very important as it will reduce unintended consequences for diplomats, aid workers and others. For example, a British diplomat was prevented from getting a mortgage because his bank found out that he lived in Sudan. Sanctions that are badly applied or inappropriate can give banks and international companies a reason to be risk-averse, reducing the availability of services to poor and vulnerable people or countries. For example, in 2011 Standard Chartered Bank received a large fine for breaching Iranian sanctions. That led to all banks becoming more risk-averse to the point where they now overimplement the sanction where the value of the market is not worth the risk. Therefore, even if the activity they are carrying out is excluded, they will often choose to avoid the market altogether. Another example is Somalia, where Barclays closed the accounts of small money transfer companies used by the Somali diaspora to send money home. We all know how important these remittances are these days. Perhaps with consultation those problems could be avoided.

It is very important that any potential impact of a new sanctions regime is properly understood and documented. As well as the other factors that I have mentioned, this would also reduce the lag time between sanctions coming into effect and licences or exemptions being provided to mitigate their impact.

Lord Hylton (CB): My Lords, I follow on very much from what the noble Baroness, Lady Sheehan, has just said. I am old enough to remember the sanctions against Southern Rhodesia. More recently, there were atrocious humanitarian consequences when sanctions were imposed against Saddam Hussein's regime in Iraq. I think Sudan and South Sudan were mentioned. If they were not, I do so now. There are also the current sanctions against Syria. Therefore, these amendments are very practical; they are not just theoretical. On those grounds, I urge the Government to take them very seriously.

Lord McNally: My Lords, en passant, the noble Lord, Lord Hylton, mentioned sanctions against Southern Rhodesia. As I am sure that at some stage a comment will be made about these Benches being overrepresented, it is worth remembering that one of the five times when this House defied the Government of the day was in relation to sanctions against Southern Rhodesia. On that occasion, a grotesquely overrepresented Conservative Party in the House of Lords voted down those sanctions. It is always useful to have a historical perspective on these matters.

I want to speak to these amendments because, like the noble Lord, Lord Collins, I attended the briefing by NGOs. It was quite surprising and shocking to find that unintended consequences were putting lives in peril. People who are in these countries for humanitarian reasons—and doing a terrific job—might suddenly find themselves hit by sanctions for using an airline connected to a regime under sanctions, even though it was the safest airline to use. Lots of other examples were given to us. Therefore, I hope the Minister will take up the invitation of the noble Lord, Lord Collins, and explain to the House whether he is aware of these unintended consequences that hit the NGOs and, if he is, how he intends to mitigate the impact of sanctions on individuals and organisations who are in these places not to bust sanctions but to carry out humanitarian work.

6 pm

Lord Ahmad of Wimbledon: My Lords, I thank all noble Lords who have spoken on this group of amendments. The noble Lord, Lord McNally, talked about Rhodesia, and historical context is one of the great values of your Lordships' House—it always puts things into context.

The specific issue of banks and sanctions against Iraq in 1991 came up. As someone who spent 20 years in that sector and started his career at that time, I remember being acutely aware of those who were opposing the Saddam Hussein regime. It was perhaps used to having more liberal purses and was suddenly subjected to stringent rules based on those that were being applied in-country. Noble Lords have spoken quite rightly about the unintended consequences that lie behind sanctions. However, there are necessary occasions for them in the banking sector. As we have seen, certain banks in certain parts of the world will take a de-risking attitude, which then prevents essential services being performed. However, I will turn to the issue in front of us.

Amendments 8 and 9 make substantially the same points so I will address them together, if I may. First, let me stress again on record that I fully understand the reasoning behind these amendments. As the noble Baroness, Lady Northover, said, we have spoken about this during Second Reading and outside your Lordships' Chamber.

It is important that, in imposing and maintaining sanctions, the Government do so with a clear understanding of what the impacts may be, and that there is a focus on minimising potential humanitarian impacts and other unintended consequences. I assure noble Lords that the Government work closely with humanitarian actors and NGOs and take their concerns into account when designing and implementing sanctions.

Last year, it was the United Kingdom that secured amendments to the EU's Syria sanctions regime to provide an exemption for fuel purchases made in Syria by humanitarian organisations, which is exactly what the noble Lord, Lord Collins, talked about. Noble Lords may also be aware that, in October, after listening to NGOs, Her Majesty's Treasury's Office of Financial Sanctions Implementation published specific guidance for the charitable sector on sanctions compliance.

I assure noble Lords that the Bill provides the Government with relevant powers, such as issuing licences to help mitigate any potential impact on the operations of humanitarian organisations. EU case law currently restricts our ability to issue so-called general licences for the humanitarian sector, but the Bill would give us greater flexibility after our exit from the EU. When making and amending future sanctions regulations, the Government would incorporate humanitarian exemptions where appropriate, and these would be subject to parliamentary scrutiny.

As the amendment makes clear, there are already methodologies for assessing the humanitarian impact of sanctions, which are agreed internationally. These would

continue to be applied. To require a humanitarian impact assessment to be published at the domestic level each time sanctions were imposed is something that I remain to be convinced about. It would duplicate the work already done at an international level before sanctions are agreed. It also carries the risk of causing delay, potentially undermining the effectiveness of sanctions.

The amendment tabled by the noble Baronesses, Lady Northover and Lady Sheehan, would require the impact assessment to be worked up in consultation with stakeholders each time. I fear that that might risk tipping off potential sanctions targets, who could then take evasive action. Again, this could undermine the effectiveness of sanctions.

I assure noble Lords that we will continue to work closely with our NGO partners. The noble Lord, Lord McNally, asked how we were taking that further. We are already working closely with colleagues in DfID on working with NGOs on how we can take the matter forward. The noble Lords, Lord Collins and Lord McNally, and the noble Baroness, Lady Northover, talked also about the NGOs themselves. I think it might be appropriate if, during the course of Committee and before Report, I make myself available to meet the NGOs to see how we may be able to further tighten up the language in this regard. I hope that following what I have presented to the House about the measures already in place, the noble Lord will be minded to withdraw his amendment.

Lord Collins of Highbury: I thank the noble Lord for his response and very much welcome his commitment to meet NGOs so that we can discuss their concerns before we come back to this at Report. In the light of those comments, I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Amendment 9 not moved.

Clause 1 agreed.

Clause 2: Financial sanctions

Amendment 10

Moved by ***Lord Judge***

10: Clause 2, page 3, line 11, leave out sub-paragraphs (ii) and (iii)

Lord Judge: My Lords, this amendment and the others in my name in the group arise in the context of the imposition of financial sanctions, and so on, on designated individuals. The process of designation is subject to regulation and is another part of the bulky regulation power that is being sought. I simply want to highlight how Amendments 10, 11, 12, 13, 14, 16, 17 and 81 relate to Clause 2(1)(b)(ii) and (iii),

"persons connected with a prescribed country, or … a prescribed description of persons connected with a prescribed country".

My argument in this debate is that we do not need this to be dealt with by regulation; we can deal with it by way of primary legislation.

I have no difficulty with making specific identified individuals subject to the sanctions regime when that is justified, including where the individual is identified in the context of the United Nations having information to give us or in accordance with our treaty obligations. My concern arises because of the way in which the Minister is empowered to prescribe a country and include in the sanctions regime anyone—here is the magic word—"connected" with it. I respectfully argue that "connected" in this context is a weasel word: it is very wide and all-embracing.

My mother was Maltese and my father was English. I was born in Malta in the middle of the war, the hospital being bombed as my poor mother gave birth to me. I accept and am proud to claim my connection with Malta—I would not mind being included on a connection list such as that. My children are one-quarter Maltese but have never lived there, and my grandchildren are one-eighth Maltese but have never lived there. Is this a connection for the purposes of this legislation? Which one? Is it the blood or the residence? For how many generations does such a connection endure? For how long must residence be? Is it for so many years or for a certain proportion of an individual's life? How recent must it be? In business, is it one transaction or many; one huge transaction or a lot of small transactions of little value?

What I am driving at is that, in the end, the Minister will choose by regulation to define what this connection shall be. Surely this should be done by primary legislation, with parliamentary scrutiny of the definition which the Minister decides that he wishes to ask Parliament to consider. I should add that a specific designated person does not have to be a British citizen, so given the regulation-making power in Clause 2(1)(b)(i), which we are not challenging, for identifying specific individuals whose conduct brings them within the sanctions regime, such persons are not going to escape from this. We have no objection to provisions that would not prevent a foreigner with such habits falling within the definition.

I turn now to Clause 50(4), which we suggest should no longer be part of this Bill. It is a classic regulation:

"Regulations under section 1 may make provision as to the connection that is required between—

(a) a person, or a person of a prescribed description, and

(b) a country,

in order for the person to be regarded as 'connected with' that country for the purposes of any provision of the regulations".

Surely we do not need to wait for regulations at some future unspecified date and surely it is open to the Government to decide what definition should now be applied; in other words, to prepare the regulations now, but, rather than proceed by way of regulation, proceed by primary legislation and deal with the matter in that way. I beg to move.

Lord McNally: My Lords, I have added my name to these amendments, again with all due humility. I speak not as a distinguished and learned lawyer like the noble and learned Lord, Lord Judge, but as a parliamentarian now of some years. One can say this only so many times: in the face of the difficulties and sometimes tempting siren words of officials saying how simple this is all going to be, I warn again that the noble and learned Lord is giving the right advice to the Government. Primary legislation is always a bind for Ministers because it is almost always much more complex—but we are talking about the sovereignty of Parliament. The more crisp and focused we can make

[Lord McNally]
legislation by taking out wide-ranging powers based on subjective judgments, the better the legislation will be, and I suspect the less trouble the Minister will have.

Lord Judge: If noble Lords will allow me, I forgot to draw attention to what the Constitution Committee had to say about this clause at paragraph 18, where it expresses concern about the,

"breadth of the power conferred on ministers".

I thank noble Lords for letting me have a second go.

Baroness Sheehan: I will speak to Amendments 19, 22 and 30 tabled in my name and that of my noble friend Lady Northover. Amendments 19 and 22 are probing amendments in relation to disqualified aircraft and shipping sanctions to learn what,

"persons connected with a prescribed country",

means in both cases. As it stands, the phrasing will cause a great deal of uncertainty about who is connected with a prescribed country. I was born in Pakistan. If Pakistan falls foul of a sanctions regime, I would be uncertain as to what my status might be. The description is too wide and will cause much confusion that will not benefit anyone. It could well stop vulnerable people who may be in danger of violence from getting to safety.

Lord Lennie: My Lords, I reassure the noble and learned Lord, Lord Judge, that his grandchildren will probably be safe for some years because I do not think that sanctions on Malta are likely. However, were they ever to be so, his grandchildren would be at some risk. That is the point he is making in the amendment.

I do not know whether it is by intention, but the provision is very wide-ranging indeed in its application. Such a catch-all approach can be helpful in some circumstances. While it can gather in all that needs to be gathered in for sanction, it is extremely rough justice for those who are unknowingly, unwittingly and unfairly caught by it. I shall complete the quotation from the Constitution Committee report referred to by the noble and learned Lord, Lord Judge. The report stated:

"The House may wish to consider whether it is appropriate for ministers to enjoy such a broad power, which is not confined to persons who have committed acts of misconduct or who have a personal responsibility for the policy of a repressive state or who have a particular status in that state".

It would be everyone connected with that state—even the grandchildren of the noble and learned Lord. We support the amendment.

6.15 pm

Lord Ahmad of Wimbledon: My Lords, these amendments seek to remove the ability of the Government to create sectoral financial sanctions measures by removing the power to apply certain sanction measures to, as we have heard,

"persons connected with a prescribed country".

Amendments 10 to 14, 16 and 17 would make this change in Clause 2 while Amendment 19 speaks to Clause 5, Amendment 22 to Clause 6 and Amendment 81 to Clause 50. Amendment 30 to Clause 10 would make a slightly different change in that it would restrict the Government from being able to designate a person on the basis of their involvement with other designated persons. However, the amendments all have a common theme as they deal with the application of sanctions to persons other than those directly designated.

The Government are clear that sectoral financial sanctions remain a vital foreign policy and national security tool to enable us to meet our UN obligations. It is worth emphasising that we already implement these sanctions under both the United Nations and the European Union regimes. For example, sanctions against North Korea restrict that country's access to certain financial markets in order to restrict its ability to generate funds for its nuclear and ballistic missile programmes. To do this and to make it work, we have had to impose sanctions on groups of persons—or in extreme cases, on all people—connected in a specified way with the prescribed country. This ensures that the sanctions measures are robust and effective.

We accept that this creates the potential for far-reaching sanctions that bite upon people who themselves have done no wrong, but it remains the case that it is a necessary part of some sanctions regimes. The more broadly sanctions can be drawn, the greater the impact they will have. I accept that it is a sad but necessary side-effect that at times this can affect persons who may not be directly involved with the activities of the target regime. For example, the current restrictions on the transfer of funds to and from North Korea—noble Lords will be aware that there have previously been restrictions on the transfer of funds to and from Iran—will affect people who do not directly support Kim Jong-un's regime.

The UK, EU and Strasbourg courts have all considered and accepted that the harsh effects on individuals are justified due to the importance of sanctions and the need for them to have broad and deep effects. It was summarised by the European Court of Justice, which stated that,

"any measure imposing sanctions has, by definition, consequences which affect the right to property and the freedom to pursue a trade or business, thereby causing harm to persons who are in no way responsible for the situation which led to the adoption of the sanctions. Moreover, the importance of the aims pursued by the regulation at issue is such as to justify negative consequences, even of a substantial nature, for some operators".

This was the Bosphorus case decided in 1996 in relation to sanctions that were placed on the former Federal Republic of Yugoslavia. It has been a settled principle of law for more than 20 years.

If the amendments were accepted, we would be unable to impose these measures. In some cases, they are mandated by resolutions of the UN Security Council, such as the obligations imposed in 2013 to cease business with North Korean banks and financial institutions. We would then be in breach of international law. Another example of a sanctions regime that we would be unable to maintain is the Ukraine sovereignty regime, which aims to restrict Russia from accessing certain financial services. Similar to the North Korea examples I have already given, we would be unable to maintain those financial sanctions if we were unable to impose sanctions on persons connected with Russia, or with persons of a certain description connected with Russia, such as state-owned banks. The clauses must remain if we are to be able to meet our international obligations and work with allies to use sanctions as an effective foreign policy and national security tool.

Clause 10 currently permits us to determine that a person is an "involved person" on the basis of their relationships with other "involved persons". The noble and learned Lord, Lord Judge, raised this issue; I hope I can briefly explain the significance of it. A person can be designated only when the appropriate Minister has sufficient evidence to have reasonable grounds to suspect that they are involved in the activities targeted by sanctions. For example, if a senior member of a regime is controlling a public body that is developing weapons of mass destruction, they are involved in that activity and can be classified as an "involved person". Assuming that the appropriate Minister deems it appropriate—and proportionate—to designate them, they can do so.

Clause 10 also enables a person to be an "involved person" if they are owned or controlled by, or acting on behalf of, an "involved person"—for example, as an agent. It goes further and enables a person to be an "involved person" on the basis of their association with other involved people. The key point is that this is often required of us by our international obligations. It is common for a UNSCR to require states to designate not just those involved in a particular activity, but those acting on their behalf or at their direction. Accordingly, we must be able to do that to meet our UN obligations, but it also has three other advantages. First, it enables us to apply sanctions more widely to affect the people around those directly involved, which would further restrict the regime's ability to act and place further pressure on the regime to change its ways. Secondly, it allows us to designate those people who enable these activities by providing funds and financial services to the regime without direct involvement in the targeted activities. Thirdly, it enables us to apply sanctions across a whole group who share the same aims but are using different methods to achieve them. For example, it would enable us to designate all members of a terrorist group: not only those who are engaging directly in terrorist activity, but those providing funds and logistical support.

A current example of that would be the EU designation of Bashar al-Assad under the EU's Syria sanctions regime, which has frozen the assets of Assad in the EU —including the UK—and banned him from entering the EU. However, people associated with him are also designated: leading businesspersons operating in Syria; members of the Syrian armed forces of the rank of colonel, or the equivalent or higher, in post after May 2011; members of the Syrian security and intelligence services in post after May 2011; and members of the regime-affiliated militias. Removing the ability to designate these as "associated persons", as proposed in Amendment 30, would remove the ability to designate those who have a significant role in threats to peace and security.

The noble and learned Lord, Lord Judge, gave a personal example of being connected and made the pertinent point of the definition being very wide: it encompasses many people, even those whose connections are arguably tenuous. As I have already explained, it is necessary to ensure that sanctions are broad and effective. To say that somebody is connected because of a remote family relationship is tenuous. I doubt it would be lawful or stand up to scrutiny in a court, nor would it advance the purpose of the sanctions. However, it is almost impossible to foresee what type of connections will be required in future sanctions regimes, but I do not believe that this one, in terms of the detailed nature of what the noble and learned Lord expressed, would apply.

I have heard and listened very carefully to the concerns, but at the same time I have stated that there are good reasons for casting these powers in the way we have. There will be real difficulties in applying sanctions if they are too restricted. We believe that we have the balance right. With the practical examples I have given, and my interpretation of the Bosphorus case—especially when we bear in mind that power can be exercised only when proportionate and compliant with human rights; any other use would be forbidden by Section 6 of the Human Rights Act 1998—I hope that the noble and learned Lord will be minded to withdraw the amendment.

Lord Judge: My Lords, I shall withdraw the amendment for now; I may come back to it on Report. However, I do not want the Minister to misunderstand the purpose of my amendment. He has produced a very convincing argument for the need for sanctions to be available and used, and there are compelling cases where they have been used out of absolute necessity. The amendments we are proposing are nothing to do with that. The amendment we are driving at is that, in reality, there is no reason why the word "connection" cannot be defined now, as opposed to leaving it for few months down the road until a Minister gets round to making a definition. I look forward to his reflections on that, and I will reflect on it too.

Amendment 10 withdrawn.

Amendments 11 to 14 not moved.

Amendment 15

Moved by ***Baroness Sheehan***

15: Clause 2, page 3, line 39, at end insert—

"( ) striking off from the register of companies a designated person, or a person (other than an individual) owned or controlled by a designated person;

( ) closing down a designated person, or a person (other than an individual) owned or controlled by a designated person."

Baroness Sheehan: My Lords, I will also speak to Amendments 46 and 78.

There is a lack of specific instruction that the Government can dissolve or close down companies in cases of violations or sanctions regulations made under the Bill. The amendments would rectify that omission. It must be made clear that the Government have the power to prevent trading or any other business activity by company structures. That is key to ensuring, for example, that action against shell companies brokering arms is captured in the Bill.

Consider a recent case: S-Profit Ltd v South Sudan. The UK-registered shell company, set up by a Ukrainian, was used to broker arms, in violation of sanctions, in a deal worth $44 million. A company can be set up in the UK in a matter of hours for just £12. HMRC has acknowledged—there are numerous other examples—that

[Baroness Sheehan]
it cannot prosecute such brass-plate and shell companies under existing law where the burden of proof is criminal standards of evidence. That is impossible to get because such companies have a limited physical presence in the UK and little hard evidence can be gathered.

That case, highlighted by Amnesty International, starkly illustrates the current loophole and legal vacuum that allows companies posing as reputable UK corporate entities to supply arms to some of the most dangerous places and actors in the world. The lower burden of proof suggested in the Bill before us—a reasonable knowledge test—would give the means to use sanction powers to take action against such shell companies and crack down on illicit arms brokering. The amendments would give enforcers powers to wind up such companies and disqualify their directors.

Furthermore, reasonable knowledge is the threshold used in existing sanctions regimes in both the EU and UN. That is why it has been replicated in the UK, so that we can have legal powers to mirror and enforce our international obligations in this area. However, there must be at least a due process mechanism to allow a right of reply, or an appeal process to challenge decisions and overturn them. This amendment would add additional tools to improve controls over the arms trade and arms-brokering activities, which would be welcome.

I will speak briefly to Amendment 78. Currently, companies can be wound up by the Insolvency Service relatively easily for corporate abuses such as non-reporting, but they can also be wound up on the ground of public interest under Section 124A of the Insolvency Act 1986. However, the sanctions regime and these powers are not used together. It would make sense for brass-plate companies known to the Government to be in breach of sanctions to be wound up using these powers. Now that BEIS's criminal enforcement team has been transferred into the Insolvency Service it also has the ability to prosecute. It would therefore make sense for the two to be linked for enforcement purposes. This amendment would have that effect.

6.30 pm

Baroness Northover: I echo what my noble friend said and I commend the amendments to noble Lords, especially the Minister. He has been arguing that he needs wide scope in the Bill to ensure that those who might seek to evade sanctions can be brought within their scope. This is an area where we seek to help him to draw that wider scope based on what the world has discovered about the ingenuity of those who use bogus companies to, for example, evade sanctions. I hope he will look kindly on these amendments.

Lord Lennie: My Lords, to echo what has been said, the amendment would strengthen the Minister's hand to act and seeks to address the problem of companies registered in this country with no connection to, business with or purpose in this country other than to evade detection and supply arms to those we regard as rather evil. There is a great difficulty with detection. I am not underestimating problems, particularly evidential ones, but I suspect that the wider the hand of the Minister in this regard, the greater the power of success. There has been some progress in this area recently under other Acts, such as the Bribery Act, but our chance of success in closing down what is simply a hosting arrangement would be greatly enhanced by the amendment.

Lord Ahmad of Wimbledon: My Lords, I am grateful for noble Lords seeking to strengthen the hand of the Minister at the Dispatch Box. I made specific note of that. I understand the reasons for wanting to go down the route of closing down designated companies and companies belonging to a designated person. However, the proposal contained in Amendments 15 and 46, and the supporting proposals in Amendments 78, 79 and 80, raise some concerns and illustrate why it may not be appropriate to accept them.

I remind noble Lords that the Bill aims to put in place the necessary powers to replicate the sanctions regimes that we currently implement as a member state of the European Union and, of course, those we are obligated to implement internationally through the UN. These amendments would go over and above the regimes and the type of sanction that the EU has put in place. It is essentially a new type of sanction and, as such, I urge a degree of caution in approaching this.

Clause 2 is about freezing assets of designated persons and preventing access to the UK's financial markets. It is not about causing companies to cease to exist. Sanctions are intended to be temporary. That is why we have various reviews of sanction regimes set up and why they are reviewed periodically: their whole essence is to ensure that the target has changed behaviour in the desired manner. Once this change in behaviour has been achieved, sanctions may well be lifted. We do not intend to impose permanent measures that cannot be reversed. I suggest that shutting down a company is pretty irreversible.

This would be a unique power that does not exist at the United Nations or with EU sanctions. Sanctions have always been and will continue to be most effective when implemented multilaterally and with maximum consistency. Before implementing a new type of sanction, we would usually discuss with our partners whether it is effective and whether there is any appetite for it to be taken forward multilaterally. Only in very rare cases would we unilaterally introduce a new type of sanction that has effect within the UK's jurisdiction only. Unilateral sanctions provisions such as this could also have an uncertain effect and could create difficulties for industry in general.

Dissolving a corporate entity is a permanent measure with far-reaching effects. It would also have an impact on the human rights of the people involved. Dissolving a company owned by a designated person would remove their property. Doing so without compensation would leave the Government open to a potential action for damages by a person alleging breach of their human right to ownership of their property. It is also uncertain where the property owned by the company would go and what effect this would have on the property rights of anybody involved. Accordingly, to do so may be in breach of the human rights convention.

When a company is designated under financial sanctions they will not be able to trade—that is clear—with any person connected to the UK or to any other countries

that have joined us in the multilateral sanctions. We therefore feel that these measures are sufficient to ensure that the effects of the financial sanctions are maximised.

The noble Baroness, Lady Sheehan, gave a specific example about actions we can take against shell companies that, in her words, may be involved in illicit arms trading. If the arms trade is a breach of trade sanctions we will of course prosecute these companies and their directors for criminal offences using powers in the Bill and the export control order 2000, which she referred to previously.

Given my explanation, the importance of the intent, the fact that we would be creating a totally new type of sanction here and in the context of this not being something that either the UN or the EU currently designate, I hope the noble Baroness will be minded to withdraw the amendment.

Baroness Sheehan: I thank the Minister for his reply. He said quite a lot about how we may diverge from the EU, but as I thought Brexit was about diverging from the EU and taking back control, I thought he might have welcomed the powers these amendments would confer on him.

Lord Ahmad of Wimbledon: Am I to take it that the Liberal Benches are now suggesting that that is exactly what the Government should be doing?

Baroness Sheehan: I am suggesting that the Liberal Benches might wish to take advantage of what the Government have been proposing when it suits our ends. This is such an important issue. We are presented with an opportunity in the Bill to do something about the illicit arms trade and arms brokering. It is a real stain on the UK that so much of that trade is facilitated here. Although I will withdraw the amendment for now, I reserve the right to come back to this issue at a later stage.

Amendment 15 withdrawn.

Amendments 16 and 17 not moved.

Clause 2 agreed.

Clauses 3 and 4 agreed.

Schedule 1 agreed.

Clause 5: Aircraft sanctions

Amendment 18

Moved by ***Baroness Northover***

18: Clause 5, page 4, line 43, at end insert "unless they are a person, or are doing so to provide legitimate travel to a person, recognised as a refugee under the UN Convention relating to the Status of Refugees"

Baroness Northover: My Lords, I extremely glad that the Minister wishes to align so closely with the EU. I can think of very simple ways he might achieve that. In the meantime, in moving Amendment 18 I will speak to Amendments 20 and 21 in my name and that of my noble friend Lady Sheehan. I am sure the Minister will be relieved to know that we are returning to our main theme: whether the scope of the Bill is too wide in giving him extra powers. Our concerns here are about unintended consequences of the sanctions, so I am afraid we are seeking to restrict the Minister again.

If these bans on aircraft and ships prove detrimental to those fleeing persecution, what exceptions might there be? We understand why the Government would wish to have such sanctions, but we are once again scrutinising for wide powers with unintended consequences. Clearly, we would not wish to include traffickers in any exception, but one can envisage, for example, a plane leaving North Korea and seeking asylum for all those on board or, more commonly, those commandeering a boat wishing to escape a terrible regime. What is emerging from the Minister's account is that the Bill is drawn widely to allow sanctions in unusual and ingenious cases. We need to see what the protections might be where wide powers are sought.

Lord Collins of Highbury: My Lords, I do not have much more to add. Obviously, the amendments in this group are probing. I hope the Minister can respond in terms of what the current arrangements are in respect of the circumstances outlined in the amendments and how they may not be necessary. As the noble Baroness said, it is important that we consider all the unintended consequences, as well as our objective of imposing sanctions that are effective.

Lord Ahmad of Wimbledon: My Lords, I thank the noble Baroness for raising this important issue. As we discussed earlier, the Government take seriously the impact that sanctions can have on the civilian population of a country and acknowledge the important work of NGOs and other humanitarian organisations in difficult situations.

The amendments would exempt ships or aeroplanes from sanctions if they are being used to transport refugees. While I agree with the principle of the amendments, which I know are well intentioned and seek to assist those who require international protection, in my opinion this is not the right way to achieve the desired effect.

I cited earlier the example of NGOs operating in Syria, where exemptions were granted on fuel access. We need to ensure that NGOs can operate in countries that are subject to sanctions by providing licences and exceptions. The Bill makes it easier—it is not just about having wide powers—by allowing government to draft exceptions and grant general licences aimed specifically at assisting humanitarian activities, including those assisting refugees or displaced persons, which is the intent behind the noble Baroness's amendment. Of course, these are currently not permitted by EU law.

There are good reasons why broad prohibitions are applied to a country with licences, then used to provide targeted exceptions. That is the right way to move forward on this. If we were to provide a general exception for ships and aeroplanes in these circumstances, it could be subject to abuse and would be impossible to enforce. In extremis, it could help organisations circumvent sanctions. It would also be very difficult to apply in practice. If a person on a ship or aircraft

[Lord Ahmad of Wimbledon]
claimed to be a refugee, such a circumstance would seem to engage the exemption proposed by the amendment. However, if it was later determined by the proper authorities and the courts that they were not a refugee, the ship or aircraft would have breached sanctions, as well as that person having circumvented immigration controls.

In many cases, it is impossible to tell whether a person is a refugee until after their claim has been examined and determined. I totally understand the intent behind the amendment, but I am sure the noble Baroness can also understand the difficulty it would pose in respect of a person on a ship or aircraft making such a claim.

I assure the noble Baroness and the Committee that the system of licences and exceptions currently in the Bill offers the best way to maintain the integrity of sanctions while ensuring that NGOs can provide humanitarian support to refugees and displaced persons. I committed during a previous debate to join the noble Baroness and the noble Lord, Lord Collins, in meeting NGOs perhaps to strengthen the narrative behind the exceptions—on how they work and how the current rules would be applied—but I am still minded to ask the noble Baroness to withdraw her amendment. I feel that looking to strengthen the communication and availability of current processes to NGOs, as well as their knowledge of them, would be a better way forward.

6.45 pm

Lord Hylton: My Lords, following on from what the Minister has just said, perhaps I may be allowed to put a drafting point to the noble Baroness, Lady Northover. Her amendments state, "recognised as a refugee". Might it not be better to say, "claiming to be a refugee"? That is because the process of obtaining recognition can often take a very long time and, in certain circumstances, it is just not obtainable. I would favour a wider wording.

Baroness Northover: I thank the noble Lord for his suggestion. This was my thought when reading the Bill —it did not come at the request of any of the NGOs, so they might be slightly surprised that discussion of this is included in what we are covering, which indeed came from them.

I was thinking not about the general exceptions that the Minister talked about, or of NGOs' work, but about the example of a group fleeing Syria. What protection would they have if there was a sanctions regime that would otherwise have included the means by which they escaped from that regime? That is what I was probing for. Perhaps the Minister could go away and consider a more thorough answer on how that is dealt with. I would appreciate that. In the meantime, I beg leave to withdraw the amendment.

Amendment 18 withdrawn.

Amendments 19 and 20 not moved.

Clause 5 agreed.

Clause 6: Shipping sanctions

Amendments 21 and 22 not moved.

Clause 6 agreed.

Clause 7: Other sanctions for purposes of UN obligations

Amendment 23 not moved.

Clause 7 agreed.

Clause 8: "Designated persons"

Debate on whether Clause 8 should stand part of the Bill.

Baroness Northover: My Lords, I found reading this Bill enormously instructive. I am no lawyer, but I nevertheless found myself wondering at many points about the possible unintended consequences of what was in it. Clause 8, along with various other clauses, seemed to me rather full of such potential unintended consequences, so I want to know from the Minister what protections are being put around the mass of regulations to which the noble and learned Lord, Lord Judge, referred in the first group of amendments. Here the Bill specifies,

"persons designated under any power contained in the regulations",

which we know are very widely drawn. That causes me concern. It goes on to talk about,

"any organisation and any association or combination of persons".

It struck me as I read this provision that it was enormously widely drawn. If we are seeking to check the abuse of power, how does this wide definition fit in?

I also support the amendments of the noble Lords, Lord Collins and Lord Lennie, in this group. They have rightly picked up on the point that regulation "must" make provision in certain areas, as opposed to simply "may", which again is very widely drawn. I am seeking from the Minister an explanation of what protections there are in relation to Clause 8.

Baroness Sheehan: I have only a short sentence to say on this. Clause 8, on "Designated persons" is so widely drawn that it occurs to me that in a prescribed country anyone who is not a designated person will doubtless be a refugee.

Lord Lennie: Amendments 33 and 34 concern Clause 10. Where Clause 10(6) says:

"The regulations may make provision, for the purposes of the regulations, as to the meaning of a person's",

we want to replace the word "may" with "must". We also want to add a final subsection to the end of the clause, as follows:

"( ) The regulations must make provision for the notification of persons designated under subsection (3)(b) to (d), and such notifications must state, to the fullest possible extent consistent with the purpose of the regulations … which person or persons the designation has been made in connection with, and … the nature of the connection identified for the purposes of the designation".

It is a question, if you are going to designate, of identifying who the person is associated with and what are the reasons for associating with them.

The regulations must make provision for the notification of persons designated on the grounds of indirect involvement in prohibited activities, including the requirement to inform such persons of the specific nature of any activities or other persons they have been designated in connection with. I am not sure how

they are to know unless they are advised as to what it is and who it is they have been designated for associating with.

Lord Ahmad of Wimbledon: My Lords, I thank all noble Lords who have spoken in this very brief debate thus far. This clause introduces the power to include designated persons under sanctions regulations and defines the meaning of this term as used in the Bill. It sets out the designated persons, which can include individuals, companies and other entities which have a legal personality, as well as groups and associations. The noble Baroness, Lady Sheehan, said that it is so wide that anyone in a particular country who was not designated would be a refugee. That is not the case. In conflict situations—Syria is a prime example—there are members of the opposition, for example. When I was qualifying the status of those who may or may not be "influenced by" or "under the control or direction of", in a previous debate, that point was made quite clear. The clause will ensure that Governments can, for example, designate particular organisations, and terrorist organisations come to mind in this respect.

The decision to designate an individual or organisation would be made by an appropriate Minister and the Minister would be informed by strategic, tactical and evidentiary advice; so the evidence would need to be there. A decision to designate would also be made where a designation advanced the purposes of a specific sanctions regime, taking into account the political picture and the evidence available. This approach is consistent with EU practice and the practices of our key sanctions partners-for example, the United States and Canada, where the power to designate rests with the Executive. It is for the Executive to use the powers then provided by Parliament as the situation demands.

I fully accept the point that there is a need for appropriate safeguards, and the Bill gives designated persons the right to ask for an administrative reassessment and then bring a challenge in the courts. It also requires annual political and triennial evidentiary reviews. These are, of course, in addition to the Government's day-to-day accountability to Parliament.

Amendment 33 in the names of the noble Lords, Lord Collins and Lord Lennie, would make it necessary to set out what was meant by being,

"owned or controlled directly or indirectly",

by another person and of being "associated with" another person. I agree that there should be restrictions on designation powers. That is why the Bill allows designation only where there are reasonable grounds to suspect that a person is involved with or connected to an activity set out in the regulations, and that it is appropriate to designate them on that basis. I hope that, with the explanation I have given, the noble Baroness will feel able to withdraw her opposition to Clause 8 standing part of the Bill.

Baroness Northover: My Lords, I thank noble Lords for their contributions. This clause does indeed seem to be challenging, and I look forward to the noble and learned Lord, Lord Judge, perhaps coming up with some overarching set of protections for the whole Bill which would apply to this as well. The Minister mentioned reviews: we will be coming to reviews later in the Bill, and there are questions around those, so that is not tremendously reassuring. He also mentioned answerability to Parliament. That has the problems that my noble friend Lady Kramer referred to earlier in our initial debates.

Clause 8 agreed.

Clause 9: Designation powers: general

Amendment 24

Moved by ***Lord Judge***

24: Clause 9, page 9, line 32, leave out paragraph (b)

Lord Judge: My Lords, I am beginning to have the awful feeling that I am punching jelly. There are so many regulations. As we go through this line by line—or nearly line by line—it re-emphasises how much we are looking at a regulation Bill. It is the bulk buy again. So we will have the same argument, but let us go about it.

I am looking at deleting Clause 9(2)(b) and Clause 11 not standing part of the Bill, and essentially my argument is the same. We are dealing with issues through regulation which should be dealt with in primary legislation. I shall not repeat what I said about Clause 9, because I can take it in in Clause 11. This is designation by description rather than by name. This is, as we discussed earlier, connection plus. It is, if I may say so, and I think I am right about this, a much wider power than the existing powers available to us under our own current regulations, based as they are on EU law—that is to say, the 1972 Act.

This provides me with the opportunity to underline what I said at the very beginning of this debate-that we are not, in truth, just replacing like with like, just preserving the existing position. We are, in fact, extending it here without any explanation as to why the current arrangements are not working properly. In EU law an express name is needed, so why is an express name not needed here? If we have not needed provisions such as this before, we surely do not need them now. Besides which, the language is vague. It is the parties that have to apply the sanctions that need to know what they are doing in this context. To use the example that the noble Lord, Lord Pannick, gave at Second Reading, how is the bank to know that the person it is dealing with falls within the description the Minister has given?

I tried to illustrate the absurdity of the situation in relation to "connected" by reference to my grandchildren, but what on earth will the regulations say? A tall man? A woman with a foreign accent? Somebody with a funny name, such as Igor? Or even someone who looks like a terrorist? Surely we can do better than this, and surely we can do better than this in primary legislation, not just issuing power—letting the Minister have the powers that will follow under the regulation system to do whatever the Minister thinks appropriate, without the safeguards that we would have if this were being dealt with by primary legislation.

I am not a voice crying in the wilderness. The Constitution Committee says:

"Clause 11 raises constitutional concerns".

That is something of a battle cry. It is not something that can be brushed aside, and it invites the Committee to consider whether the Minister should have the power to designate by description as well as by name.

[LORD JUDGE]

Here I am not quoting from the Constitution Committee: why do we need it? If the EU, with all 28 of us—still—does not need description, why do we need it now? The Constitution Committee goes on to say:

> "We further invite the House to consider whether, if ministers are to have the power to designate by description, the Bill should include additional safeguards",

and then a description is given.

There is nothing more to say about this. We can go round the houses but the issue is there, stark and simple. I beg to move.

7 pm

Lord McNally: My Lords, I am pleased to see the Chief Whip in his place because we are getting to a point now where it is quite unfair for the Minister—and a whole succession of Ministers, I suspect, over the next few months—to come to this House, and to Parliament in general, to sell the unsellable. The Chief Whip should report back to the Cabinet that it has to come up with a better idea for handling this legislation. My noble friend Lady Northover said that surely with the noble and learned Lord, Lord Judge, in the Committee, he will come up with some brilliant overarching principle—such is the confidence we have in our former Lords Chief Justice.

I was on the Cunningham committee when it was the Labour Government who were getting impatient with the way that this House and Parliament in general could slow down the progress of a great and reforming Government. It was clear then that the principle that the House of Lords has the right to say no is very important—it may well be tested in the months ahead. But we have also acknowledged that ours is mainly a revising and advisory House, so we have to get the right machinery to handle that. What the noble and learned Lord, Lord Judge, said, from his experience, has to be taken into account.

The present way of doing this just will not work. We have to look at some of the suggestions made by the Cunningham committee for progressing legislation. One was a Joint Committee of both Houses—as with the Congress and the Senate—to resolve difficulties. Another was to allow amendments to certain pieces of secondary legislation. There are ideas around and there are fertile minds that could address this. But if we are going to continue to have Bills with massive amounts of secondary legislation, with massive discretionary powers given to Ministers, and Henry VIII clauses scattered through them, we will have a constitutional car crash. It is the responsibility of the Chief Whip to go and tell No. 10 that that is the truth.

Lord Falconer of Thoroton (Lab): My Lords, I apologise for intervening in the debate at this late stage. I support what the noble and learned Lord, Lord Judge, has said. Reading the Bill, it would appear, despite what the Minister has said, that it would allow regulations to be passed which would allow a Minister to designate any group of people that the Minister considered, by designating them, would further a foreign policy objective of the United Kingdom. For example, if a Minister thought it would further the foreign policy of the United Kingdom to treat everybody from one particular country as a designated person, the Bill would give that Minister the power to do that.

I am absolutely sure that that is not what the Government intend by this, because I have heard the Minister say this evening that the purpose of the Bill is only to allow the Government—the Executive—to join in with sanctions that are imposed by another international organisation, such as the United Nations. It is not intended to give the wide powers that I have just identified. Can the Minister confirm that I am right that it is not intended to give such wide powers? Assuming that I am right, I sound a very loud clarion warning that whatever Ministers say, in either the Commons or the Lords, ultimately the Executive always reaches for the Act of Parliament and sees what the Act of Parliament allows. While I completely respect the good intentions of this Minister—indeed, of the Executive—in relation to this, the only answer, constitutionally, is to limit the powers to precisely what the Government intend. Anything wider, in the months and years to come, could be used by another Government when it was never intended for that to be the case.

Lord Lennie: My Lords, we are having a bit of a Groundhog Day. Following on from the noble and learned Lords, Lord Judge and Lord Falconer, where did this idea come from? Where has this authority been dreamed up? It clearly risks overzealous action or a meaningless designation. If it is seen to designate the citizens of an entire nation, it is entirely meaningless. That is a real fear and possibility.

If a person is to be designated, they should be designated by name. I think that is common cause. There may be an occasional circumstance when it is simply not possible to identify or get hold of their name through all kinds of investigative methods, but it would be a rarity-it will not be the generality of the application of this law. The difficulty with enforcement for the banks—the noble and learned Lord, Lord Judge, mentioned this—is real and serious and has been referred to before. The Government should identify the source and purpose of this and then rewrite the Bill in line with what is intended rather than what the unintended consequence would be.

Lord Ahmad of Wimbledon: My Lords, I thank the noble and learned Lord for moving his amendment. I know that he has spoken before about the powers that are being given to Ministers in this respect. The amendment seeks to remove the ability of the Government to make designations by description which cover groups of people. It would mean that we could designate individual persons only when we knew their names.

Picking up a point made by the noble and learned Lord, Lord Falconer—I hear what he said—I assure the Committee that we will always seek to designate by name wherever possible. We anticipate that the power to designate by description will be rarely used, for reasons that I will set out shortly. But, as I hope to explain to the Committee, it remains a useful tool for the imposition of sanctions. The noble Lord, Lord Lennie, commented just now that some exceptions might apply. That is exactly the kind of exception for which we want to ensure these powers will allow us to apply sanctions.

It is important that this proposal is seen in its proper context. Sectoral sanctions—those aimed at groups or sectors rather than individuals—remain a vital foreign policy and national security tool. The ability to designate by description also enables us to refer to lists of designated persons produced by others, such as the United Nations. To have a single list to look at will reduce the administrative burden upon business. It will also enable us to target particular entities within a given sector: for example, state-owned banks operating in a particular market. Finally, it will enable us to target groups of persons, such as members of a terrorist group—for example, the Hezbollah military wing.

In some cases—they may be few but there will be exceptions—we will not be able to identify all members of a group by name. But it remains important that those members are subjected to sanctions, to prevent them using their funds and assets to commit terrorist crimes. We are also cognisant of the difficulties that this might cause to banks; the noble and learned Lord, Lord Judge, raised this issue. We accept that a designation by description will be harder for them to implement, but I hope that I can offer a few reasons why this power should be retained despite the difficulties that have been highlighted.

First, as I have said, we will always seek to designate by name where we can and this power will be used very rarely. Secondly, when we use this power we will provide as much information as possible to assist institutions, such as banks and other businesses, to carry out their obligations under the sanctions. Thirdly, it may sometimes be necessary to impose these types of sanctions to cover groups of persons where, as I have said, not all the names of members are not known. Fourthly, banks and businesses carry out their own customer assessments and are well placed to carry out their obligations under sanctions. They also have their own compliance procedures, which enable them to identify persons subject to sanctions and can be used to assist them to identify members of a group. For example, if we designate a group of persons acting in a geographical area, the compliance systems can then be used to pick up economic activity in that area and trigger a deeper investigation into the relevant account holders.

If this amendment were to be accepted, we would be unable to impose these kinds of measures in the cases that I have illustrated. This provision needs to remain to ensure that sanctions can be used as an effective tool for not just foreign policy but, importantly, national security. Noble Lords have alluded to the difficulties, which I fully acknowledge, but I hope that I have offered some degree of reassurance in the context of how they might be overcome.

The noble and learned Lord, Lord Judge, also mentioned the phrase "connected to" and designation by description in primary legislation. The issue remains that the connections and descriptions can be context-specific. For example, what is applied under counterterrorism sanctions may not be applied under Russian sanctions, hence the proposal to include these definitions as regulations. That said, he also referred again to the reports by the two committees. As I alluded to earlier, we are reflecting on the specific points that they have raised, including the one that the noble and learned Lord raised in the context of this debate. I will return to those points and reflect—

Lord Patten (Con): I apologise for not having entered into the debate at an earlier stage but I have been reflecting on what the noble and learned Lord, Lord Falconer, said about the importance of legislation being specific. I also reflect on the fact that, working in the financial services as I do, I often see names but we are never quite sure who is behind the names. It may therefore be necessary to have a secondary back-up power to address the groups of unspecified people who one thinks are behind those whose names are specified. Much in the spirit of the noble and learned Lord, I suggest to my noble friend that he may wish to reflect on whether there is some way of specifying in the Bill that these are reserved powers, to be used under particular circumstances. That might well reassure those who feel that they are too overarching.

7.15 pm

Lord Ahmad of Wimbledon: I thank my noble friend for his intervention. He speaks from experience and, as someone who spent 20 years in the financial services sector, I am acutely aware of the challenges presented by the issue of designations. I will of course take his suggestion and reflect upon it. To address particularly the point raised by the noble and learned Lord, Lord Falconer, this would be the exception. It would not be the norm but would be to cover situations that do occur and have occurred. I have sought in my response to illustrate the circumstances in which that would occur and, based on that, I hope that at this time the noble and learned Lord will be minded to withdraw his amendment.

Lord Thomas of Gresford: Can the Minister explain what the point is of having sanctions if you do not know who they are against? I am looking again at the memorandum to which I referred earlier, which says in paragraph 44:

> "Designated persons attract individual sanctions, including asset freezes. Designations are an effective way of coercing or constraining individuals who are directly involved or closely associated with the activity or behaviour targeted by the sanctions. The Government would intend to publish the names of designated persons on a list on its website, and would also notify those persons, where possible, in accordance with clause 1. There are currently around 2000 designated persons under existing sanctions regimes implemented by the UK".

If that is the purpose of it—to coerce or constrain individuals when you do not know who they are—how can these sanctions be effective in any way?

Lord Ahmad of Wimbledon: I suggest to the noble Lord that if there is a person who is not named but is connected to a group on which that sanction is being observed, that would stop them carrying out particular actions. It would ensure that that sanction was effective.

Lord Judge: My Lords, it really is not beyond the wit of parliamentary draftsmen to produce primary legislation that says, "Designated by name unless it is impracticable to do so" or "Save exceptionally". That is not difficult, neither is it difficult for parliamentary

[LORD JUDGE]
counsel to produce for us a Bill which says, "Designated by identifying a group or body". It is not a problem. I make a fuss about this because we are coming to Clause 16, which will enable a Minister to create offences punishable with 10 years' imprisonment and define the defences. It will be open to the Minister to say in the regulations: "This is an absolute offence. You, the bank, have dealt with somebody for whom we gave a description. It did not quite fit but you dealt with him". If we have an absolute offence created, I do not suppose that the bank will go to prison for 10 years. But the whole of this legislation goes together; the Bill needs to be seen in its overall context. I do not think that I should pursue it any further at this stage and I beg leave to withdraw the amendment.

Amendment 24 withdrawn.

Amendment 25

Moved by ***Lord Lennie***

25: Clause 9, page 9, line 36, leave out "may" and insert "must"

Lord Lennie: My Lords, I shall also speak to Amendment 26. Amendment 25 would replace "may" with "must", which would make it consistent with other places in the Bill. Amendment 26 is the real substance and raises a new requirement to notify a designated person once relevant sanction regulations have been made. If a sanction is made, thereafter the individual will have to be notified that it has been made against them. They must also be given a reason for the sanction having been made, under procedural fairness. The legislation contains rights of appeal and review, but how can you appeal or review something you do not know about, or do so if you do not know the reasons for it? That seems a justification for this amendment. What actions are necessary to address the concerns which have led to their designation? On that basis, we invite the Minister to consider whether this is an appropriate amendment to be accepted into the Bill.

Baroness Northover: I shall speak to one amendment in this group, Amendment 61. I support the noble Lords, Lord Collins and Lord Lennie, on the various protections they have outlined in their other amendments. Amendment 61 is extremely simple. It puts forward the proposition that a Minister should provide reasons for complying or refusing to comply with a request for removal from the EU sanctions list. This is very straightforward, not very much to ask and a very reasonable proposition.

Lord Judge: I shall speak to Amendment 60, which is in this group. It is simply a question of elementary procedural fairness. It is really no more than that and no less than that. It may not be wise to tell an individual before he is designated that he is going to be designated because, obviously, if that were to happen the designation would come too late and the assets would be hidden or dissipated, but procedural fairness is a basic principle of the common law. If you are arrested, you must be informed of the reasons for your arrest. If you are made subject to sanctions of the kind envisaged in this Bill, they affect your livelihood and your ability to support your family and to live an ordinary life so that you are, in the words of my noble and learned friend Lord Hope at Second Reading, in effect a prisoner in your own home. If you are in any way going to be subjected to the coercive powers of the state, you should be told why those coercive powers are being exercised against you and they should be justified. This Bill is bung full of massive coercive powers. In these circumstances, the amendment that my noble friend Lord Pannick and I propose is absolutely self-evident, but without it, or without some concession to this group of amendments, we will end up with having done some insidious damage to an essential constitutional principle, and we should not be doing it. I highlight paragraph 29 of the Constitution Committee's report, but I do not suppose noble Lords want me to read it.

Lord Falconer of Thoroton: What does my noble and learned friend envisage the position to be where the main sort of sanction used is where one is trying to implement sanctions, for example, agreed to in the United Nations? What then does the British Minister do in relation to evidence in relation to why the person is being covered?

Lord Judge: Your name goes on the sanctions list before you are told, so as to avoid the dissipation of your assets, but afterwards you are told that you are now designated, these are the consequences, this is why it is happening, this is what you must not do, this is what you must do and—what is more—you had better know that it is X who has given us this information or that we think you are Igor Judge, but actually there is another Igor Judge who lives in, shall we say, Russia and it is him we are after. That way, you can very rapidly get your review looked at and justice done to you.

Lord Ahmad of Wimbledon: My Lords, I agree with the underlying principle of these amendments, which aim to ensure that designated persons are told the reasons why they have been designated and given sight of the evidence on which this designation is based as soon as is practically possible. I reassure noble Lords that I do not believe that these amendments are necessary. As is the case currently, the Government fully intend to inform all designated parties after their designation either directly in writing or, if we do not have an address for them, through the government website. This notification will set out clearly why they have been designated and the clear and transparent channels through which they can challenge their designation via a request for a reassessment of their designation or a legal challenge in the courts. While we intend to inform designated persons of the reason for their designation, as we have heard from the noble and learned Lord, Amendment 60 rightly highlights that some evidence may not be suitable for disclosure for national security reasons. In these cases, we would provide a summary of the information.

In short, this amendment would simply codify standards to which the Government are already committed and would in any case be expected to meet by the courts. The courts have already made several findings on the need for disclosure of reasons and evidence in cases of designations, which we think would continue to apply, and the Bill makes no effort to disturb these standards.

However, I have listened very carefully to this short but important debate and in the light of the powerful points put forward and the Constitution Committee's comments, which the noble and learned Lord did not read out, I will consider further and come back to the House.

Lord Lennie: In the light of those helpful comments, I beg leave to withdraw the amendment.

Amendment 25 withdrawn.

Amendment 26 not moved.

Clause 9 agreed.

7.26 pm

Sitting suspended. Committee to begin again not before 7.58 pm.

7.58 pm

Clause 10: Designation of a person by name under a designation power

Amendment 27

Moved by ***Lord Judge***

27: Clause 10, page 10, line 10, after "appropriate" insert "and proportionate"

Lord Judge: My Lords, this is just about the use of a word—it always is. It is a word that the Minister was kind enough to say he would be using and expected to be used if ever these powers were used. The word is "proportionate". The decisions should include an element of proportionality as a feature, so why do we not just have it straight in the Bill so that it becomes part of the statute of the realm? I draw attention to paragraph 14 of the report from the Constitution Committee.

Lord Collins of Highbury: Maybe I should read out the Constitution Committee's report, as it might be helpful for the record. We have to acknowledge, like the noble and learned Lord, Lord Judge, that at Second Reading the Minister said that where human rights were affected, a Minister would always need to comply with the European Convention on Human Rights and Strasbourg case law, which will include an assessment of proportionality. The Constitution Committee said it was grateful for those words, but it is such an important limitation on ministerial powers that it should be expressly stated in the Bill. I know the Minister will say, "I am considering the report of the Constitution Committee and the Delegated Powers Committee", but I hope that by the time he and his colleagues have read those reports, they will be able to come back and agree to the insertion of this very long but important word.

Baroness Northover: From these Benches, I concur. I look forward to hearing what the Minister is planning to do in light of the reports from the Constitution Committee and the Delegated Powers Committee.

Lord Ahmad of Wimbledon: My Lords, I agree with the spirit behind the amendments. Targeted sanctions inevitably involve significant impacts on the people affected by them. That reflects the purpose of sanctions, which are about changing behaviour. I shall repeat, as was mentioned by the noble and learned Lord, Lord Judge, and the noble Lord, Lord Collins, what I said at Second Reading: I reassure noble Lords that where relevant rights under the European Convention on Human Rights are engaged, we consider that proportionality and the impact on the individual will 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 as informed by the Strasbourg case law. We consider that that includes satisfying themselves that the designation is proportionate.

In the response to our consultation published in August, we made clear that our approach to sanctions would be compatible with UK and international law and we would continue to ensure that the UK's obligations under the European Convention on Human Rights, particularly Article 6(8) and Article 1 of Protocol 1, are upheld when imposing and maintaining human rights and maintaining designation. However, as a result of the Human Rights Act 1998, the requirement to act proportionately applies across a wide range of legislation regardless of whether it is stated explicitly in the legislation. It is also relevant that the Bill contains a range of protections to ensure that designations are used appropriately.

In cases where the UK has chosen to act in an area where the UN is not acting, the affirmative procedure will apply, ensuring that Parliament has a vote. This will provide an opportunity for Parliament also to consider whether the designation powers being taken by the Government are appropriate. Parliament will also have the opportunity to consider the exceptions and licensing arrangements that will apply to a regime, which can allow, for example, the release of frozen funds to meet basic expenses or travel to be authorised for humanitarian reasons. The Bill further provides for an annual review of each sanctions regime against the purpose that it was put in place to achieve, which will involve looking at the current global picture. The Bill also provides opportunities for reassessments and court challenges.

I state all that because it is important for the record. I hope I have been able to provide noble Lords with reassurance. Nevertheless, while this debate has been extremely short, it is a pertinent one based on a word. I will therefore consider with my officials what further reassurances we can give and, as the noble Lord, Lord Collins, said, reflect on the committee reports. For now, though, I am minded to ask the noble and learned Lord to withdraw his amendment.

Lord Judge: On the basis that the Minister is going to reflect, I beg leave to withdraw the amendment.

Amendment 27 withdrawn.

Amendments 28 to 34 not moved.

Clause 10 agreed.

Clause 11: Designation of persons by description under a designation power

Amendments 35 and 36 not moved.

Clause 11 agreed.

Clause 12: Persons named by or under UN Security Council Resolutions

Amendment 37

Moved by ***Baroness Northover***

37: Clause 12, page 11, line 19, leave out subsection (3)

Baroness Northover: My Lords, this is part of the running theme of the Bill. Once again, we wish to know why Ministers need the wide powers that they appear to have through regulations. I do not need to repeat the arguments that were so well put earlier, but I flag the wide powers here once more. I beg to move.

Lord Ahmad of Wimbledon: My Lords, I shall speak to both amendments in this group, because although referring to different areas—UN lists and International Maritime Organization numbers—I believe that they have some similarities.

For sanctions to be effective, we believe that it is important that the Government act quickly and that the targets of sanctions are easily identifiable. This enables those who are affected by sanctions, including businesses, quickly to work out what they need to do to comply with whatever restrictive measures are put in place.

When a Minister is specifying a ship, they must be confident that they have identified the correct one. There are a variety of ways in which a ship can be identified—using the ship's name, tonnage, or the country whose flag it flies. I am sure that noble Lords accept that all those details are important. However, they are also changeable. The most reliable way to identify a vessel is by referring to its International Maritime Organization number, which remains with the vessel throughout its lifetime. This is the method used by the UN to specify ships and one that the Government recommend.

The names of those who are on UN lists can be subject to regular changes. As an example, the UN list relating to North Korea has changed five times in the past year. The ability to refer to a UN list, without having to change regulations each time the UN list is amended, would not only be less bureaucratic but would result in less risk of mistakes. I hope that I have underlined the importance of referring to the UN and IMO lists when designating people and specifying ships and that, in the light of that, having provided that clarification, the noble Baroness will be minded to withdraw her amendment.

Baroness Northover: For the moment, I beg leave to withdraw the amendment.

Amendment 37 withdrawn.

Clause 12 agreed.

Clause 13: "Specified ships"

Amendment 38 not moved.

Clause 13 agreed.

Clause 14: Exceptions and licences

Amendment 39

Moved by ***Baroness Northover***

39: Clause 14, page 12, line 26, at end insert—

"( ) provide for the procedure to be followed for an application for an exception or licence."

Baroness Northover: My Lords, I shall speak also to Amendments 42 and 50 in my name and that of my noble friend Lady Sheehan. I also support the amendments in the names of the noble Lords, Lord Collins and Lord Lennie.

We return here to exceptions. The Law Society of Scotland has pointed out to us that there is no provision for regulations to provide for the application procedure for an exception or licence, so that is contained in Amendment 39. We feel that it is useful to have provision for exceptions and licences, and therefore that we need to provide for an application procedure for them. Amendment 42 seeks to make the policy on exceptions clearer, so that they can be granted for humanitarian, development, reconstruction and peacebuilding agencies, as my noble friend Lady Sheehan outlined earlier. Again, we think that it is useful to have those exceptions and, as we discussed earlier, sanctions are having an impact on NGOs. I welcome the proposal by the Minister to meet the NGOs and hope that, therefore, we can take this group of amendments forward in those discussions as well.

Amendment 50 would insert a new subsection in relation to what the Crown Prosecution Service might publish by way of guidance, so that it is clearer where sanctions might have been breached and where somebody might be prosecuted. One thing that we have been hearing is that one uncertainty for NGOs, banks and other suppliers is the lack of clarity on when NGOs or companies will be prosecuted for sanctions breaches. This amendment seeks to clarify that, to assist in that area, too—and, again, I hope that that is something that we can address when the Minister meets the NGOs. I beg to move.

The Earl of Dundee (Con): My Lords, I support Amendment 42, proposed by the noble Baronesses, Lady Northover and Lady Sheehan, as I do the other proposed amendments in this grouping, including those from the noble Lords, Lord Lennie and Lord Collins of Highbury.

Following what the noble Baroness has just said, I should like to connect four points: first, the case for the Government to provide a licensing system for humanitarian activity; secondly, the desirability that the Government should report back regularly on the humanitarian effects of sanctions; thirdly, the urgent necessity of interim measures to assist NGOs to deal with banking restrictions; and fourthly, the need to implement the recommendations of the current United Nations/Swiss report on international co-operation.

On the case for a licensing regime, as we know, banks are considerably held back by government prohibitions. As a result, the flow of funds for important work is often blocked—for example, in Syria. To redress that anomaly, can my noble friend the Minister say

what steps the Government will take to provide a licensing system for essential civilian and humanitarian activity?

Then there are lessons to be learned from Iraq and Somalia, where, as an unintended consequence, broad-based sanctions have impacted adversely on the civilian population, demonstrating the need for frequent scrutiny and review. Therefore, what plans do the Government have to report to Parliament at regular intervals on the effect of sanctions—in particular, where humanitarian work has been impeded?

On interim measures, which ones does my noble friend favour to enable safe, transparent, dependable banking and payment channels? As soon as possible, how will the Government advance a regime of exceptions, to prevent the current blocking of humanitarian work? Such interim measures should reduce restrictions on NGOs functioning in sanctioned countries and surrounding territories.

Just now, fundraising and vital aid are being held up by lack of banking facilities. NGOs active in the Levant, even those registered with the Charity Commissioners, find it difficult to open a bank account in the United Kingdom, and in some instances find it not possible at all. A case in point is Sawa, the first Lebanese NGO to help Syrian refugees when they arrived in the Beqaa valley in 2011. For its achievements in Lebanon and elsewhere, this NGO is much respected; it is the winner of the Global Pluralism Award 2017. However, Sawa is still unable to open a bank account in the UK. Consequently, it cannot receive funds which are urgently required, as well as ready and waiting, in the United Kingdom.

On international co-operation, UK Finance has written a parliamentary briefing paper calling for a new international approach towards humanitarian licensing. Correctly, it asserts that relevant changes in the UK will take proper effect only if also supported and structured elsewhere. A report commissioned by the United Nations along with the Swiss Government advocates setting up viable, transparent safe banking and payment corridors. Not least, that expedient would improve the flow of permissible funds into Syria. I know my noble friend would wish the UK to take a lead in assisting this process. Therefore, what plans do the Government have for backing up the recommendations of the UN and the Swiss authorities' report so that these proposals can then be taken forward?

8.15 pm

Lord Collins of Highbury: My Lords, I support all the amendments in this group and address particularly Amendments 40, 41 and 51 and the requirement for a fast-track process. Like the noble Baroness, Lady Northover, I welcome the Minister's commitment to meet the NGOs before the next stage of the Bill. It is important to understand that their anxiety is not due to the Minister's lack of commitment, his intentions or the policy of the Office of Financial Sanctions Implementation, which has a stated policy of processing licence applications for humanitarian purposes as quickly as possible. However, the NGOs and all the amendments in this group seek to create more certainty because, as the noble Earl mentioned, delays occur and when sanctions are biting hard we are unable to get assistance where it is needed. Humanitarian crises can emerge extremely suddenly and we are most concerned about how the new regime will deal with them. As the noble Earl said, there are plenty of examples of the costs of slow-moving sanctions policy—for example, in Somalia in 2011, where uncertainty about the sanctions regime slowed down the NGOs' response to the famine in that country. I certainly support the proposal of the noble Baroness, Lady Northover, for a general licensing exemption. I hope the Minister will come back with some very concrete reassurances after meeting the NGOs, so that there will not simply be his kind words but a declaration in the Bill to ensure that uncertainty is removed.

Lord Ahmad of Wimbledon: My Lords, Amendment 39 seeks to enable the procedure by which individuals or entities could apply for licences and exceptions to be included in the regulations. Amendment 40 would require the Government to establish a fast-track process for dealing with requests in respect of exceptions and licences for humanitarian purposes, as the noble Lord, Lord Collins, just highlighted.

I would like to make it clear that the consultation on the White Paper raised the need for clear guidance and swift and robust licensing processes. I assure my noble friend Lord Dundee that the Government are committed to a positive reply on both issues. I hope the Committee will be reassured that, given the number of departments involved and the many different derogations, exemptions and grounds for licensing that exist, the relevant application procedures in each sanctions regulation are all contained in guidance. This guidance is publicly accessible to all via various departmental websites. To reproduce them in the regulations themselves would certainly create a substantial administrative burden and greatly lengthen the instruments, so we do not think it is necessary to do that.

On Amendment 40, the variety and complexity of exemptions and licensing arrangements in place means it could also be difficult to establish a single fast-track process that would be straightforward to operate. The Government believe that the criteria for considering the prioritisation for granting licences and exemptions should remain as flexible as possible. We have already committed to dealing with licences as swiftly as possible and we will of course prioritise urgent requests. The fact that a licence is required for humanitarian reasons is something that we already factor into, and will continue to factor into, the time we take to respond to the request. However, I am sure that noble Lords will also acknowledge that humanitarian licences are not the only ones that might require an urgent response. For example, a legal fees licence might be needed to enable an imminent court deadline to be met. To have a fast-track procedure confined to humanitarian licences alone might put these at additional risk by giving priority to a humanitarian needs licence that is not urgent over another request that is. For all these reasons, we do not consider that new requirements need to be added to the sanctions regulations.

I appreciate the sentiment behind Amendment 41, which proposes that a consultation be undertaken for an overarching framework for exceptions and licences. The White Paper consultation on exceptions and licences

[Lord Ahmad of Wimbledon]
highlighted the need for good systems and clear guidance when applying exceptions and licensing. We have taken on board the comments of all respondents and replied to them and, as we said in our reply, we intend to design the post-Brexit licensing framework based on these representations. We also intend to consult industry from now until the day we leave the European Union and thereafter, to ensure that the framework allows us to be flexible and has the minimum possible effect on industry while having the maximum effect on the intended targets.

It is also true that an overarching framework for licences might not allow us to take advantage of the flexibility that we currently have for each regime. For example, the licensing grounds for a proliferation regime should be different from those of a misappropriation regime. Different types of sanctions also require different approaches. We currently have centres of expertise on the different types of sanctions, and any move to an overarching framework might put these at risk.

Finally, the Committee will be aware that the moment of leaving the EU is approaching. In that time, after the Bill is enacted, we will need to design the replacement UK regimes. To undertake a consultation exercise on top of that will make it harder to prepare in time. Given that the purpose of this amendment is to ensure good licensing and clear guidance, I hope I have been able to reassure the Committee that we are committed to both.

On the humanitarian exceptions, I have great sympathy with the intention behind Amendment 42; humanitarian, development, reconstruction and peacebuilding agencies need to continue the important work they conduct, often in very difficult circumstances, without fear of unintentionally falling in breach of sanctions. The Government should have the necessary discretion to enable this. The intended effect of this amendment is to make it explicit in the Bill that the types of exceptions that can be granted include,

"humanitarian, development, reconstruction and peace-building agencies".

However, the addition is unnecessary, as Clause 14(2) as currently drafted allows the Government to create exceptions and issue licenses for activities that are not explicitly listed in Clause 14(2). It is the Government's intention to use this drafting to create exceptions for a wide range of activities. Humanitarian activities are currently included under existing exceptions and licensing provisions in the sanctions regimes in place, and I assure noble Lords that we intend to continue to include them. Clause 14(6) is an additional clarification of purposes for which exceptions can be created, not an exclusive list. For this reason, accepting the amendment would have no effect on the powers, as they are already contained there and therefore unnecessary.

Clause 14(2)(b) also gives a power to issue general licences. This goes further than the position we currently have under EU law, giving the Government the ability to put in place licensing arrangements for humanitarian purposes, which would enable multiple parties to undertake specified activity without the need for a specific tailored licence. Given that this provision is unnecessary as we already have this power, I hope noble Lords will not press the amendment.

I entirely agree with the intent—although the drafting may need to be looked at—of Amendments 50 and 51, which we understand require the Government to provide guidance about enforcement procedures for sanctions breaches. The need for clear and accessible guidance was highlighted throughout the Government's consultation on the White Paper. In our response, we said:

"We recognise the call for clear and consistent guidance. Accordingly, the bill would provide for the government to issue guidance on the content and implementation of sanctions. The government is committed to ensuring that this guidance would be of a high standard".

I am happy to say that the Government have delivered on that promise and have included a provision in the Bill—Clause 36—requiring Ministers to issue guidance about any prohibitions and requirements imposed by sanctions regulations. There will be a mandatory requirement to provide comprehensive guidance for all those affected by sanctions implementation. One strand of the guidance requirement set out in Bill—in Clause 36(2)(b)—explicitly specifies that the guidance may cover,

"the enforcement of the prohibitions and requirements".

In line with this, we intend to continue to publish guidance on sanctions enforcement.

Clause 36, which we will debate at a later stage, provides for a more comprehensive duty than that specified in the amendment. It has been drafted to allow guidance to be given to all persons in the UK and it enables consultation with sources of expertise as appropriate. For example, we do not expect that the CPS will need to feed into any guidance about how civil monetary penalties are issued in respect of breaches of financial sanctions.

My noble friend Lord Dundee asked specific questions about help for NGOs. I am not sure whether he was in your Lordships' House when I discussed that matter with the noble Lord, Lord Collins, and the noble Baroness, Lady Northover. We will be meeting NGOs before the next stage of the Bill to discuss how we can better understand and address some of their concerns, but we will continue to issue clear guidance to them. I also assure my noble friend that we will provide speedy and efficient responses to requests for licences. As I have already indicated, under the Bill we can issue general licences, which offer more comfort to banks—which I believe my noble friend specifically mentioned—and give them a greater appetite to assist in these areas.

With that somewhat detailed explanation of where we currently stand on Clause 36, I hope the noble Baroness will be minded to withdraw her amendment.

Baroness Northover: My Lords, I thank everybody, especially the noble Earl, Lord Dundee, for contributing at this late stage of the evening. I welcome that. I agree with the noble Lord, Lord Collins, about the need for certainty in the Bill. I noted what the Minister said. It reflects the complexity of Brexit and the energy that it is taking up, even in this area, and I therefore look forward to the meeting with NGOs that he has promised. In the meantime, I beg leave to withdraw the amendment.

Amendment 39 withdrawn.

Amendments 40 to 42 not moved.

Clause 14 agreed.

Clause 15: Information

Amendment 43

Moved by ***Baroness Northover***

43: Clause 15, page 13, line 28, leave out paragraphs (d) and (e)

Baroness Northover: I shall speak also to Amendment 45 in my name and that of my noble friend Lady Sheehan. I also support Amendment 44 in the name of the noble Lord, Lord Collins.

Once again, we are concerned that regulations confer wide powers—in this case of entry and disclosure. Clearly, regulations should not authorise the disclosure of information that is subject to legal professional privilege, and the noble Lord, Lord Collins, will no doubt address that in a moment.

We are seeking the deletion of Clause 15(1)(d) and (e), which confer wide powers of entry and to authorise or restrict the disclosure of information. We want to give the Minister an opportunity to place protections around these areas, as we have in other instances. We are also concerned that under Clause 15(3)(b) an "appropriate authority" could be,

"such other person as may be prescribed".

It is difficult to think of anything wider than that description. Therefore, once again, we flag enormous concern about wide powers—especially those put in regulations. I beg to move.

Lord Lennie: My Lords, I will speak to Amendment 44 in this group, which seeks to add the words printed in the Marshalled List to the end of Clause 15 to give protection to the relationship between client and lawyer. It may be thought that that goes without saying, but it does not seem to as far as this Bill is concerned. Legal professional privilege is key to the rule of law and the administration of justice. To omit it from this legislation would seem to be a mistake. It permits information to be communicated between a lawyer and a client without fear of it becoming known to a third party without the clear permission of the client, except in rare cases where LPP is used to protect communications from a client in a case of illegality.

8.30 pm

Lord Ahmad of Wimbledon: My Lords, the provision for sharing information is vital to ensure that a sanctions regime works in practice. For example, the provision of information by the private sector is essential in monitoring the financial transactions of sanctioned persons. We need this information to ensure effective implementation and compliance with our obligations under the various sanctions regimes, and to ensure robust enforcement when the law is broken.

The information powers contained in the Bill will ensure that sanctions regimes continue to work effectively by requiring people to report relevant information and by authorising the sharing of information. It may be helpful for me to specify those powers. They provide the basis for the Government to monitor compliance with the regulations; to investigate and obtain evidence if they believe that the regulations have been contravened or circumvented; and to share information with third parties to enable co-operation on the development of sanctions and enforcement efforts.

There is already a duty in EU law on all persons in the UK to supply information to the relevant competent authorities. We currently make failure to comply with this duty an offence only in relation to "relevant institutions" in the regulated financial services sector and "relevant businesses or professions". We could, if we chose, apply this duty more widely. Clause 15 has been drafted widely to enable the duty to be placed on, and the offence of not supplying information on financial sanctions breaches to apply to, all persons in the UK. The extension of this offence to cover everyone who obtains such information in the course of their business would equalise the scope of the offence with the scope of the related duty. This will give the Government the ability to compel production of information to aid the investigation of reported breaches and ensure there is effective redress for not complying with legal obligations. The regulations will safeguard how the information is used, stored and shared. This will be consistent with the Government's data protection, commercial and banking confidentiality obligations.

These powers provide the basis for the Government to continue monitoring compliance with the regulations and to obtain evidence if they believe that the regulations have been contravened or circumvented. They will also enable the Government to share information with partners to aid their enforcement efforts.

The deletion of two key paragraphs as suggested in Amendment 43 would have a serious impact on the enforcement of UK sanctions. Let me illustrate how. First, powers of entry set out in paragraph (d) are essential for compliance inspectors to check that the terms of general licences have been upheld and that there has been no circumvention of sanctions. These powers are in line with those in the Export Control Order 2008, which were reviewed in 2014 and considered necessary for ensuring compliance with the terms of licences. Without them, authorities would be unable to check that exporters were complying with the terms and conditions of their licences if they were uncooperative.

Secondly, deleting paragraph (e) would completely remove our ability to authorise the sharing of information relating to designated persons. This is essential both for law enforcement purposes and for liaising with international bodies and our foreign partners on compliance and enforcement in individual sanctions cases. It would also have unwanted effects as we would be unable to communicate information to designated persons, them affected by sanctions and the wider UK. We maintain that the powers in paragraphs (d) and (e) ensure continuity with the existing legislation. Both will continue to be needed for sanctions when we leave the EU.

Amendment 44 seeks to ensure that legal professional privilege, or in Scotland the obligation of confidentiality, is upheld. I would like to say first and without any reservation that of course we do, and intend to continue to, respect legal professional privilege, a point made by the noble Lord. This is the position we currently

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take in all sanctions regulations and we intend to continue to do so. As the Bill does not explicitly authorise the Government to make regulations that remove this privilege, we do not think we would be able to do so if we so desired. Any such cavalier use of the power would surely be struck down by the courts. I hope that I have reassured noble Lords of the Government's intentions towards legal professional privilege and that any departures from it can and undoubtedly will be the subject of a judicial decision.

Finally, I turn to Amendment 45. I think I understand the intent of this amendment. It is to ensure that persons who do not have ministerial accountability cannot request information from sanctioned persons or use that information. However, the amendment unnecessarily limits the Government's ability to request information which is vital for ensuring that sanctions can be enforced and implemented in a robust manner. It will increase the workload of Ministers significantly and unnecessarily if they are required to approve every single information request relating to sanctions. It would also cause difficulty where the Minister is not the appropriate authority. For example, shipping and aircraft sanctions will be implemented by bodies outside Whitehall such as the Civil Aviation Authority, harbour authorities, and the Registrar General of Shipping and Seamen. Depriving them of the ability to seek and use information will make it harder to implement sanctions and will only assist those who avoid or breach them. This clause allows us to work with industry to ensure that sanctions are effective and that we have all the necessary information and evidence available.

The restriction on who can use the information requested would create difficulties in the use of powers to impose civil monetary penalties for breaches of financial sanctions given to HM Treasury in the Policing and Crime Act 2017. In that law, the relevant Minister is required to personally review penalty decisions imposed by the Treasury; the Minister's view is independent of Treasury officials. The amendment would place the Minister in the investigatory and decision-making process, and then the review process. This would not be appropriate and would give rise to challenge on appeal on process grounds.

I understand the concerns that the Committee might have about these powers being more widely available, as the noble Baroness mentioned, but I hope I have reassured the Committee that we believe that they are necessary for the effective implementation of sanctions. Moreover, I hope the Committee will also be reassured by the fact that the appropriate Minister cannot make regulations delegating powers which are incompatible with the basic and fundamental rights of people in the UK. Indeed, as noble Lords will know, Section 6 of the Human Rights Act 1998 forbids it. I hope that, with this detailed explanation, the noble Baroness is reassured and will withdraw her amendment.

Baroness Northover: I thank the Minister and others. He will know that the deletion of clauses is, as is usual in this place, a challenge to the Minister to come up with something that is more consistent with amendable primary legislation. That is what we are seeking here, along with more specific detail. I have already made reference to the fact that it is difficult to see that the Human Rights Act is necessarily the protection the Minister thinks it might be, but in the meantime, I beg leave to withdraw the amendment.

Amendment 43 withdrawn.

Amendments 44 and 45 not moved.

Clause 15 agreed.

Clause 16: Enforcement

Amendment 46 not moved.

Amendment 47
Moved by ***Baroness Northover***

47: Clause 16, page 14, line 12, leave out subsections (3) and (4)

Baroness Northover: I rise to move Amendment 47 and speak to the other relevant ones in the group.

We are seeking to delete sections that allow the creation of offences by regulation. I am sure that we will return to this as we go through the Bill. The Delegated Powers Committee notes the very wide powers and very high penalties that are capable of being set for criminal offences under the regulations. I know that other noble Lords will contribute and I look forward keenly to hearing what the noble and learned Lord, Lord Judge, has to say. We are enormously concerned about this provision. I beg to move.

The Deputy Chairman of Committees (Lord Haskel): I have to inform the Committee that if this amendment is agreed, I cannot call Amendment 48 because of pre-emption.

Lord Judge: My Lords, I rise to address the whole issue of Clause 16 and Amendments 70 and 71, relating to paragraphs 15 and 18 of Schedule 2. Time is getting on. I have been very brief in my previous three efforts during the debate. I will not take much longer, but I have carefully measured what I will say.

These provisions are lamentable and should not disfigure our statute book. It used to be an invariable principle that criminal offences could be created only by statute. For example, we had a little history lesson earlier, going back to the reign of King Henry VIII, with his famous Henry VIII clauses. Even his subservient Parliament did not give him power to create criminal offences without a statute. The principle has been broken over the years. It is open to the Minister to say that this sort of legislation has happened before and precedents have been set; he may very well do so. Bad precedents should be overruled, not least in this House.

What is pernicious about this legislation? It is secondary legislation that will give power to a single Minister, by regulation, to create criminal offences for conduct that contravenes not statute, but laws made by secondary legislation. It is secondary legislation on secondary legislation, at the end of which, in Clause 16, there may be a 10-year sentence. The mind boggles. Has this been thought through? It does not stop there; that is only the start. The legislation will also simultaneously enable the same Minister who created the criminal offence to redefine the rules of evidence, as they apply to the offence he has created—talk about being judge

in your own court—and the Minister creating the offence will be given power, by regulation, to provide for defences as he sees fit, if he sees fit.

That is an astonishing combination of powers. Put in this way, regulations will govern a newly created offence or offences and say, "This is an offence of strict liability. What if the bank that got it wrong when it decided that it would lend money to somebody, failing to appreciate that he was designated, didn't know? Too bad. This is an absolute offence". That could be included. They could also say, or a Minister could decide, that those sorts of offences are so precious to our allies and our foreign obligations—let us not overlook terrorism, which is in the Bill—that we had better say that the burden of proof should be on the defendant to prove that he was not a terrorist or breaking the sanctions. That is assuming that there will be a defence at all. Without going into every detail of the rules of evidence, the regulations may provide that all or any of the laws of evidence, which are designed to protect the defendant from an unsafe conviction, may be abrogated by ministerial decree. I assume, as I did at Second Reading, that we will be allowed a trial, but at the end of the trial, if there is conviction for an absolute offence, 10 years' imprisonment is available.

I hope the Committee shares my view that this is shocking. It is not the way we should create criminal offences and administer criminal justice. It gives too much power to one individual. With great respect, I am not thinking of this Minister or the shadow Minister. We are legislating for 10 or 20 years. Do we want to give this power to anybody who may come to power? Do we want to give these kinds of powers to any Government that we may get? I reckon not. This is too much power in the hands of the Executive. If we let this through it will be a precedent for which Ministers for the next 50 years will sit on this side of the House and say, "But it's happened before. It's a precedent". What sort of a country will we be?

8.45 pm

Lord Norton of Louth (Con): My Lords, I shall be brief. I endorse what the noble and learned Lord, Lord Judge, said. Like me, he is a member of the Constitution Committee, which has reported on this Bill and raised the concerns that he has just outlined. There are particular problems with Clause 16(3) and (4). This amendment would remove them, but by itself it would not be sufficient to address the concerns he has indicated.

The Constitution Committee has made the point before that it is unacceptable for offences to be created by regulation, as we conclude. On that point and the point the noble and learned Lord made about evidence, we consider that such regulation-making powers are constitutionally unacceptable and should not remain part of the Bill. It is important that we do not mess about with the particular provisions of the clause, rather that it is taken away and the Government come back with something that is constitutionally acceptable. As the noble and learned Lord mentioned, this is going on the statute book. It will be there for as long as Parliament allows it to remain and it would therefore be in the gift of future Ministers. That, as he indicated, is not acceptable.

Baroness Bowles of Berkhamsted (LD): My Lords, I shall speak to the whole of this group of amendments. I gave notice of my intention to oppose Clause 16 standing part of the Bill. From the debate we have had it is quite clear that there is a little bit of an earthquake going on throughout the whole of the Bill. In a sense, its epicentre, as has been rightly explained by the noble and learned Lord, Lord Judge, comes to a climax with the criminal sanctions. Deleting the criminal sanctions parts would not provide a solution because they build on all the other wrongs, if I may call them that, that exist in the other clauses—throughout the sanctions part debated today and the powers contained in Schedule 2, which we will debate. We may eliminate those criminal sanctions, but we would still have an awful lot of other powers that will still do an awful lot of wrong. The fact that the criminal sanctions are laid on top of them is what makes it so egregious.

I move on to the transposition of the fourth money laundering directive and the issue of precedents. It has been said that there are precedents for creating criminal offences by statutory instrument and that in the past as well as now constitutional committees and delegated powers committees of this House have objected. In the earlier debate, the noble and learned Lord, Lord Judge, explained that those criminal offences might be buried among many other regulations. I have a good example here; it is a pretty thick one. It is the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017—that is, the fourth money laundering directive. I think that there are 116 pages of dense type there, together with the schedules, and 109 other articles—sorry, we are not in Europe any more, or we will not be, or we may not be, or maybe we are. There are 109 other regulations contained within that. One of those is new—we have just dealt with it again recently—but in terms of the precedent, they derive from things that happened in the Proceeds of Crime Act. They reflect what has happened to the primary offence of money laundering, on to the secondary or derived offences where banks or other financial institutions have failed to have the right procedures in place. So there are kinds of precedents, even though I do not agree with the way that it has been done.

If we turn to what we have both in Clause 16 and Schedule 2, we see that there are no limitations at all. There are very open powers—they are even more open in Schedule 2 than in the sanctions part of the Bill. There may have been a failed attempt to create a framework for those criminal offences by referencing alongside them that the Minister will look to the matters of defences and evidence, but that has created other problems. As was again elaborated by the noble and learned Lord, Lord Judge, how can we tell that those will not be the right kinds of provisions? What do we know about the future?

The noble and learned Lord, Lord Falconer, said earlier that, ultimately, the only thing that matters is what is in the Act; it does not matter what the Minister's intentions are, even if he says what they are—it is the words of the Act. We do use legislation for purposes that were not intended. In 2008, at the height of the financial crisis, the UK used anti-terrorism legislation to freeze £4 billion of assets of Landsbanki. It caused us a great loss of reputation in some circles, which is

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not to say I endorse what Landsbanki was up to. When the Anti-terrorism, Crime and Security Act 2001 was going through Parliament, I do not think anybody said, "We're going to use this to freeze the assets of banks because they were a bit too laissez-faire in their financial regulation". Something that was done for one purpose was used seven years later for another. Who is to say that there are not many other examples—I am sure if I dig I can find them—or that we may not get examples like that in the future? One cannot have new offences that are unpredictable as to how the rule of law, the defence and due process will operate. One has to have those safeguards, and this Bill does not do any of that.

I refer to what the Minister said in the debate on Clause 2 on whether one should wind up a company or disqualify directors. This was in the context of a company that would have been breaching sanctions and doing things such as arms trading. The Minister said that those amendments would not do because all the Bill aims to do is to replicate sanctions and the amendments went over and above that—the sanctions provisions that are already in existence, he meant—and we do not want to go further than other countries on sanctions and do what the UN and the EU are not doing. I can tell noble Lords that they do not do unlimited, undefined, potentially abolish-the-defence type of criminal sanctions. Actually, they do not have the powers to do that, but I doubt that they would do it anyway.

Another thing that the Minister said was that the sanctions need to be reversible. I fear that there is nothing very reversible about 10 years in prison. There is something seriously wrong here: it needs a lot more structure around it if they are even going to make the case that we can have sanctions, for instance, if they are going to follow, or punishment for sanctions, if they are new ones. The circumstances that give rise to requiring sanctions might be unpredictable, but the general nature of the sanctions that are imposed are not. You stop people trading or stop people having access to financial services: you can certainly put a framework around those. No effort whatever has been made, yet if you turn to something such as the fourth money laundering directive—and, indeed, the very regulations that have just been made to transpose it—all those safeguards are already there. There is absolutely no reason why they should not be replicated in the Bill.

Lord Thomas of Gresford: My Lords, I emphasise everything that has been said up to now about how unacceptable Clause 16 is. If someone is a designated person, sanctions are imposed upon him and he wilfully and deliberately breaks those sanctions, there is perhaps room for criminal offences which can be defined and can carry sentences of up to 10 years' imprisonment. However, these regulations are concerned not with that so much as with trying to create a system of regulation of banks and providers of financial services to encourage them to report and to follow what is required in order to prevent money laundering or the busting of sanctions. These are banks and institutions which are not acting wilfully and deliberately and so are not criminal in that sense.

It might be proportionate in those cases—this is what has happened with other regulations—to have a small criminal sanction for a breach of the particular regulation which requires that you report on a client. That is one thing, but here there seems to be a confusion; the two types of criminality are put together. The serious criminality of breaching the sanctions is looked at in the same way as a failure to report what a client may be doing which could amount to a breach of sanctions. It is wrong that that should be subject to serious criminal sanctions of the nature described in the Bill.

What really offends me about it, however, is that the Minister has power to stipulate where the burden of proof should lie: for example, whether hearsay evidence could be introduced or whether a particular defence can or cannot be run—"It shall not be a defence to do" whatever it may say. That is the sort of thing you see in statutes from time to time. It is not Parliament deciding that; it is the Minister. He creates his criminal offence and then makes it almost impossible for a person to defend themselves.

It is one thing to face a charge where you know that the burden of proof is on the prosecution—and there are strict rules of evidence which apply across the board in criminal cases. It is something else if a Minister has power to create his own form of criminal law. That is really what this is all about. It is wholly unacceptable and must be defeated.

9 pm

Lord Collins of Highbury: My Lords, I do not want to repeat the comments that have been made. The one thing that I would make clear to the Minister is that he has a wide range of opinion against him on this, not least the Law Society's own briefing, which raised huge concerns about this clause. The Constitution Committee has been very clear. The Delegated Powers Committee has also raised concerns, even though it says that the Foreign & Commonwealth Office has made "a compelling case" in relation to this.

The noble Baroness, Lady Bowles, referred to the argument that it is impossible or too difficult to create a framework. The Delegated Powers Committee said that,

"the FCO's reasons provide a compelling case for allowing the creation of criminal offences in sanctions regulations … Trying to set out the offences in primary legislation would risk producing offences and penalties that are defective or disproportionate or both".

We have heard in the debate that it cannot be beyond the powers of the Minister to come up with a much better answer to this difficulty than the one currently being offered by his department. Even though the Delegated Powers Committee says that there is a compelling case, it thinks that parliamentary scrutiny should be enhanced if these powers are conceded. So I hope that the Minister will give deep thought to this and come back at some stage with a much better and more acceptable option.

Lord Ahmad of Wimbledon: My Lords, obviously I have noted the opinions that have been expressed, as the noble Lord, Lord Collins, said. I see that your Lordships' Committee is concerned about the new

criminal offences. To be clear: these types of offences already exist. People who breach financial, trade, immigration and transport-related sanctions can be convicted for those breaches in the criminal courts. We will continue to legislate on this basis so that breaches of sanctions can continue to be an offence.

We have set safeguards. We have set a cap of 10 years on maximum sentences for breaches of trade sanctions, which is consistent with the Export Control Act; for breaches of financial sanctions the cap is set at seven years, which is consistent with recent changes introduced by the Policing and Crime Act 2017. Coming back to the point made by the noble Lord, Lord Thomas, about differentiation between the types of offence, we have lower sentences in respect of information provisions and money laundering regulations.

I hear what noble Lords have said. The purpose behind the sanctions is to replicate the existing legal frameworks for enforcement across the various forms of UK sanctions that will be created by the Bill. For all types of sanctions, Clause 16 includes provision for creating offences and dealing with offences, including defences and the treatment of evidence. It also provides for powers and duties to be vested in persons who assist in the enforcement of any prohibitions. For example, for trade sanctions, Clause 16 enables regulations to apply any provision of the Customs and Excise Management Act 1979, which provides a full suite of powers for the enforcement of these measures. The clause also enables civil monetary penalties, introduced in the 2017 Act, to continue to be issued for breaches of financial sanctions. It does not extend these to other types of sanctions. It also enables regulations made under the Bill to replicate the current position on maximum terms of imprisonment. I have already referred to that. It contains further powers for deferred prosecution agreements and serious crime prevention orders for all measures in the Bill.

Clause 16 also makes a provision that would enable the UK to extend the existing offence of failing to supply information on financial sanctions breaches. As noble Lords know, there is an existing duty on everyone to supply such information, which will be transposed by the Bill. However, the associated criminal offence for not doing so applies only to relevant institutions in the regulated financial services sector and relevant businesses or professions. The Bill enables the UK to equalise the scope of that duty and offence, as I said earlier, by making it a general offence applicable to everyone.

I assure the Committee that I am listening carefully to the representations being made, in particular those made by the noble and learned Lord, Lord Judge. However, we believe that the sanctions enforcement provisions, including criminal and civil penalties, remain proportionate to the scale and nature of sanctions breaches and that they will continue to act as a deterrent. That is the ultimate objective. Although I am sure I will not get a ringing endorsement for—or agreement with—everything I have said, I hope I have outlined where the Government are coming from in drafting Clause 16. Based on my explanation, I hope the noble and learned Lord will be minded to withdraw his amendment.

Lord Judge: My Lords—

Baroness Northover: My Lords, it is this noble Lord doing that.

Lord Ahmad of Wimbledon: I am sorry.

Baroness Northover: The Minister will have heard the voices, including those from behind him on his own Benches. The noble and learned Lord, Lord Judge, was right to get up because I knew my best bet was to introduce the amendment briefly and pass it across to him. The Minister will have heard him, too. Something tells me that we will return to this on Report and that various things will happen in between but, in the meantime, I beg leave to withdraw the amendment.

Amendment 47 withdrawn.

Amendments 48 to 51 not moved.

Clause 16 agreed.

House resumed.

House adjourned at 9.08 pm.