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OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Wednesday 29 November 2017

3 pm

Prayers—read by the Lord Bishop of Worcester.

Death of a Member: Lord Steyn

Announcement

3.06 pm

The Lord Speaker (Lord Fowler): My Lords, I regret to inform the House of the death of the noble and learned Lord, Lord Steyn, on 28 November. On behalf of the House, I extend our condolences to the noble and learned Lord's family and friends.

Nurses: Tuition Fees

Question

3.06 pm

Asked by ***Lord Clark of Windermere***

To ask Her Majesty's Government whether they will write off the tuition fees of nurses who spend a number of years working in the NHS or related public care services.

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, there are currently no plans in place to write off tuition fee loans for nurses who take up work in the NHS. Substantial financial support is available for nurses in training. With the increase in the student loan repayment threshold introduced by the Department for Education, from April 2018 a newly qualified nurse will not pay back their loan on earnings up to £25,000 a year.

Lord Clark of Windermere (Lab): My Lords, when we have a shortage of 40,000 nurses, when the Government's introduction of tuition fees has resulted in fewer nurses entering training, and on the very day it is announced that we are having to import 5,500 nurses from India, is it not crucial that we incentivise everything we can to get British students into nursing? Would my proposal about working in the NHS not help that?

Lord O'Shaughnessy: My Lords, nurse training places have been discussed a number of times in this House. I am sure noble Lords will be keen to know that, while there has been a small percentage drop-off in places year on year, the numbers recruited this year are comparable to 2014-15. That is common with the introduction of tuition fees for other courses and we would expect it to rebound. In the long run, the intention is to grow more of our own nurses and to recruit from the United Kingdom, which is why there will be an increase of 25% in the number of clinically funded training places for nurses—5,000 extra—from 2018-19 onwards.

Lord Forsyth of Drumlean (Con): Can my noble friend indicate what percentage of the borrowing by student nurses under the student loans scheme will be paid back at the point when it is written off after 30 years? If so, would it not be better to do this earlier in their careers, rather than at the end of them?

Lord O'Shaughnessy: My noble friend is quite right to point out that student debt is forgiven after 30 years. The point of that is to ensure there is an equitable system, where those who earn more pay back more over the course of their working lives. It is important to point out that, with the new threshold moving up to £25,000, a nurse earning £26,000 in band 5 of the Agenda for Change pay scale would pay back £7.50 of that loan per calendar month.

Baroness Brinton (LD): My Lords, with the NHS reporting that 96% of hospitals are currently failing to meet their planned number of registered nurses, and UCAS reporting a decline in student nurse applications, as the noble Lord mentioned, as well as the further news that one in four post-qualifying nurses leave in their first year, what are the Government proposing to do to change the problem of recruiting new nurses, including returning to bursaries and abolishing tuition fees altogether? Specifically, what are the Government doing right now to attract nurses into our hospitals?

Lord O'Shaughnessy: It is important to point out that there are 10,000 more nurses on wards than there were seven years ago. One of the things that we are trying to do is encourage nurses to return to practice—3,000 of those nurses have been on the return to practice programme. In regard to attracting them to hospitals, the main thing is that we need to train more nurses to fill those places so that we fill the demand that we know that we have from a growing and ageing population. That is why there are going to be 5,000 more funded nursing training places from 2018 onwards.

Lord Brooke of Alverthorpe (Lab): My Lords, is it not necessary to offer the most attractive terms to get more nurses into training? Will the Minister reflect on the very helpful suggestion made by the noble Lord, Lord Forsyth, that there is a possibility that a fair number of these people will never repay the full amount? Will he tell the House what the estimated write-off is of the repayments that will apply to nurses? If it is a high figure, will he reflect on the answer that he gave to the noble Lord?

Lord O'Shaughnessy: I shall certainly write to my noble friend, and indeed all noble Lords, about the proportion of the write-off. Let us remember, however, why the student loans system exists. It exists because those people who earn enough over the course of their working lives end up paying more than those who do not. Therefore, if somebody has gone into nursing but has then gone on to work in another profession, earning more money and being able to pay it off, it is equitable that they pay it off. That was the policy of the Labour Government, and it has been adopted by the Conservative Government precisely on the point

[LORD O'SHAUGHNESSY]
of equity. It is only right that the loan is written off for those who have not earned enough but, for those who have earned enough, that they pay it off.

Baroness Butler-Sloss (CB): My Lords, will the Government reconsider the issue of bursaries?

Lord O'Shaughnessy: I obviously have not been clear enough; I thought that I had. The answer to that is that we are not considering that at the moment.

Lord Tugendhat (Con): My noble friend is explaining the policy very eloquently, but surely he ought to take into account the point raised by my noble friend Lord Forsyth. The problem is that the way the scheme works disincentivises people from entering occupations that are extremely socially desirable and much needed by the country precisely because they are going to be loaded with debt. Although they do not in the end pay it off, it bears very heavily on them during their working lives.

Lord O'Shaughnessy: The system that we have means that the people who benefit most from higher education are those who pay for their higher education and, in doing so, they subsidise those who go into the professions that my noble friend has mentioned, which are extremely worth while but might not be that well paid.

Baroness Wheeler (Lab): My Lords, the Health Foundation research has shown that the change in nurse training funding arrangements in England has led to a fall in student numbers, rather than the Government's promised increase. One of the most alarming statistics shows a 31% shortfall in the number of applicants aged 30 and over, just the group with the background and experience the NHS needs, many of whom are care workers with hands-on experience wishing to develop their skills by becoming qualified nurses. Does the Minister agree that these are the very people whom nursing needs, but for whom taking on a huge debt, often at a time of heavy financial commitment, seems an impossible hurdle? Does this not all underline the need for urgent reinstatement of nurse bursaries?

Lord O'Shaughnessy: I think that the figure on shortfalls that the noble Baroness has given is not right. If one looks at the UCAS data, it shows, as I said, a small drop of around 6%, but the numbers going into training are comparable to 2014-15. She is quite right about the need for additional financial support, and there is £1,000 available for childcare support for those who need it, as well as exceptional support funds of up to £3,000.

Baroness Gardner of Parkes (Con): My Lords, is the Minister aware that there was a great disincentive for people to enter nursing when it was decided that it was necessary to have university-level academic education to do it? The SENs—the state enrolled nurses—were abolished. Does he think that the apprenticeship scheme, which I understand is put forward all the time as being the replacement for that, is really working well, or is there a need to bring back that middle layer of nurses who cannot get five A-levels but can nevertheless be excellent nurses?

Lord O'Shaughnessy: My noble friend makes an important point. It is precisely to, if you like, recreate that route into nursing that the nursing apprenticeship and nursing associate positions have been created, and the numbers are increasing.

Criminal Justice: Interpretation and Translation Services

Question

3.15 pm

Asked by ***Baroness Coussins***

To ask Her Majesty's Government whether they have revised their target for annual budget savings on the cost of providing interpretation and translation services in criminal proceedings, following the allocation of the latest contract for those services to thebigword; and if so, what is their new target.

Baroness Coussins (CB): My Lords, I beg leave to ask the Question standing in my name on the Order Paper, and declare my interest as vice-president of the Chartered Institute of Linguists.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, the ministry's suite of language service contracts was designed to ensure value for money and affordability of the services provided by its suppliers. Given the importance that the ministry attaches to the provision of court interpretation, we have not felt it appropriate to set a target figure for cost savings for the provision, which is a demand-led service. Fulfilment of interpreter bookings is currently around 98%.

Baroness Coussins: My Lords, that sounds encouraging, but there has been a long-standing concern that the quality and qualifications of some of the interpreters sent to our courts do not match up to the demands of the job, which results in cases needing to be rescheduled. Is the Minister satisfied that the new contract for quality assurance can provide much useful information when it scrutinises only 1% of assignments, and can he say whether interpreters' pay and conditions have improved under thebigword contract? Poor employment practice was one of the reasons why large numbers of high-level interpreters boycotted the service previously.

Lord Keen of Elie: My Lords, the new contracts came into place on 31 October 2016. They include a contract in respect of quality assurance, which has proved extremely effective. Indeed, the number of complaints about the service provided has dropped quarter by quarter. As regards the numbers of interpreters available, 4,660 have now registered with the new contractors. We are proceeding on that basis; it is at present a success.

Viscount Hailsham (Con): My Lords, may I support the noble Baroness in her remarks? Does my noble and learned friend agree that the provision of honest and professional interpretation in criminal courts is absolutely central to the proper construction of many cases? Does he also agree that that applies to many civil cases as well, particularly family work and immigration? What public provision is now made for those classes of case, and if none, would he consider the position further?

Lord Keen of Elie: I agree with both the propositions advanced by my noble friend. We have no difficulty at present with the provision of interpretation services in respect of these matters.

Lord Marks of Henley-on-Thames (LD): My Lords, this month there have been at least six reported instances of cases being adjourned for lack of an interpreter, and there may be more. This is part of a continuing pattern which disrupts court business and wastes resources. Does the MoJ have any new proposals to ensure that needs for interpreters are identified and arrangements made for their attendance earlier and more efficiently?

Lord Keen of Elie: We have no proposals to alter the present system, which works effectively. I point out that there are around 500 to 550 bookings for interpreters each day, so the number he refers to—six—is a very small proportion of the overall interpretation service.

Lord Suri (Con): My Lords, will we be able to see that justice is being done without providing proper translation services, either in criminal or other proceedings?

Lord Keen of Elie: It is clearly critical to the administration of justice and to the issue of access to justice that full and adequate interpretation services should be available to the courts and to those who have recourse to them.

The Lord Bishop of Leeds: My Lords, there is clearly a difference between interpretation and translation. I speak as a former professional linguist. What about quality control? Will the Minister comment on that? Being able to deal with a language is not the same as being a competent interpreter, sometimes of very delicate matters.

Lord Keen of Elie: I entirely agree with the observation made by the right reverend Prelate. That is why the present contract provision includes a quality assurance provision by the Language Shop, to ensure that not only are the appropriate levels of qualification available but also the appropriate skills.

Lord Judd (Lab): Does the noble and learned Lord agree that there is a great deal of anxiety about people's experiences with interpretation? It is not just a matter of making sure that an interpreter is there—the quality of the interpretation is essential. Surely with the whole principle of the quality of justice, and of justice being seen and felt to be done, one cannot overestimate the importance of interpretation and its quality. That must apply to civil law as well as criminal law and certainly to the immigration sector.

Lord Keen of Elie: We are confident about the quality of the translation and interpretation services provided to the courts at present, which have been provided under the present contractual regime since 31 October 2016.

Baroness Ludford (LD): My Lords, the Minster will know that this is an obligation of an EU directive. I was a rapporteur in the European Parliament; the UK Government chose to opt into this. Not only do we maintain standards that help standards across the whole EU but, if we Brexit, we will obviously want to keep up those standards so that we can operate such things as the European arrest warrant without our operation of it being called into question.

Lord Keen of Elie: Of course, that is one of the objectives of the withdrawal Bill, which noble Lords will have the opportunity to pass in the near future to ensure that we maintain our legal obligations in that context. Over and above the European regulation—I believe it is a regulation and not a directive—there is of course the convention right under Article 6 and the common-law right of access to justice.

Apprenticeships: Training Providers

Question

3.22 pm

Asked by ***Lord Aberdare***

To ask Her Majesty's Government what assessment they have made of the impact of the introduction of the new system of apprenticeship training on both public and private training providers.

Viscount Younger of Leckie (Con): My Lords, we are implementing a range of reforms to continue to improve the quality of apprenticeships for all, ensuring employers can access the training and skills they need. We recognise that our reforms have resulted in a number of changes for apprenticeship training providers. We are keeping the impact of the reforms under review and we continue to work closely with providers and their representative bodies.

Lord Aberdare (CB): My Lords, independent training providers deliver three-quarters of all apprenticeships, especially for non-levy-paying employers, many of them SMEs, and for 16 to 18 year-olds. The current funding system gives them no certainty about how many apprenticeships they will be able to offer. Will the Minister and his colleagues look at renewing and adapting the system so that providers can plan with confidence to support SMEs in providing the apprenticeships that young people and the nation need to drive up skills and productivity and, indeed, to meet the Government's own targets?

Viscount Younger of Leckie: The noble Lord is right, in that we do recognise this is a period of uncertainty for providers. The Education and Training Foundation is running a programme specifically to help the ITPs prepare for the transition and change. The Government are also making available £440 million for non-levy-paying employers, to cover the costs of new starts during the transitional period from January 2018 —that is until all employers use the new apprenticeship service, from April 2019. The SMEs are also very important for our economy and the Government are paying 90% of the training and assessment costs for 16 to 18 year-old apprenticeships in this area.

Baroness Burt of Solihull (LD): Does the Minister agree that, given the industrial strategy, Brexit, technological advancement and low productivity, there has never been a more urgent need to address and sort out our skills shortages? But apprenticeship registrations have fallen off a cliff because businesses—large and small—do not like the changes the Government are introducing. Is it not time to cut the business world a bit of slack and let them use their own money, raked in through the levy, in a more flexible way to address their actual training needs, and not force all the levy money into an apprenticeship straitjacket which serves little purpose, other than saving the Government's face in their boast of creating 3 million apprenticeships?

Viscount Younger of Leckie: My Lords, it is not a boast; it is a clear aim. As the House will know, a great deal of emphasis has been put on training and skills in the industrial strategy document. On the demand for apprenticeships, it is true that there has been a 59% fall-off, but that is not the whole story because between March and May there was a 47% increase, so the net decline was 2.8%. However, the overall picture—for which there is anecdotal evidence—is that over the next 24 months employers are looking to bed in the changes, and they are working very hard to do so.

Baroness McIntosh of Hudnall (Lab): My Lords, although it is probable that many large employers are perfectly content to see the Government do as much as they can to encourage apprenticeships, is the noble Viscount aware that in some sectors—I particularly refer him to the creative industries—the apprenticeship levy does not work terribly well? Those sectors do not resist paying the levy, obviously, but they do not find it particularly helpful because of the inflexible way the benefits from it can be accessed by larger employers who pay it. Looking to the future, and building on the question from the Liberal Democrat Benches, is there a rather more flexible way large employers can develop their own apprenticeship schemes?

Viscount Younger of Leckie: The noble Baroness makes an interesting point but we believe that there is enough flexibility in the system. A lot of work is being done with the Institute for Apprenticeships and with employers on the design of apprenticeships to ensure that the approach and the job descriptions are correct for the individual sectors. I know that the noble Baroness has a lot of experience in the creative sectors, which we are looking at very closely.

Lord Wallace of Saltaire (LD): My Lords, is the Minister aware that in Bradford a social housing association runs an excellent training scheme for the building trades? It took 10 people this year and has had 400 applications. When there is so much unfulfilled demand—particularly from what we have to call the white working class—obviously there is still something wrong. I am told that in Yorkshire the big building companies still prefer to recruit already-trained people from outside Britain rather than go to the expense and trouble of doing their own training. That is clearly a major problem. Can the Government assure us that the new apprenticeship levy will push companies like that into training our own people?

Viscount Younger of Leckie: I hope I can give the noble Lord that assurance. The construction sector is particularly important. Regarding the temporary drop that we have seen, 3,000 apprenticeship vacancies have been posted this month by 40 employers. So I think this comes back to the point that employers are taking their time—which they need to do—working with HMRC and the Treasury to bed in these new changes.

Lord Baker of Dorking (Con): My Lords, is the Minister aware that the number of apprenticeships for those aged 16 to 18 declined this year, as they did last year? These are the important ages for apprenticeships, and that decline will persist if the Government continue their school education policy of eliminating all technical education below the age of 16. If they do that, very few students at 16 will want to take an apprenticeship. He has to join up apprenticeships with the education policy and try to get it changed.

Viscount Younger of Leckie: I am aware of my noble friend's interest in this area, and I have also read the report linked to the UTCs. His point is noted, although I do not entirely agree with him.

Lord Watson of Invergowrie (Lab): My Lords, whichever way the noble Viscount dresses it up, a 59% decline in new apprenticeships year on year is hardly an auspicious start to the main plank of the Government's attempts to address the skills gap. One issue is pay. The Department for Business reported in July that one in five apprentices was not receiving the correct national minimum wage, even though it is only £3.50 an hour. Another question relates to flexibility, which has been raised by other noble Lords, although I would like to put a slightly different angle on it. The Chancellor said in his Budget speech last week that he would keep under review the flexibility with which levy payers can spend their money. I very much hope he will, because part-time apprenticeships have a role to play here and flexibility would certainly be valued by young parents. Will the Government offer advice to employers to make sure that they make more part-time apprenticeships

available, not only for their own benefit in terms of skills but to boost the overall number of necessary apprenticeships?

Viscount Younger of Leckie: The noble Lord has raised a number of points but I shall pick up on two. As he will know, the national minimum wage is going up from £3.50 to £3.70 per hour from April 2018. However, we do not see pay as being a particular issue in the way he has suggested. Apart from that, his point about part-time apprenticeships is important, and that is very much part of our plans.

Armed Forces: Morale

Question

3.30 pm

Asked by ***Lord West of Spithead***

To ask Her Majesty's Government what assessment they have made of the impact of the review by the National Security Adviser on morale in the Armed Forces.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, the Ministry of Defence strives continually to ensure that our people feel valued and that their contribution and sacrifice are recognised. I regret that recent press speculation around the national security capability review has created a deeply unhelpful atmosphere of uncertainty for many of our service men and women. The review is ongoing and no decisions have been taken.

Lord West of Spithead (Lab): My Lords, I thank the Minister for his Answer but I have to say that I am a little disappointed by it. The latest continuous attitude survey shows disappointing aspects of morale within the services and there is no doubt that, certainly among people I have met and know within the services—particularly young Army officers—there is a real drop in morale. To say that this is press speculation is slightly disingenuous. Since the Levene study, any work looking at costings of any parts of defence is done out in the sticks. This means that the people involved very close to those things are aware of it. I do not believe that talk about getting rid of the two landing docks, fewer Army numbers and so on has been made up by the press. These clearly are things that are being looked at in that arena, and that causes a great deal of worry. There is no doubt that the continual downward pressure on defence is having an impact on morale. Does the Minister not think that making a statement that we intend to not have any further cuts to the forces we have and that we will strive to get Force 2025 would have a wonderful impact on morale?

Earl Howe: My Lords, the thing to emphasise here is that absolutely no decisions have been taken by Ministers. Any fall in morale is clearly a concern that we have to take seriously, and we do. I do not think that there is a single cause for this, but press reports which imply that decisions have been taken which have not been are deeply unhelpful to the men and women in the Armed Forces whose lives and livelihoods these reports directly affect.

Lord Dannatt (CB): My Lords, does the Minister not agree that, should the Government see their way to announcing a modest rise in the defence budget, this would have an inevitable upward boost to morale?

Earl Howe: My Lords, there are many of us who wish the defence budget were larger—but every department of government has to live within its cash-limited means.

Lord Campbell of Pittenweem (LD): My Lords, in view of the uncertainty to which the noble Earl referred, what advice would he give to a young person wanting to make a career in the Royal Marines.

Earl Howe: My Lords, I hope that my speech last night in the debate on the Royal Marines settled many concerns. The idea that the Government are going to abolish the Royal Marines or give up our amphibious capability is, frankly, ridiculous. I hope that I was able to settle that point.

Lord Sterling of Plaistow (Con): My Lords, the defence of the realm is the number one responsibility of government, yet during the Budget there was not a single word about defence. Does that help morale? Will the Minister also comment on the fact that the retention rate of some of our best people is worsening nearly every week?

Earl Howe: My Lords, my noble friend has a deep knowledge of all these matters, in particular on the personnel front. There is no denying that recruitment and retention are currently a challenge, as they always are when the economy is growing and there is a demographic shortage of young people. That is precisely why we have to focus on the things that matter to those thinking of joining the Armed Forces and the offer that we make to them, not only in terms of pay but in modernising the lived experience of service personnel—that is where the covenant comes in—and in the Armed Forces family strategy.

Lord Tunnicliffe (Lab): My Lords, the Minister has said that the press are being deeply unhelpful. Now, the Minister has been around long enough to know that being helpful is not a core objective of the press. The MoD's own attitude survey shows satisfaction in the forces over the past year has declined in almost all areas. The key measure, satisfaction with service life in general, has decreased from 61% in 2009 to 42% this year—a one-third decline. This is a service morale crisis. How are the Government going to arrest this decline if the review does not yield significant additional money?

Earl Howe: My Lords, Britain has a competitive advantage in defence, and that advantage is based on the commitment, professionalism and skills of our people. We place heavy demands on them all, including those in the Armed Forces whom we ask to risk their

[Earl Howe]
lives on operations. Therefore, we place a very high premium on recruiting, retaining and developing the right people. As set out in the 2015 SDSR, we have identified a number of long-term plans to ensure that the service offer to which I referred better reflects the aspirations and expectations of our personnel and new recruits.

Lord Stirrup (CB): My Lords, our future military capability depends on retaining sufficient talented and experienced personnel. That retention in turn depends on offering those personnel sufficiently challenging, rewarding and exciting training. Can the Minister reassure the House that, in its search for savings, the Ministry of Defence will not be looking to cut back in this area, which would be the falsest of all false economies?

Earl Howe: The challenge, when looking for efficiencies rather than straightforward savings, is to achieve the same or a better level of outputs with the money available. I can tell the noble and gallant Lord that, while training is of course under the spotlight, what we do not want to do is to dilute or degrade the quality of that training for those whose standards we set great store by.

Brexit: Costs

Statement

3.37 pm

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, with the leave of the House, I will repeat a Statement made in answer to an Urgent Question by the Chief Secretary to the Treasury in another place earlier today.

"Mr Speaker, our negotiating team are currently in Brussels discussing our exit from the European Union. In fact, our officials have been working on it for months. It would be completely wrong of me to cut across those discussions by commenting on speculation on the financial settlement. It would not be in our national interest either.

The Prime Minister made it clear in her Florence speech that the EU member states would not need to pay more or receive less money over the remainder of the current budget as a result of our decision to leave. She also made it clear that the UK will honour its commitments made during the period of membership in the spirit of our future partnership.

As we have said before, nothing is agreed until everything is agreed. Any settlement that we make is contingent on our securing a suitable outcome, as outlined by the Prime Minister in her Florence speech. We will meet our commitments and get a good deal for UK taxpayers. We want to see progress towards a preferred option, which is an implementation period followed by an ambitious future economic partnership. In the Budget we set aside £3 billion in addition to £700 million we have already allocated to make sure that our country is fully prepared for all eventualities.

What we have seen today in the media is simply speculation. We will update the House when there is more detail to give".

3.39 pm

Lord Davies of Oldham (Lab): My Lords, I was going to welcome the Statement, but I had hoped it would be a bit more definitive than the Minister has managed. We think that developments have gone a considerable way to securing the financial settlement, which of course is of great importance. I hope the Minister will accept that we expect the settlement to be a good deal for the nation, a fair settlement for the taxpayer and one that will meet our international obligations. The settlement will need to reduce the uncertainty that has obtained in the British economy over the period in which the Government have been negotiating so far. The Government must recognise that there is a real economic cost to those levels of uncertainty. Will the Minister accept that to get a good trade agreement in the next phase of the negotiations—the important phase—they should be based on trust and the Government should ensure that they earn that trust? Moreover, in circumstances where we may be negotiating positively in the wider world as well, such a reputation for trust will stand us in good stead for the future. The Government have so far pursued a negotiating strategy that has lacked transparency, which has caused considerable anxiety. I hope they will do better in the future.

Lord Bates: I welcome the support that the noble Lord offered to parts of the Statement, but the Government have a specific responsibility, which Parliament has endorsed, not to release information that would undermine our negotiating position. We are in the midst of one of the most complex and important negotiations that this country has ever undertaken in peacetime. It cannot be right that we should have to give a running commentary that will be observed and undermine our negotiating position. We do not want that to happen. At the same time, we are very mindful that we have a duty to keep Parliament informed as far as possible. The position is that we are negotiating the best possible outcome that we can achieve. We have a particular target in relation to the Council meeting taking place in mid-December. We are making every effort and working in a good spirit towards a successful completion of that negotiation.

Baroness Kramer (LD): My Lords, the £50 billion to £55 billion being discussed is the net sum of our unpaid bills and commitments, so will the Minister answer the Question and tell us the costs of Brexit: the cost of a complex new customs system and of replacing 39 regulators; the cost to business of losing "just in time" in trade; the cost to the public of the collapse in sterling; the cost of Christmas dinner, which is up by 20% this year; and the cost of financial services not being able to sell across Europe? Then perhaps we could understand the shape of the Government's negotiation.

Lord Bates: I accept that there are costs, but there are also benefits that will come from Brexit. As for the costs, there is our net contribution of £10 billion a year. We have set aside £3 billion, which the Chancellor announced in the Budget, to prepare government

departments and the devolved Administrations for all eventualities and outcomes. This is the right and proper way to implement a decision of the British people.

Lord Lamont of Lerwick (Con): Does my noble friend accept that what he has said will seem reasonable to many people: the member states will, over the budget period, receive what they would have expected to receive? But will any payments be made beyond that, apart from pension liabilities?

Lord Bates: My noble friend tempts me a little further than we are aware at present. The negotiations are happening in a complex situation—it is fast-moving and changing—but our team is out there trying to secure the best deal for the British taxpayer, which I am sure it will.

Lord Anderson of Swansea (Lab): On careful reflection, does the Minister agree that the point made by the Foreign Secretary that the EU will have to "whistle for it" was just bluster and wholly unhelpful?

Lord Bates: This negotiation is going on across a whole range of headings and there have been remarks on both sides. The key ambition is that set out by the Prime Minister in her Florence speech, where she set out a rational, well-argued and clear vision for our exiting in a way that honours our obligations but also prepares a new relationship of economic partnership with our European friends.

Lord Garel-Jones (Con): Does my noble friend agree that, regardless of any disagreements between Brexiteers and remainers, nothing could be more damaging to Her Majesty's Government than that we should default on obligations properly entered into by previous Governments?

Lord Bates: We have honoured those obligations and they are part of negotiating a settlement. The Prime Minister set out in her Florence speech that we will continue to honour that, that no country will have to pay in more and no country will get out less. I think that has been well received by our European partners and we look forward now to moving on to negotiating the more important area for us of continued trade with the frictionless access that we want to a very large and important single market.

Lord Wigley (PC): My Lords, further to the point made by the noble Lord, Lord Lamont, will the Minister confirm that, if there is indeed a transition period beyond 2020, we may well need to make further payments for that period?

Lord Bates: We will find that out when we find out the outcome of the negotiations.

Lord Pearson of Rannoch (UKIP): My Lords, is it not somewhat grotesque of the eurocrats to try to extract more money from us in pursuit of continuing free trade than we owe under our present commitments, when that free trade is so much more in the interests of EU exporters than it is in ours? Is not the underlying problem that the eurocrats' absolute priority is to keep their failing project of European integration alive because it pays them so well, no matter how much damage it does to the real people of Europe?

Lord Bates: I am not going to respond in the terms that the noble Lord has set out because it is important that we are in a serious negotiation not with enemies but with people with whom we want to be friends. We want a constructive relationship with them in the future and it behoves us to recognise that in our language and the way we go about the negotiations. The Prime Minister's speech in Florence was a textbook example of that.

Lord Tebbit (Con): My Lords, have there been any discussions yet in this divorce, as it is called, about not only the alimony but the fate of the matrimonial home—all those buildings in Brussels to which we have contributed? Are we going to get our money back?

Lord Bates: There are assets on the balance sheet of the European Commission and, be they buildings, satellites or anything else, they will be part of the assets factored in to a fair and reasonable settlement for the United Kingdom.

Baroness Quin (Lab): My Lords, in honouring our commitments—I very much welcome the fact that we will honour our commitments—will the Government explain to Parliament and the wider public the many positive programmes that this money will go towards and on which we hope we will be able to co-operate with the European Union in future? To pick up on the point made by my noble friend Lord Anderson, can we be assured that no more statements such as that about the EU whistling for its money will be uttered from Government Benches?

Lord Bates: Certainly, in relation to the ongoing programmes and relationships we are having, once the negotiations have been completed, it is important that we ensure that the British taxpayer understands the importance and value of those ongoing relationships as part of the wider settlement.

Viscount Hailsham (Con): My Lords—

Lord Robathan (Con): My Lords—

The Earl of Courtown (Con): My Lords, we shall hear first from the noble Viscount, Lord Hailsham, and if there is time, from the noble Lord, Lord Robathan, afterwards.

Viscount Hailsham: My Lords, as a committed remainer I say to my noble friend that if the reports are true, I welcome them. Is it not also correct, however, that they are difficult to reconcile with the advantages identified by the Brexiteers in the course of last year's referendum campaign? Should we not treat those stated advantages with a degree of caution?

Lord Bates: Much as I understand the point my noble friend makes, in all this we should not be involved in fighting the battles of the past. We ought to be coming together and uniting with the single purpose of ensuring that we get the best possible deal, the best possible access to the European Union and the closest possible relationship without being a member.

Railways: Update

Statement

3.49 pm

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

"When Britain's railways were privatised in the mid-1990s, it was against a backdrop of what many regarded as terminal decline. The radical Beeching cuts of the 1960s had been followed by further line closures under British Rail, and passenger numbers had been steadily falling since the Second World War—yet privatisation sparked a remarkable turnaround in the railways' fortunes. Over 1.5 million more trains are timetabled each year than 20 years ago, passenger demand has more than doubled and other countries are now adopting Great Britain's rail model in their own markets.

To support this growth and reverse decades of underinvestment in the infrastructure, we have embarked on the biggest rail modernisation programme since Victorian times. In addition to government funding, billions of pounds of investment from the private sector is also helping to renew and expand train fleets, upgrade stations and transform services across the country, and franchises are making an increasing contribution to the public purse—so the rail renaissance we are seeing in Great Britain today is the direct result of a successful partnership between public and private sectors.

This partnership has delivered real benefits for passengers for more than 20 years, but the success of privatisation has created its own challenges. As the number of services has increased, our network has become more and more congested, making delivering the punctual, reliable services that passengers expect more challenging. On much of the network our railway is operating on the edge of what it can cope with. It carries more passengers today than since its heyday in the 1920s, on a network a fraction of the size. When things go wrong, the impact can be widespread and quick, causing significant frustration for the travelling public.

That is why last year I announced plans to start bringing together the operation of track and train on our railways. This is a process of evolution and not revolution, and I said that the exact approach may differ from area to area, but the outcome must be the same: a railway that is predominantly run by a joint local team of people with an absolute commitment to the smooth running of the timetable, whether planning essential repairs, responding to incidents on the line or communicating with passengers.

Today I am publishing more details about our plans, an update on what we are doing and the steps that we will take to realise them. This publication, called *Connecting People: a Strategic Vision for Rail*, explains how we will create a new generation of regional rail operations with a relentless focus on the passengers, economies and communities they serve. It represents the biggest change to the delivery of rail services since privatisation. Although we have already achieved significant structural improvements, with joined-up working between operators and Network Rail, and Network Rail's own transformation into a series of regional route businesses, the document explains our plans to go much further.

Where it delivers real benefits for passengers, many future rail franchises will be run by a joint team, made up of staff from Network Rail and the train company, and headed by a new alliance director. This will make the railway more reliable for passengers by devolving powers to local routes and teams, and ensuring that one team is responsible for running the trains and the infrastructure they use.

Today I am also issuing the invitation to tender for the next South Eastern franchise. This will, among other things, deliver longer trains, providing space for at least 40,000 additional passengers in the morning rush hour, and a simpler, high-frequency turn-up-and-go timetable on suburban routes, which will boost capacity and provide a better service to passengers. As part of that unification of track and train, the day-to-day operations on the South Eastern network will be run by a joint team led by a new alliance director, heading both the track and train operations. On the East Midlands main line we will also introduce a joint-team approach, bringing more benefits to passengers.

Honourable Members will know that the east coast main line has had its challenges in recent times, and I intend to take a different approach on this route. From 2020 the East Coast Partnership will run the intercity trains and track operations on the east coast main line. This partnership between the public and private sector will operate under one management and a single brand, overseen by a single leader, with a leading role in planning the future route infrastructure. Bringing the perspective of train operators into decisions on rail infrastructure will help ensure that passenger needs are better represented in the process. While we run a competition to appoint the East Coast Partnership members, we are in discussions with the existing East Coast franchise operator to ensure that the needs of passengers and taxpayers are met in the short term while laying the foundations for the reforms I have just outlined. I want the passenger to be central to train operators' strategies. On some parts of the network, that will mean we will introduce smaller train companies.

I am today launching a consultation on the Great Western franchise, to seek views on how it can best meet the needs of passengers and communities in the 2020s and beyond. We want to establish whether it should be retained in its current form or divided into smaller parts with a more local focus, to best deliver for customers. We will also begin the process of splitting up the Thameslink, Southern and Great Northern franchise in 2021. When the two franchises were put

together, it was intended that this would help the implementation of the £6 billion Thameslink upgrade investment programme, which is now near completion.

Despite the improvements in the railway since privatisation, we are still some way from achieving the modern, high-performance, low-cost and customer-focused industry we all want to see. That is why we must continue to reform and invest in the railway, and maximise the contribution that public and private sectors make to improving services. We must continue to deliver the biggest railways investment since the steam age, which the party opposite never did when it was in government. Getting to grips with industry structure will go hand in hand with investment in the infrastructure. We need new capacity to cope with growing demand and new links to support economic growth and housing development.

The Great North Rail Project is transforming journeys across the north. There will be faster, more comfortable journeys, new direct services and room for tens of thousands more passengers. Every single train replaced in the north of England is new or brand new—again, a change we never saw when the party opposite was in power. I now intend to invest around £3 billion in upgrading the trans-Pennine route to deliver faster journey times and improved capacity between the great cities of Leeds, York and Manchester.

In the south, flagship projects such as Crossrail and Thameslink are now coming on stream to provide the capacity to underpin economic growth. Our investment in HS2 will bring the north and south closer together, and bring benefits for people across the country. It is a new railway for a new era of rail—a bold and ambitious project. But if it were not for the ambition and faith in the power of rail to transform this country, we would have no railways at all.

Our vision rejects the mentality of decline that characterised the railway in the second half of the 20th century. To complement record levels of private investment, we recently announced government funding of up to £34.7 billion for the railway in the years 2019 to 2024, as part of an overall expected spend of around £47.9 billion. This will support an overhaul of the network's ageing assets and other vital work and improvements. Passengers value reliability more than anything, and this commitment will help deliver that. We will also deliver new connections. We are establishing the East West Rail company to restore the lost rail link between Oxford and Cambridge—lost to passengers in 1967—and provide a major boost to the region. I expect construction work to begin next summer. We will look at other opportunities to restore capacity lost under the Beeching and British Rail cuts of the 1960s and 1970s where they unlock development and growth, offer value for money and, in particular, unlock the potential for housing.

Large projects and industry reform take time, but passengers want to see faster improvements in their day-to-day experience travelling on the railway. We do, too—and we are doing something about it. We are pushing to see smart ticketing available across almost all of the network by the end of 2018. We are improving arrangements for compensation and dispute resolution when things go wrong, including supporting the establishment of a passenger ombudsman. We are working with industry to extend the benefits of discounted rail travel to ensure that all those aged 16 to 30 can access appropriate concessions. We are investing in new digital technologies and better mobile connectivity, and are committed to improving the accessibility of the network and delivering a modern customer experience, open to all.

I know that the party opposite does not believe this, but privatisation brought a revolution to our railways. That is why there are twice as many passengers as there were 20 years ago. But now is the time for evolution to build on that success by joining up track and train, expanding the network, modernising the customer experience and opening the railway for new innovation. We have a vision of a revitalised railway used to its full potential by a partnership between the public and private sectors, supporting people, communities and the economy. We are taking real action to make that vision a reality. I am making copies of the strategic vision available in the Libraries of both Houses, while the Great Western and South Eastern documents are now on the website of the Department for Transport. I commend this Statement to the House".

4 pm

Lord Rosser (Lab): I thank the Minister for repeating the Statement made in the House of Commons. We welcome and advocate continuing investment in our rail industry and measures to enhance its role and importance in the economy of this country and in the lives of our citizens, including the reopening of some lines closed under the Beeching cuts.

The extent to which the content of the Statement and the associated strategic vision document will deliver those objectives is debatable. We have a Secretary of State who is very good at making grandiose statements about future rail developments—in fact, almost as good at doing that as he is in quietly announcing the abandonment or postponement of schemes that he has previously championed. No Government have cancelled or postponed more railway electrification schemes, or parts of schemes that they have previously espoused, than this one. On the roads, the policy is to reduce diesel mileage; on the railways, it is apparently to increase it above that previously planned. What is the Government's strategic vision for rail in respect of the further electrification of our railways? I think the Statement was silent on that issue.

The Statement was pretty thin, too, on the issue of fares, as is the associated document called "a strategic vision for rail". Fares have been deliberately and regularly increased by well above the rate of inflation in order to reduce the percentage of operating costs not covered by fares, and thus the costs to the Government, which they transfer on to the backs of commuters in particular. What is the Government's strategic vision on fares? What is their objective in relation to the percentage of operating costs that should be covered by fares? How can you have a credible strategic vision without saying what your future intentions are in respect of the level of fares, fare increases in the future and the objectives that you are seeking to achieve and why?

The Statement made reference to the next South Eastern franchise and referred to providing space for additional passengers. However, that is not a strategic

[Lord Rosser]
vision for addressing overcrowding in our railways. There are many other examples of overcrowding on our rail network, not solely in London and the south-east. Since the Government have chosen to describe their document as "a strategic vision for rail", what are the objectives in relation to reducing overcrowding? What is the end game in respect of overcrowding and its elimination that the strategic vision is seeking to achieve? Just referring to new schemes, which may or may not be abandoned or postponed at some stage in the future, does not constitute a strategic vision against which success or failure in delivery can be judged.

The Statement set out proposals and intentions for tinkering with the organisational structure of the railways. It referred to a proposed alliance on the east coast main line, running intercity trains and track operation under one management. We had a similar arrangement between Stagecoach and Network Rail in the south-west, which did not seem to prove an unmitigated success. Why do the Government now think this proposed alliance will prove any more successful? What are the specific objectives that it will be expected to deliver under the strategic vision for rail?

As the Government thrash around to find an organisational structure for our railways and the train company franchises that they deem acceptable, they may care to look at the structure of the London Underground, which combines track and trains and has generated—in the public sector—significant increases in the numbers of passengers. It is also a system under which all the revenue goes back into providing and improving services for the travelling public, which cannot be said for our railway network as a whole. Indeed, so concerned was the Secretary of State about the success of Transport for London and London Underground in running services in the public sector, and the revitalisation of the London Overground network since it was taken over by TfL, that he felt it too politically dangerous to agree to the transfer of any further rail services within the GLA area to TfL—not much of a strategic vision there.

This Statement does not represent a strategic vision. It is silent on too many issues, including future fares policy, and silent about too many overall objectives to be such a strategic vision. It is, frankly, more a hotchpotch of separate announcements, some of them regurgitated, since they have been made previously and do not represent anything new. While I reiterate what I said earlier about welcoming new investment in our railways if it materialises, tinkering with the structure, which seems to be the Government's modus operandi at present, will not address rail's urgent organisational and ownership problems. Indeed, to the extent that making the structural changes proposed deflects the attentions of managers and staff from the objective of running reliable and efficient services, tinkering with the structure is more likely, in fact, simply to add to the problems.

Baroness Randerson (LD): My Lords, one thing on which we agree with the Government is that the answer to improving the railways does not lie in renationalisation. I am disappointed in this strategic vision. It is largely a restatement of existing announcements, some of which I recognise from the days of the coalition.

However, on these Benches, we welcome the commitment to assess transport projects on the basis of their potential for unlocking future growth, rather than on a simplistic assessment of current overcrowding and journey time saved. I want to ask the Minister about the announcement on reopening old lines, which had a lot of publicity this morning—but it is obvious that no new money is involved, as otherwise we would have been told. The reference in the Statement is to partnership with metro mayors. That is usually a code for saying that local government will foot the bill. What are the terms on which these proposals are made? Where will the money come from and how advanced are the plans, with specific examples in mind?

This week, the Minister replied to a Written Question from the noble Lord, Lord Berkeley, setting out total transport expenditure across each region of England. I am grateful to the noble Lord for asking the Question. The Answer, which I recommend to your Lordships, makes extraordinary reading. Capital expenditure in the last year is a total of £16 billion across the whole of England, £6 billion of which was spent in London. Only £520 million was spent in the north-east, and £666 million in the east Midlands. This entrenches the inequality and the divide in our society, and I am disappointed that this Statement does not provide new announcements on projects for the north and the Midlands that are desperately needed. What are the Government going to do to change that balance of spending within the country?

Finally, there is no reference here to electrification projects. The stalling of electrification and the abandonment of those plans was a huge blow to those poorer parts of the UK, including south Wales—west of Cardiff being an example. It is important that they are given the renewed investment that electrification with provide. That will also improve the quality of our air.

Baroness Sugg: My Lords, the noble Lord, Lord Rosser, asked how we will deliver these schemes. As the Statement announced, we have already provided up to £34.7 billion directly in government grant, we expect significant amounts of that to be spent on enhancement during the period, and the funding is provided within that grant to support that. We are also making funding available for early-stage development of the new enhancement schemes.

Both the noble Lord and the noble Baroness, Lady Randerson, brought up electrification. We understand that passengers expect high-quality rail services and, of course, we are committed to electrification where it delivers clear passenger benefits. We are also taking advantage of state-of-the-art new technology to improve journeys. The decision to cancel some of the electrification was made to deliver the benefits to passengers sooner than would otherwise have been possible. We are focused on using the best technologies to improve each part of the network, and will continue to do so.

On fares reform, of course we carefully monitor rail fares and changes in average earnings, and will keep them under review in calculating rail fares. The regulated rail fares are capped in line with inflation each year

and for the next year. In the five years to 2019, Network Rail is spending more than £40 billion to improve the network. On average, 97% of every pound of the passenger's fare goes back into the railway. We recognise that the fare system can be complicated, and the Rail Minister is working with the industry to consider what can be done quickly to help passengers find and choose the best ticket.

On overcrowding, obviously the expansion we are talking about today will help. HS2, once it is up and running, will take huge amounts of people off the overcrowded rail network. As I said in the Statement, the South Eastern franchise is a good example. We are hoping that it will provide space for at least 40,000 additional passengers in the morning rush hour.

The noble Baroness, Lady Randerson, asked how we will decide on the new rail lines and when they will be delivered. We of course want to work with partners in industry to develop the proposals for the next generation of those lines. We are developing guidance for investors and developers to ensure that the process for taking the proposals forward is as clear and transparent as possible. We cannot today commit to specific amounts or the timescale when the proposals are still in such early stages of development. The strategy refers to some of the potential ones, so we are aiming to take a sensible and measured approach, helping our partners to develop those proposals. As I said, we are funding schemes to help develop business cases.

The noble Baroness mentioned the north. We are investing huge amounts of money into rail in the north. For example, there is the £1 billion in the Great North Rail project to 2020, the train operators of Northern and TransPennine Express will invest over £1 billion in buying new trains and there will be more than 500 new carriages. The Great North Rail project has seen the journey times between Manchester and Liverpool improved by 15 minutes. In addition, we are working with Network Rail in the regions to develop options for major upgrades between Manchester, Leeds and York to provide more seats and faster journeys.

4.12 pm

Lord Elton (Con): My Lords, the Great Central Main Line was closed under Beeching on the grounds that a consultation and survey showed that travellers preferred massively to use the parallel line going north. I was a passenger and commuter on that line during those years, and saw how the traffic on it was strangled by the huge reduction in efficiency, punctuality and cleanliness before the consultation took place. Before that campaign it carried a great deal of traffic, both long distance and commuters. Is reopening all or part of that line still feasible, or would it be considered now to be in competition with HS2, which would be a grave misjudgment?

Baroness Sugg: We are looking at every economic case for each of those rail lines, and as I said, we are working with partners to see whether an economic case can be made. Obviously, demand has changed significantly since the railway line was shut. I do not have specific details on that line but I can certainly come back to my noble friend on that.

Lord Berkeley (Lab): I thank the Minister for repeating the Statement, and congratulate her on some of the things in it. Now is the time to see what can be and will be delivered. It sets out in a very positive way the contestability of some of Network Rail's costs and how other contractors can do enhancements. I like the list of new openings and enhancements, some of which I have been involved in. I notice that something dear to my heart and that of my noble friend the Chief Whip is missing from the list—the reopening of the Lewes to Uckfield line. Perhaps the Minister can say why it is not included.

My biggest concern is the structural issue of the east coast main line, which is mentioned a lot in the report. It is easy to say that having the passenger and the Network Rail operators work together is a good thing, but there are open access operators and freight. I declare an interest as chairman of the Rail Freight Group on that line. The passenger figures for the open access operators on the east coast main line are very positive, so competition has brought benefits, not just to the traffic on the main line but to some of the other places served. Can the Minister explain how what the Government are trying to create as a big monopoly is going to protect the interests of the other open access operators and freight on a vital artery?

Baroness Sugg: As for the specific line the noble Lord referred to, the ones used in the strategy were just examples of lines that could be reopened; of course there are many others across the country. As I said, we will look into the economic case for all of them. On the east coast partnership, I acknowledge that the increased competition has led to increased numbers, but we believe that that suggested partnership between private and public ownership will be the best solution for the passengers. On freight, we think that joining up the track and train will benefit freight as well. We will ensure that those interests can contribute to the decision-making process on the franchising, and on the use of the rail lines.

Lord Framlingham (Con): My Lords, I welcome much of what the Minister has said—but not, she will not be surprised to hear, the bit about HS2. This albatross of an infrastructure project is now forecast to cost over £100 billion. If that money were directed to the rest of the country—the rest of the regions and services that really need it—it would transform our railway system and get rid of a project that everybody now knows is completely discredited.

Baroness Sugg: My noble friend will not be surprised to hear that I do not agree with him on the benefits of HS2; nor do I recognise the £100 billion figure that he quotes. Our trains are becoming increasingly crowded, and that is why we need HS2. We have invested £55 billion in it, but that is not at the cost of other improvements in our rail network. The announcements we have made today will enable both HS2 and our existing railways to improve.

Lord Adonis (Lab): My Lords, I congratulate the noble Baroness on her appointment to the best department in the Government, the Department for Transport. I also welcome what she said about HS2 and east-west rail. Is she aware that when this House voted on HS2,

[Lord Adonis]
it voted by a majority of 10 to one in favour of the project? That is a degree of unanimity that the House has shown on no other subject that I am aware of—besides its opposition to Brexit.

However, I find the Statement disappointing, because the document that the Government have published today is, essentially, a smokescreen, with all the blather about reopening Beeching lines—which, of course, is not going to happen. It is a smokescreen for a very big announcement, which is detectable only in the small print: that the Government intend to end the current east coast franchise three years early. They intend to do so—forfeiting hundreds of millions of pounds of payments that would have been made to the Department for Transport—in order, it appears, to bail out the two private companies that currently operate that route, in the guise of a public/private partnership that will do nothing other than excuse those companies from making the premium payments to which they were previously committed.

Does the Minister understand that treating private companies in this way in respect of contracts they have entered into will simply encourage other private train operators to try for the same kind of bailout? Is she aware that when I was Secretary of State we faced exactly the same pressure with the downturn in projected passenger numbers on the east coast main line, which led the then private operator, National Express, to ask us for a bailout, which we refused to give? It was as a result of that refusal that the east coast nationalisation took place: it was a huge success, and should not have been ended. Had the East Coast national company continued operating that line, the return to the taxpayer would have been significantly higher than we now face. Can the noble Baroness answer two specific questions? First, can she tell me precisely how much the taxpayer will lose in premium payments that are currently contracted under the new public/private partnership which she announced this afternoon? Secondly, will she undertake to publish all the communications between Stagecoach, Virgin and the Department for Transport which have taken place prior to the development of the strategy that she announced this afternoon?

Baroness Sugg: My Lords, I do of course recognise the noble Lord's vast experience in this area but I am afraid that I do not recognise the description of the announcement today as a bailout. As the noble Lord will know, as part of the bidding Stagecoach made a series of financial commitments. It has met them in full to date and the Department for Transport expects it to continue to honour them. We will hold VTEC to its obligations and in the meantime will ensure that passengers are protected. The noble Lord mentioned the Directly Operated Railways solution. Since 2015, VTEC has contributed on average 20% more per rail period to the taxpayer than when the line was operated by Directly Operated Railways, and has achieved consistently high passenger satisfaction. It will have a rollout of new rolling stock in 2018. The choice today is not between OLR and privatisation. As announced, we are implementing the first regional public/private partnership on the route to deliver the best of both the private and the public sectors.

Lord Bradshaw (LD): My Lords, I draw three points to the Minister's attention. On electrification, we had a meeting which demonstrated that the technology of the hybrid trains to which she referred may save some money and some face in the short term but will leave behind a trail of costs far in excess of those of electrification. Therefore, it ought to be considered very seriously. Secondly, I put in a word for CrossCountry trains along the lines of the reference made to Great Central. CrossCountry trains used to make much use of that route. In the new dispensation the Minister announced, will the significant success of CrossCountry trains in providing services across the country rather than to London be safeguarded? Thirdly, in the era of Dr Beeching, British Rail made a lot of money out of parcel traffic. It seems there is a new opportunity to harness the appetite for parcel services with delivery from terminals in cities by pollution-free vehicles, which could perhaps replace a lot of the vans that create both congestion and pollution chaos.

Baroness Sugg: I met the noble Lord recently to discuss electrification and we are seriously considering its benefits versus other options. We are trying to focus on the outcomes and what will provide better value quicker. As regards CrossCountry trains, the idea is that more railways will be opened up. I do not believe that will affect competition in relation to that company. On the noble Lord's last point about parcels and freight, with HS2, as I said, and the expansion of the other railways, rail freight would be expected to increase.

Lord Lansley (Con): My Lords, my noble friend the Minister will know that increased communication opportunities between Oxford and Cambridge offer significant national economic potential. However, when will the public have an opportunity to look at, and be consulted on, the route of such a rail link between Sandy in Bedfordshire and Cambridge? I should declare an interest as a resident west of Cambridge.

Baroness Sugg: My noble friend mentioned East West Rail, which is a good example of our delivering on the opening of tracks. Since last year, we have been building up the team to work with Network Rail and the department to accelerate the permissions needed to re-open the route and reduce the cost. As part of that, there will be consultation with the people it affects.

Lord Darling of Roulanish (Lab): My Lords, I appreciate that the Minister did not write the Statement—it is somebody else's—but it contained a somewhat inaccurate précis of what happened to the railways after privatisation. There are two problems: one is that only central government is capable of providing the sustained level of investment needed to make the railways work. That dried up after privatisation. On passenger numbers, what the Minister referred to happened in the late 1990s and early 2000s, when investment started. The second mistake is to believe that the operation of track and rail could be fragmented. They are intimately connected, for obvious reasons, although that escaped the architects of the original privatisation.

On that point, I want to ask the Minister something. I welcome the idea that track and train should work closely together. It is not new; it started in 2003.

I know that because I was there at the time, but I am glad that it is still being thought about 14 years later. On the point made by my noble friend Lord Adonis, what is happening on the east coast main line? Is the Virgin franchise continuing, or not? There is a real problem when we grant franchises to railway companies that come to believe that if it gets too difficult, or they do not want to do it, they can bail out and hand the keys back to the taxpayer. That is not acceptable and it needs to be stopped, so I hope the Minister will answer the noble Lord's point. If she does not, that question will be asked again and again, because transparency is needed on what exactly is going on.

Baroness Sugg: On the separation of track and train, we acknowledge the benefits of putting together the operation of both those things. That is exactly what today's announcement is all about. On the east coast partnership, as I said, the new partnership will come in from 2020, at which point the current franchise will be terminated. That was originally expected to happen in 2023. As I also said, we will hold VTEC to the obligations it made.

Lord Adonis: Until 2020?

Baroness Sugg: Yes.

Lord Judd (Lab): In the Government's concern for the future, are they taking seriously the lessons to be learned from recent investment? I am a regular user of west coast rail services. How can we justify the level of expenditure in the new signalling system on the west coast, when delay after delay still occurs because of signal failure? What are we learning about quality of investment? On Cumbria, and the frequently loose talk about the north, specifically, what are the Government's plans for Cumbria—west Cumbria in particular—and for real improvement in the communications between Newcastle and Carlisle?

Baroness Sugg: On the West Coast Partnership, I understand that passengers are benefiting from its new technology. Obviously, we want to see improvements in the passenger experience on the west coast services. On the detailed question on Newcastle and Cumbria, I am afraid I will have to get back to the noble Lord.

Lord Stoddart of Swindon (Ind Lab): My Lords, I welcome the Statement. It is something of a counter-revolution. I remember sitting on the Front Bench, opposing the legislation that split operation from track maintenance. I am glad to see that after all these years, the lesson that track and operation go together has been learned. Will legislation will be needed to put these proposals into operation? That is important. Can the Minister say whether smart ticketing will abolish going online, to a railway station or to some agent to book a ticket? If those options are not retained, a lot of people will not able to travel by train.

Baroness Sugg: I thank the noble Lord for his recognition of the importance of integrating the track and train systems, which will obviously help to reduce delays and increase performance for the passengers. We will not need legislation to make these changes: they will be rolled out as the new franchises come up. We are driving forward the roll-out of smart ticketing so that, by the end of 2018, almost everyone will be able to buy smart tickets. They will be able to use their mobile phones, barcodes and smart cards. They will have the choice of travelling without a paper ticket but the paper ticket will still be available.

Lord Scriven (LD): Will the Minister clarify an earlier answer? Electrification, particularly of the Midland main line, is not at all in this strategy. If we are talking about faster, cleaner, cheaper and greener railways, electrification has its role. In answer to my noble friend, she said that the Government would look at electrification again. Is she giving a firm commitment that the Midland main line is being looked at again by the Government for electrification?

Baroness Sugg: As I said, we are making decisions on electrification. We obviously see its benefits, but our focus is on improving rail journeys and passenger experience as quickly as we can. In some cases, electrification would take many years and cause a lot of disruption. The noble Lord mentioned the environment. We have introduced the new, state-of-the-art bi-mode trains, which, while giving passengers more comfortable and quicker journeys, will also help the environment.

Baroness McIntosh of Hudnall (Lab): Will the Minister have another go at answering questions put to her by my noble friends Lord Adonis and Lord Darling? She has conceded that the current franchise on the east coast will end three years earlier than originally anticipated. Can she tell the House—if she cannot today, could she please write to me—what the net cost is of that franchise being ended? That is, what money will the Treasury not receive as a result of that franchise being ended that it would otherwise have received?

Baroness Sugg: I will certainly have another go at that. The noble Baroness is quite right: the franchise was originally due to end in 2023 and it will now end in 2020, when the east coast partnership will take over. As I said, the current franchise owners have made a commitment and we will hold them to it. I will come back to the noble Baroness on costs.

Sanctions and Anti-Money Laundering Bill [HL]

Committee (2nd Day)

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

4.32 pm

Clause 17: Extra-territorial application

Amendment 52

Moved by ***Lord Lennie***

52: Clause 17, page 15, line 20, leave out subsection (4) and insert—

"(4) For the purposes of subsection (2)(b), a body incorporated or constituted under the law of any part of the United Kingdom includes a body incorporated or constituted under the law of the following—

(a) any of the Channel Islands;

(b) the Isle of Man;

(c) any of the British overseas territories."

Lord Lennie (Lab): My Lords, this is a probing amendment concerning the territorial application of sanctions regulations. The amendment will make it automatic that the sanctions imposed would apply to bodies incorporated or constituted in the Channel Islands, the Isle of Man or the British Overseas Territories. This is not because they are favourite places to hide away from tax regimes—although they are—but because they are dependent on the UK in terms of foreign and defence policy matters. For sanctions to have an effect, they have to have an international dimension. Currently determined by the UN or the EU, they require co-operation and co-ordination between and across nations. It is surely a matter of good policy to seek to put our own house in order first—which this amendment would help to do.

The Bill currently proposes that its sanction provisions "may" be applied to the Channel Islands, the Isle of Man or the British Overseas Territories by use of an Order in Council, which I understand is a Privy Council matter. I am not a member of the Privy Council and I do not know how it operates. I do not understand in detail how it works, and I am not sure whether such orders are always granted, whether there is ever a debate about them, whether they can be challenged or whether there is delay built into the process. This amendment would make it clear that, as far as sanctions are concerned, the UK will have a consistent application of the law. We would welcome the Government's views on that.

Baroness Northover (LD): My Lords, I support the amendment. It is useful to have more precise definitions within the Bill, and it seems that the amendment seeks to tighten up the subsections which relate to the Channel Islands, the Isle of Man and the British Overseas Territories, so that instead of a Minister being able by an Order in Council to add these areas, they are included in primary legislation. It makes sense to clarify that now and in primary legislation in this way to ensure that those whom the UK wishes to sanction cannot evade that sanction by association with these areas. If the UK is to leave the EU, it makes sense to tighten in this way.

The Minister will know that there is a meeting today of the Joint Ministerial Council at the Foreign Office with the overseas territories. Perhaps he could assure us that they would be content to be clearly within the same sanctions regime. I know that they will be less keen on aligning themselves with the UK on anti-money laundering measures; we will of course come to that later.

I also flag to the Minister that, in addition, the Law Society emphasises that guidance should be given on the terms in Clause 17, as well as those in Sections 2, 10, 15 and 46. It points out that in Clause 17 it is unclear whether the UK sanctions regime would apply, "where UK currency is used, where a non-UK subsidiary of a UK company is involved, or where a UK person on the board of a non-UK company is present when a decision is taken in breach of the UK sanctions regime". It suggests that Clause 17 should be renamed "UK nexus" as its current subject matter does not deal sufficiently with "Extra-territorial application".

It seems that further clarity is required on such issues. Clearly, it would be useful if stakeholders were properly consulted to assess the impact of the scope of application of the UK sanctions regime, simply to identify any unintended consequences. Clearly, intended consequences are fine. So this is a complicated area, but I hope that the Minister will take on board this advice.

Lord Faulks (Con): My Lords, I note the nature of the amendment and the final provisions in the Bill in Clause 51(3). I was at one stage a Minister with responsibility for the Crown dependencies, so I am acutely conscious of the particular constitutional relationship between the United Kingdom and the Crown dependencies. As I understand it, we do not normally legislate without their express consent. I wonder whether that is why the Bill is framed as it is. However, I look forward to hearing the Minister's response on this.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, I thank the noble Lord for tabling this amendment. The noble Baroness, Lady Northover, talked about the Joint Ministerial Council; as a Minister for the Overseas Territories, today has been one of those days when I find myself shuttling between the Joint Ministerial Council and your Lordships' House. I can confirm to the noble Baroness that this issue—and other elements that relate to the departure of the UK from the European Union—is very much on the agenda of our discussions with the overseas territories. Indeed, as we speak, my honourable friend Minister Walker is hosting a session with them on the implications of the United Kingdom leaving the European Union. The noble Baroness raised issues on guidance and I will certainly take back the issue of where we can clarify certain elements.

I will pick up on a couple of points so I can clear them at the start. In his intervention, my noble friend Lord Faulks—

Lord Collins of Highbury (Lab): As a matter of information, it is our amendment.

Lord Ahmad of Wimbledon: I am fully cognisant of that. I meant no discourtesy to noble Lords on the Opposition Front Bench; I thought it appropriate to give the context of what I was going to say. The clarification that my noble friend provided from the outset is exactly why the particular clauses have been framed as such.

I will now take up what the noble Lord, Lord Collins, has just pointed out. The amendment is in the names of the noble Lords on the Opposition Front Bench. I thank them, as I did at the start. I believe that I came to the noble Lord, Lord Lennie, first—we will have to check *Hansard* on that—to thank him for tabling the amendment.

Clause 17 sets out which persons can be bound by sanctions regulations, in the UK and elsewhere. It also confirms that prohibitions or requirements can be

imposed on any conduct in the UK, including UK territorial waters, or on any UK person anywhere in the world. This clause is consistent with the way the UK currently implements sanctions as part of the European Union. If noble Lords are interested, further detail is provided in the White Paper we published in April.

Clause 17 also allows for Her Majesty, by an Order in Council, to extend the effect of sanctions to bodies incorporated or constituted under the law of any of the Channel Islands, the Isle of Man and any of the British Overseas Territories. This amendment would remove the ability of Her Majesty to make an Order in Council in respect of corporate bodies registered in the overseas territories and Crown dependencies. Instead, it would require that, when UK Ministers legislate to create sanctions in regulations, these bodies would automatically be caught.

When introducing this particular amendment, the noble Lord referred to the overseas territories in a very generic way. I have had the good fortune of visiting one or two of them—somewhat tragically in the aftermath of the hurricanes that hit—and generalising all our overseas territories in a particular way is not something I would subscribe to. They provide some incredible potential. For example, I am not sure how many Ministers partake of lobster, but apparently Tristan da Cunha has the best lobster in the world. On a more practical note, we have done some incredible work with them on marine protection and building sustainable economies.

I make that point because it is important to recognise the role that our overseas territories play. However, I agree with the point the noble Lord raised that the overseas territories and Crown dependencies must follow the UK Government's foreign policy, including the sanctions we apply, and that bodies incorporated or constituted in these jurisdictions must also be bound by sanctions. The Foreign Office—to confirm what I said at the start to the noble Baroness, Lady Northover—has discussed the Bill with the overseas territories and Crown dependencies, and they also accept this point of principle.

However, there are constitutional considerations that affect the way sanctions are implemented by the overseas territories and Crown dependencies. As my noble friend Lord Faulks pointed out, at the moment all Crown dependencies—Jersey, Guernsey and the Isle of Man—legislate on their own behalf, as do Gibraltar and Bermuda. We anticipate that these jurisdictions will seek to continue to do so—save, possibly, for a transitional period. We legislate for some of these jurisdictions directly through Orders in Council. However, as I have said, other jurisdictions legislate for themselves.

The Bill is drafted in a way that reflects this reality. It is consistent with the current implementation model for UN and EU sanctions, as well as measures under the Terrorist Asset-Freezing etc. Act 2010. To change this model would depart from current practice and we do not see a compelling case for this. With that explanation—and the assurance I have given to the noble Baroness on the valid point she raised about the Law Society, which I will certainly look at again—I hope that the noble Lord will be minded to withdraw this amendment.

Lord Lennie: I thank the Minister for that answer. We will consider, read carefully what he said and, perhaps, come back to it. In the meantime, we will seek leave to withdraw the amendment.

Amendment 52 withdrawn.

Clause 17 agreed.

Clause 18 agreed.

Clause 19: Right to request variation or revocation of designation

Amendment 53 not moved.

4.45 pm

Amendment 54

Moved by ***Lord Pannick***

54: Clause 19, page 16, line 15, after "decide" insert "as soon as reasonably practicable"

Lord Pannick (CB): My Lords, this amendment is in my name and those of the noble and learned Lord, Lord Judge, and the noble Lord, Lord Collins of Highbury. It is not concerned with lobsters; it is concerned with the duty of the Minister to consider a request to vary or revoke a designation. The Bill contains no provision requiring the Minister to address such a request within any specific time period. I can understand why it would be inappropriate to set any defined time period—how long it takes to address a request to vary or revoke a designation will inevitably depend on the circumstances of the individual case—but the Bill should, I think, contain a more general obligation on the Minister in relation to time. This amendment would require the Minister to decide on a request to revoke or vary,

"as soon as reasonably practicable".

It is important for the Bill to impose such an obligation because, under Clause 32, read with Clause 33(5), a person who is put on a sanctions list cannot seek a review from the court until the Minister has made the decision on the request to vary or revoke the designation. It would be quite wrong for a person to be listed, with all the adverse consequences that that involves, with no opportunity to complain to a court unless the Minister had an obligation to act with reasonable expedition. In an extreme case, were this amendment to be included in the Bill, the courts would be able to say to the Minister that his or her delays were unacceptable.

I cannot see that a "reasonably practicable" test could be in any way objectionable. I suspect that the Minister will tell the Committee that the amendment is unnecessary because of course Ministers will decide these cases as soon as reasonably practicable. We have heard such assurances repeatedly during this Committee

[Lord Pannick]
stage. However, I am sure that the Minister understands that in contexts as important as this Bill I prefer to see obligations written into the statute rather than rely on assurances from Ministers, however fair and reasonable they are. I beg to move.

Baroness Northover: This seems an eminently reasonable amendment. It almost seems unambitious in its scope—it invites Ministers to answer questions along the lines of "as soon as possible" and "shortly"—but noble Lords are surely right to seek to put something of a common-sense timetable on this, and we support them. The Bill proposes to give such wide and untrammelled powers to Ministers that any moves to qualify them should be welcomed.

Lord Collins of Highbury: As the noble Lord said, I have added my name to this amendment, and I have done so for a very good reason, which is that it is about an important matter of procedural fairness and should be included in the Bill. It is not unreasonable to say that there should be a judgment about the actions of a Minister in terms of timeframes. As we have understood in this House on many occasions, the summer can often be extended into the autumn without the blink of an eyelid.

Lord Judge (CB): Without this amendment, we are leaving a recipe for lethargy, which is inappropriate. We need it so that the court will get hold of the complaint, if one is needed, as soon as practicable.

Lord Ahmad of Wimbledon: My Lords, I thank the noble Lord, Lord Pannick, and the noble and learned Lord, Lord Judge, for tabling this amendment, and I thank other noble Lords for their contributions. Perhaps I will disappoint the noble Lord, Lord Pannick, somewhat by saying that I agree with the substance and constructive nature of the proposal before us. When the noble Baroness, Lady Northover, started talking about "shortly" and so on, I was reminded of my time as the Aviation Minister and the occasion when an announcement on Heathrow Airport was pending—but we got there.

In that mood, let me outline the Government's position on this amendment. When a request is received from a designated person to vary or revoke their designation, the appropriate Minister should ensure that they make their decision as soon as is reasonably practicable. As sanctions are applied without giving those sanctioned the opportunity to make representations, and because they have serious consequences on the individuals concerned, it is important to ensure that mistakes are rectified swiftly.

As sanctions are intended to change behaviour, it is also important that people should be able to have their designation revoked if they change their behaviour. Clause 19 therefore provides a quicker and less costly option than going to court. It will also have the advantage of keeping unnecessary pressure off the courts and potentially reducing costs to the taxpayer. The reassessment process exists to allow designated persons to seek swift redress when wrongly designated—and I can assure noble Lords that the Government fully intend to act promptly to requests for reassessments.

I shall certainly reflect on the amendment. I have listened carefully to noble Lords, who have made a compelling case for us to look at our position. With the assurance today that we will look at the amendment again—although it is only an assurance at this juncture—I ask the noble Lord, Lord Pannick, to withdraw his amendment.

Lord Pannick: I am grateful to the Minister. I look forward to hearing from him before Report that the Government are able to move on this matter. He has heard the views that there is no basis for not including this in the Bill. I hope this is the first of many amendments today that he will see the wisdom of. On that basis, I beg leave to withdraw the amendment.

Amendment 54 withdrawn.

Amendment 55 not moved.

Clause 19 agreed.

Clause 20: Periodic review of certain designations

Amendment 56

Moved by ***Lord Pannick***

56: Clause 20, page 16, line 43, leave out "3 years" and insert "1 year"

Lord Pannick: Again, this amendment is in my name and the names of the noble and learned Lord, Lord Judge, and the noble Lord, Lord Collins of Highbury. It concerns the periodic review provisions in Clause 20. The appropriate Minister is required to consider any designation of a person every three years. That is far too long a period given the gravity of the consequences of designating a person. It is true, as the Minister emphasised at Second Reading, that the listed individual can seek a review under Clause 19, but subsection (2) of that clause provides that once such a request has been made, no further request may be made by the individual unless,

"there is a significant matter which has not previously been considered by the Minister".

There may well be cases where, although the individual can point to no significant new material, the Minister, on reviewing the matter, may find good reason to vary or revoke the designation. Indeed, the passage of a year without any further material coming to light may justify looking again at whether the listing is appropriate. The three-year period is especially troubling because of the grave consequences of listing for the person concerned and because, as I said in the earlier debate today, you cannot start court proceedings under Clause 32(1)(d), to be read with Clause 33(5), until you have sought a review by the Minister and received a decision on that review.

The Minister will confirm that under the EU system, which this Bill is designed to replace, a periodic review occurs every six months normally but certainly in all cases at least every year. I can see no justification for this Bill to triple the period which can elapse before a review is required. I beg to move.

Baroness Northover: The noble Lord, Lord Pannick, was eagle-eyed as ever, and this issue came up at Second Reading. He now brings forward this amendment with other noble Lords, and we support them.

The point here is that the review period for designations would occur not after one year but only after three. As the Minister said on Second Reading, it could happen earlier, but of course it does not have to. I also note that, on Second Reading, the Minister said that he did not regard the period proposed by the Government as excessive. He did not answer the point that this was a detrimental change from the position should we stay in the EU. I expect that he has now had time to consult on that and—if you like—to recognise that the writing is on the wall and, I hope, to persuade his colleagues that this cannot stand.

There is no reason for the frequency of reviews to change from one year, as now in the EU, to three years. I hope and expect that the Minister will find that this is one straightforward area in which to concede. After all, it has always been said that if we were to leave the EU, no protections or rights of UK citizens would be diminished. This is a case in point.

I raise one other issue, which I think has been flagged to the Bill team. This is, again, from the Law Society. It is concerned that UK courts should have the jurisdiction to hear wrongful listings in the case of UN listed persons. It points out that the Bill does not require or permit a UK court to quash a wrongful listing for a person who is UN listed and can only ask the Government to use their best endeavours to secure a de-listing in the UN. It recommends that the Bill directly transpose into UK law—

Lord Pannick: I am sorry to interrupt, but that is the specific subject of Amendment 62, to which we are coming. I do not wish to inhibit the noble Baroness, but she may wish to be aware of that.

Baroness Northover: I did not spot that point. In that case, I will wait until we get to it. I hope that the Bill team will have taken it on board, both from the amendment submitted in the noble Lord's name and, indeed, from what we sent through.

Lord Judge: My Lords, I had thought of saying something but while the Minister, unlike Richard III, is in the giving mood, I do not want to discourage him.

Lord Lennie: My Lords, we have heard, and the noble Lord, Lord Pannick, has repeated, the gravity of the consequences of sanctions on the lives of individuals and dependants upon them. Three years is a very long time, particularly if the designation is wrong or if behaviour has changed and they are now compliant. Therefore, we ask that the three years be reviewed and replaced by one year. It cannot be left for a length of time without a review taking effect. The Minister has the right to review. The individual has only one possibility of an application review. Therefore, we ask that this become automatic in the Bill.

Lord Ahmad of Wimbledon: My Lords, I thank the noble Lord for tabling this amendment. The noble and learned Lord, Lord Judge, sat down before making a further point. I was reminded not of Richard III but of Oliver Twist, who wanted "more".

On this particular point, Clause 20 is one of a number of safeguards, as I am sure noble Lords have seen, within the Bill that provides for designated persons and requires the Government regularly to conduct a thorough re-examination of designated decisions. The Government must, as we have heard from noble Lords who have spoken through this short debate, conduct this review at least every three years. The noble Lord, Lord Pannick, has rightly raised the issue, and I accept the point, that the EU carries out reviews more frequently. However, Clause 20 should be considered as part of a system of safeguards that the Government have built into this Bill which I believe will provide at least an equivalent, and in some respects greater, level of protection to that afforded to individuals designated by the European Union.

5 pm

First, a designated person can request a reassessment of their designation whenever they so choose. Whenever that same person has new information to present in their defence or their circumstances change, they may request a further reassessment. The Government will consider such requests promptly. The closest equivalent process in the EU can take many months, as I am sure noble Lords are aware, due to the need for decisions and documents to be agreed unanimously by all 28 member states.

Secondly, designated persons can challenge in court on judicial review principles.

Thirdly, a Minister may instigate a reassessment at any time—for example, if new information becomes available to the Government, including revocation of a designation by one of our international partners. The decision to designate would not be made for an indefinite period. Rather, sanctions would be actively managed, and the Government would be under an obligation to revoke a designation if it no longer met the legal threshold.

Fourthly, the Bill mandates a broader political review of each sanctions regime at least once a year. This will shine a spotlight on the overall dynamics in the same way as the EU's annual reviews and provide impetus for Ministers to use the power I have just mentioned to instigate a reassessment of designations that may no longer meet the threshold given the passage of time.

The review mandated by Clause 20 is intended as a final protection in case a designation has not been actively considered for a considerable period. The three-year timeline is in line with current Australian practice. The US, Canada and others do not carry out such reviews. While I accept that the EU reviews are more frequent, the process—which I have looked into—is relatively light-touch: designated persons are invited to present new information and member states are given a similar opportunity to make observations. It is then up to each member state to decide how actively to engage in such reviews.

The process envisaged in Clause 20 would be a more substantial exercise than the EU review. It would accordingly take a great deal of time and resource, which would have to be diverted from other work. It would also risk cutting across ongoing court challenges and add further and unnecessary complexity to that litigation. Requiring this exercise to be run every year

[Lord Ahmad of Wimbledon]
would hold the UK to a higher standard than our international partners and is, we believe, unnecessary given the wider procedural protections I have outlined.

Therefore, on the basis of the explanation I have given—

Baroness Northover: In the Explanatory Notes accompanying the Bill, it is mentioned that sanctions apply to about 2,000 people. That does not seem a huge number of people where one might need to make this kind of assessment.

Lord Ahmad of Wimbledon: I am not quite sure what the noble Baroness's question is.

Baroness Northover: The Minister was saying that this was very onerous. I am aware that there is discussion elsewhere in the Bill of immigration status conflicting with those who have had sanctions imposed upon them. Obviously, when one is dealing with immigration status, one is dealing with very many people, but the point made in the Explanatory Notes is that one is not dealing with a large number of people here or a large number of sanctions provisions.

Lord Ahmad of Wimbledon: I think I understand the noble Baroness's question, but, notwithstanding the issue of numbers alone, Clause 20 lays out a process which the Government perceive to be more efficient than that currently adopted by the EU.

Lord Pannick: My Lords, I thank the Minister for his response. It is disappointing. I am not persuaded. As the noble Baroness pointed out, a limited number of people are involved here, and surely the time and the resources are justified by the significance of the sanctions imposed. It is right and proper that sanctions of such significance should be reviewed more often than every three years.

The Minister says that the individual can seek a review, which is right, but the individual can do so only if there is a significant matter known to the individual not previously considered by the Minister. There may well be material in the files available to the Government which is not known to the individual. The Minister says that the individual can go to court, but it is the same under the EU system: you can go to court but the whole point of the Bill is to encourage court procedures as a last resort.

The Minister's other point was that there is a sanctions review every year, but as I understand it—the Minister will correct me if I am wrong—that is not a review of individual cases but a review of the structure of the system, so for my part I do not see that that adds to the debate.

I will reflect on what the Minister has said, and I hope that he will reflect on this debate before Report, but we may well come back to this on Report. For the moment, I beg leave to withdraw the amendment.

Amendment 56 withdrawn.

Amendment 57 not moved.

Clause 20 agreed.

Clauses 21 to 25 agreed.

Clause 26: Review by appropriate Minister of regulations under section 1

Amendment 58

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

58: Clause 26, page 19, line 10, at end insert—

"( ) No later than six months from the date of completion of a review under subsection (1), the appropriate Minister must lay the findings of the review before Parliament."

Lord Collins of Highbury: My Lords, when we had discussions with the Minister prior to Second Reading and just after, the review of the regulations cropped up on a few occasions, the justification being that some of these new powers and regulations would not be subject to primary legislation. In those discussions, I asked, if you are reviewing in government, who tests and scrutinises that review? This is the first Brexit Bill and we have heard on many occasions that Brexit is an opportunity, or an obligation, to bring powers back to the United Kingdom. If that is the case—I do not necessarily agree—and the Minister supports it, this is an opportunity for him to support the principles of these amendments, which are about ensuring that powers taken by the Executive are subject to proper scrutiny, and that the Executive are held to account by Parliament.

Amendment 59 sets out the details and asks: how do we do that job? What are we measuring? But if there are issues and the Minister says, "I cannot have this list because there are things in it that may be subject to national security, or other things that cannot be disclosed"—the Government seem to have a habit of not disclosing information to Parliament on matters relating to Brexit—I would be more than willing to consider those concerns and take them into account. Obviously, if there are issues with the list then the minimum standard that I am arguing for is Amendment 58. I do not think it unreasonable that if the Government are taking these powers, we should be able to hold them to account in any possible review. I know the Minister will say that regulations are subject to consideration by Parliament, et cetera, et cetera, but that is not the scrutiny we want to see here. I hope that if the noble Lord is able to continue in his giving mood, he can give us some positive words about how Parliament will be able to hold the Executive to account.

Baroness Northover: My Lords, these amendments in the name of the noble Lord, Lord Collins, helpfully make much clearer the commitments that Ministers must make to review the regulations they have put in place, giving a time by which this must happen and more detail on what they should include. They would, indeed, as the noble Lord has indicated, make these reviews more transparent and accountable and we are happy to support them.

Lord Ahmad of Wimbledon: My Lords, they say that generosity defines the spirit of a person, so perhaps I can be slightly more generous than noble Lords may perceive. The noble Lord, Lord Collins, is quite correct: we have talked about this issue, and sanctions, we all accept, can be an effective tool of foreign policy and national security, but I also accept that they can have

serious implications, not only for those directly designated but also for businesses and charities operating in particular areas.

Foreign policy priorities can change frequently. It is therefore important that Ministers regularly revisit the decision to apply sanctions regimes to political problems and security challenges, and also consider carefully whether the sanctions are having the intended purpose, whether there are unintended consequences and what adjustments might be needed to achieve the desired effect.

Clause 26 therefore requires the Government to carry out a political review of its sanctions every year. The EU also carries out annual reviews of its sanctions regimes. The purpose here is to consider whether the sanctions should continue unchanged or be amended. If there is a published outcome, it is simply confirmation that the legal Acts have been renewed or amended. We have in mind a similar model for the UK; the annual review would be mainly an internal policy exercise, rather than a report for external publication. If the Government decided as a result to amend the sanctions regulations, this would involve a process of parliamentary scrutiny through which we would set out the rationale. Of course, the Government would always respond to Parliamentary Questions about specific areas of policy through the usual channels.

That said, I have listened very carefully to the noble Lord, Lord Collins, and we are looking at the amendment specifically. I will reflect on the proposal in that regard. He made the helpful suggestion that, between Committee and Report, we meet again to work out some of the perhaps necessary parameters. I know he appreciates national security issues and other such issues. I hope, with the assurance that we will reflect on his proposal, the noble Lord is minded to withdraw his amendment.

Lord Collins of Highbury: I thank the Minister. I am going to take that as his continued giving mood and I certainly would welcome a meeting. If you are going to have a political review, I do not see how it can be limited to the Executive; Parliament needs to be involved. I therefore welcome his comments and, in light of them, beg leave to withdraw the amendment.

Amendment 58 withdrawn.

Clause 26 agreed.

Amendment 59 not moved.

Clause 27: Procedure for requests and reviews

Amendment 60 not moved.

Clause 27 agreed.

Clauses 28 and 29 agreed.

Clause 30: Rights of person on EU sanctions list

Amendment 61 not moved.

Clause 30 agreed.

Clause 31 agreed.

Clause 32: Court review of decisions

Amendment 62

Moved by ***Lord Pannick***

62: Clause 32, page 23, line 16, at end insert—

"( ) For the avoidance of doubt, in relation to a decision under subsection (1)(c) above, the court has power to set aside the designation if satisfied that it is in breach of the principles applicable on an application for judicial review."

Lord Pannick: This amendment is in my name and the names of the noble and learned Lord, Lord Judge, and the noble Lord, Lord McNally. It is concerned with persons who are designated in this country because they have been placed on the UN sanctions list. It raises a very troubling rule-of-law issue, to which the noble Baroness, Lady Northover, referred in one of our earlier debates this afternoon.

Clause 21(2) and (4) provide that a person who is designated here because they are on a UN list may request the Secretary of State to use best endeavours to secure that their name is removed from the UN sanctions list. My concern is that what Clause 32 means —and indeed is intended to mean—is that, in relation to such a case, a court in this country has no power other than to overturn a decision of the Secretary of State not to use such best endeavours, and to ask the Secretary of State to use best endeavours at the UN. What the Bill appears to deny the person concerned is the right to say to the court: "I have been listed in this country—designated in this country—because I am on a UN list. But I am on a UN list as a result of procedural unfairness, as they have never told me why I am listed, or as a result of a substantive defect. There is no basis whatever for my listing, therefore the court in this country should quash the domestic designation".

5.15 pm

After Second Reading, the Minister said in his letter to me, which was circulated to other interested noble Lords, that our courts cannot be given a power to quash the domestic listing because this country has an international obligation to designate where a person is on the UN sanctions list. I have three responses to that.

First, we are considering domestic law powers to designate. No one should be designated in this country if our courts are satisfied that the designation is as a result of an unfair or unjustifiable decision. In those circumstances, the Minister cannot shelter behind the decision of another person, whoever they may be, in order to deny justice to the person affected in this country, especially given the gravity of the consequences for that person of a listing in this country. In my view, it is simply unacceptable that persons who are subject to a designation order in this country should be denied an effective judicial remedy in this country, however defective they can show the designation to be. That is unacceptable, and for the Bill so to provide is a flagrant breach of the rule of law.

Secondly, Clause 32 denies any effective judicial remedy in this country because of listing by the UN. I cannot be persuaded that the rule of law in this

[LORD PANNICK]
country should be subcontracted to the United Nations. This is, noble Lords will recall, the organisation which earlier this year voted Saudi Arabia on to its Commission on the Status of Women—a body which is,

"dedicated to the promotion of gender equality and the empowerment of women".

This body, the UN, decided last week that there was no room for Sir Christopher Greenwood on the International Court of Justice. He failed to win reappointment after a most distinguished nine-year term, for reasons which had nothing to do with the international rule of law and everything to do with the popularity of a former Lebanese ambassador to the United Nations and the political attraction of an Indian candidate.

I know the Minister is well aware of the circumstances, so I think he will understand that I cannot accept that the rule of law in this country should be subcontracted to a body which displays such ignorance of the international rule of law. The nations of the United Nations are not united on the importance of the rule of law. We cannot deny remedies in this country in the hope that justice will be done at the international level.

Thirdly, despite the international law obligations of European states, including the United Kingdom, the Court of Justice in Luxembourg is prepared in an appropriate case to set aside a listing based on a UN listing where such a listing breaches legal standards. Indeed, I would suggest that the very best way to ensure that UN listings are legally robust is for the courts of this country to have the power to quash a domestic listing based on a UN listing.

I say to the Minister that the amendment raises a fundamental issue of the rule of law. The Bill should not deny our judges the power to quash, where appropriate —and I hope it will rarely, if ever, be appropriate—a designation that is based on a defective UN listing. I beg to move.

Baroness Northover: My Lords, Amendment 62 is partly in the name of my noble friend Lord McNally. I knew he would not be able to be here, and he sends his apologies for that. I have to say that I read the amendment and the clause a number of times and it seemed to me that the amendment tightened and clarified the clause. What I failed to spot, as a non-lawyer, was what lay underneath it. I am extremely glad that the issue I raised earlier has been so effectively explained by the noble Lord, Lord Pannick. I again express support from these Benches for what he has said.

The Lord Bishop of Chester: My Lords, if I heard the Minister correctly, he compared the noble Lord, Lord Pannick, to Oliver Twist asking for more. I wonder, having heard the noble Lord, whether the Minister would agree that Oliver Twist had right and justice on his side.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I support the amendment. I recognise that it is not an entirely simple point; it is not perhaps as straightforward as some of the amendments with which we dealt earlier. I see the force of the Government's argument that the UK has no alternative under international law but to give effect to our obligations under the UN charter; indeed, Article 103 of the charter expressly dictates that these obligations prevail over any conflicting international law obligations. In the 2010 Supreme Court case of Ahmed, I ended my dissenting judgment with the hope that the majority view would not be thought to indicate any weakening of our commitments under the charter. In Ahmed, however, I also stressed the draconian nature of these orders. I said:

"The draconian nature of the regime imposed under these asset-freezing Orders can hardly be overstated … they are scarcely less restrictive of the day-to-day life of those designated (and in some cases their families) than are control orders. In certain respects, indeed, they could be thought to be even more paralysing".

It strikes me as highly relevant to the amendment that in the case of Ahmed the Court of Appeal had held—and before the Supreme Court Treasury counsel for the Government argued this in terms—that orders implementing a UN resolution are reviewable, and that on such a review the court can grant relief directed against any UK public authority, not against the United Nations. That, essentially, is what the amendment seeks to achieve, or at least to clarify.

I note not least that one of the team of counsel instructed for the Government in the Ahmed case was Sir Michael Wood, who had been the senior legal adviser to the FCO. Clearly he had seen no insuperable obstacle to the court having this judicial review jurisdiction—the very thing that the amendment seeks to put beyond doubt that the court has. On balance, therefore, my concluded view is that we can and should make plain that the court will have this jurisdiction.

Lord Judge: My Lords, my name is attached to the amendment. I shall not repeat what the noble Lord, Lord Pannick, had to say. The issue is simple: we must honour our obligations to the United Nations but if, having honoured them, there is an injustice, we must provide a remedy.

Lord Lennie: My Lords, I had not realised that there would be quite such a debate on the application of the rule of law, but I am now aware that it is an important matter. When a sanction's designation is in place, and a review has been requested but denied by a Minister, the court here will have the authority to set aside the designation if the Government are found in breach of the applicable principles. That is entirely appropriate and sensible. I support the amendment.

Lord Ahmad of Wimbledon: My Lords, I thank the noble Lord for tabling the amendment and all noble Lords for their contributions.

I agree that appropriate remedies for designated persons are vital, but the Bill achieves this. However, since some noble Lords have mentioned comparisons with other systems of challenges—there was reference to the EU—it is worth emphasising how this Bill has been designed to reflect the current procedural protections for designated persons that exist in the European Union.

As the noble Lord acknowledged, I stated at Second Reading that the proposed threshold of "reasonable grounds to suspect" for designations is the same standard that the UK currently uses when considering designations at the EU and the United Nations. It is broadly

equivalent to the threshold applied by EU courts. The Bill then provides a system for reviews and reassessments. Where those lead the appropriate Minister to decide that designation is not appropriate, they must take remedial actions. As I indicated in a previous debate, these provisions provide at least an equivalent level of protection to that afforded to individuals designated by the EU.

I agree with the noble Lords that designations should be put in place and maintained by the United Nations only if there is a sound basis to do so. I can assure all noble Lords—the noble Lord, Lord Pannick, in particular—that, as a permanent member of the UN Security Council, the UK makes this point consistently. The Bill provides a route for persons designated by the UN to bring a challenge in UK courts. As the noble Lord stated, if the court finds that the decision of the Secretary of State not to use best endeavours to secure an individual's delisting at the UN is unlawful, the court may order the Secretary of State to do so.

However, as the noble and learned Lord, Lord Brown, also pointed out, this matter is slightly more complex. As a member state of the UN, we are legally bound to implement decisions of the United Nations Security Council taken under Chapter VII of the charter. If a person has been designated by the UN, the UK is bound by international law to maintain sanctions against the person unless and until the UN Security Council agrees to remove this designation. Again, as the noble and learned Lord pointed out, as set out in Article 103 of the UN charter, these UN obligations take precedence over obligations under any other international agreement, such as those in the European Convention on Human Rights.

I recognise that in the past—as the noble Lord, Lord Pannick, referred to—the EU court has occasionally made rulings striking down EU designations in place to implement UN sanctions. The UK's position has consistently been firmly that it should not do so and the UK has made this point in submissions to the EU courts in the Kadi case. The EU courts adopting this approach does not change our analysis of the position. The EU is not a signatory to the UN charter and is therefore not bound by its terms—we are. It is not correct to say that this will leave a person in the UK in a worse-off position than a person in another EU member state. All the other member states of the European Union are also signatories to the UN charter, and are bound by it. If there is no EU law in place to implement a UN designation, those countries would need to take alternative steps, for example under their own domestic law, to remain in compliance with their UN obligations. The noble and learned Lord, Lord Brown, has just reflected that we have done this in the UK in the past. When, in 2010, the Supreme Court in the case of Ahmed ruled that an order putting UN counterterrorist sanctions in place was ultra vires, we created domestic legislation—the Terrorist Asset- Freezing etc. Act 2010 to ensure that the UN sanctions remained in place.

5.30 pm

If the UK were to unilaterally cease to implement a designation mandated by the United Nations, the UK would be acting in breach of its highest obligations under international law. The Bill needs to reflect this reality, which I am sure noble Lords appreciate. The appropriate way to deal with UN designations that should no longer be in place is by taking action at the United Nations. The Bill recognises this in the power it provides the UK courts to direct the best endeavours of the Secretary of State. While it is not in the UK's gift to secure a UN delisting, this provision would have a significant political effect. It would compel a permanent member of the UN Security Council to seek to secure delisting.

I have listened very carefully to the noble Lord, but I hope equally that he has listened carefully to my response, and I hope he is minded to withdraw his amendment.

Lord Pannick: I am grateful to the Minister. I have listened carefully, but I am not persuaded. The Minister is telling the Committee that however strong the individual's case that his or her designation is unfair as a matter of procedure and substance, there is nothing that the English courts can do except ask the Secretary of State to use best endeavours at the United Nations, which the Secretary of State may already have done. What happens if the UN's response is that it will maintain the designation and the English court is still satisfied that there is no basis for including this person on the list? There may be no evidence that justifies it; it may be a rank breach of fairness.

I am not satisfied, as I said, that we should subcontract these matters to the United Nations. I can well understand that the English court would be very slow to form the view that it should take the step of quashing the domestic designation when the United Nations has imposed internationally such a designation, but I cannot accept that the English court should be left without power to do so if it believes that injustice has been done, given the grave consequences for the individual concerned. I will reflect further on this, and I hope the Minister will reflect further before Report. If not, we will need to return to what, as the noble and learned Lord, Lord Judge, said, is a simple matter but also a fundamental matter of the rule of law. For the moment, I beg leave to withdraw the amendment.

Amendment 62 withdrawn.

Clause 32 agreed.

Clauses 33 and 34 agreed.

Clause 35: Suspension of prohibitions and requirements

Amendment 63

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

63: Clause 35, page 26, line 16, at end insert "but any such period may not exceed 12 months"

Lord Collins of Highbury: My Lords, this group of amendments is focused on a subject matter that we repeatedly return to: namely, parliamentary accountability and scrutiny of the actions of the Executive. I want to focus primarily on how we enable Parliament to do the job of scrutiny. Amendments 65 and 68, in particular,

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are designed to ensure that there is relevant information in relation to actions to revoke or introduce regulations. I know that the Minister will say that because regulations will be placed before Parliament there will be a scrutiny function there—but I think more than that is needed. We say that an affirmative decision is required, and also that the reasons should be clearly stated and set out in a written memorandum by the appropriate Minister. So the theme that we are returning to, and focusing on, is enabling Parliament to scrutinise, and giving it the tools to do that job.

There is a power under Clause 35 for an appropriate Minister to suspend regulations "for a specified period" —no period being specified, of course, because that is subject to regulations. I keep coming back to the fact that, in the exercise of powers, it is important to put certain principles on the face of the Bill. We would insert a requirement for the time period to be put in. We must understand that the power of the Executive to suspend regulations or other sanctions has the potential to cause compliance uncertainty for business. There could be uncertainty about when and on what terms a sanction may be reimposed, or whether it could be revoked entirely.

The purpose of the amendment is to create more certainty for all those involved, and by doing so to introduce more effective compliance with sanctions. Considering the aims of those sanctions, that is very important. The persons or entities that are subject to suspended sanctions may still be affected by reputational stigma. It is important, in terms of procedural fairness, that these issues should be properly addressed.

The group is focused primarily on parliamentary scrutiny and enabling Parliament to do that job effectively, and I have also put my name to Amendment 72, to Clause 44. I look forward to the contribution from the noble Lord, Lord Pannick, on that. In my opinion that clause gives the Executive an overwhelming power, which the Minister will have to give very good reasons for retaining. I beg to move.

Lord Pannick: My Lords, the noble Lord, Lord Collins, mentioned Amendment 72, which is in my name and his, and in those of the noble and learned Lord, Lord Judge, and the noble Baroness, Lady Northover. It concerns Clause 44(2), which is a very broad Henry VIII clause. As the noble and learned Lord, Lord Judge, repeatedly argued during earlier debates in this Committee and elsewhere, we should not be giving Ministers powers to amend primary legislation without very strong justification. Clause 44(2) would allow Ministers to take action,

"amending, repealing or revoking enactments",

including primary legislation,

"(whenever passed or made)".

It contains no limitations on those powers. For my part, I cannot see any justification for including such extensive powers in the Bill. I strongly suspect that such a provision is included simply because it may turn out to be useful at some time in the future. We in this House are seeing too regularly provisions of this sort and we ought to take a stand against the conferral of such sovereignty on Ministers.

Baroness Northover: My Lords, the noble Lord, Lord Collins, is once again trying to help the Government, and I appreciate his efforts. He seeks to put a very useful time limit on how long a so-called "specified period" in Clause 35 might be, and his Amendment 64 proposes a further time limitation. We will come back to Clause 35 when we discuss the next group of amendments and I shall address that clause as a whole shortly.

Amendment 65 in the name of the noble Lord, Lord Collins, seeks to check the wider and unspecified powers on the revocation of sanctions that the Government seem to want to grant themselves in Clause 38. We do not want to see wide and untrammelled powers in either the setting or the revoking of sanctions. The noble Lord is right to seek to address this.

My name is, indeed, attached to Amendment 72. The case for this amendment was very cogently argued by the noble Lord, Lord Pannick. The clause contains one of the wide-ranging Henry VIII powers that we have seen elsewhere in the Bill. I cannot see how this power can stand. Clause 44(2) states:

"Regulations under this Act may make supplemental, incidental, consequential, transitional or saving provision".

That is a rather wide-ranging description. Therefore, I trust that the Minister has been given enough leeway by his colleagues across government to think again.

Lord Judge: I will not add very much, but I am beginning to think that there is a computer in every department which produces a Henry VIII clause at least once in every Bill. That is what we have here. This is not belt and braces; it is belt, braces and Henry VIII's great big heavy boots. We do not want it.

Lord Ahmad of Wimbledon: The noble and learned Lord made me imagine Henry VIII's boots for a moment.

As regards thinking, I am forever thinking; I think it is a good thing to do. The Government are reflecting very carefully on all elements of the arguments noble Lords are putting forward on these amendments. I will say at the outset that I can see that a number of these amendments gather around a central theme—namely, the appropriate roles of Parliament and the Government when creating and implementing future policy on sanctions. I assure noble Lords that I recognise that this is a difficult balance to strike. As power flows back to the United Kingdom from the European Union —I say to the noble Baroness, Lady Northover, that it is a case of "when" we leave the EU—it will not be appropriate to simply follow the model in the European Communities Act 1972, where decisions of the EU either apply directly in UK law or are implemented through statutory instruments following the negative procedure.

I assure noble Lords that we have tried hard to strike the balance correctly in this Bill and ensure that Parliament has the right level of oversight of the Government's exercise of sanctions policy. For example, we have ensured that the UK autonomous sanctions regulations must be approved by Parliament before they are put in place. I continue to listen very carefully to the points that have been made about the need for proper parliamentary scrutiny. I assure noble Lords that I will continue to reflect on those points—and not just in respect of these amendments.

It is perhaps worth remembering that sanctions are, in essence, as I have said repeatedly, a matter of foreign policy and national security, which fall more to the Government than Parliament. This was recognised by the great constitutional lawyer A V Dicey, who wrote that the "right of making treaties" was,

"left by law in the hands of the Crown, and are exercised in fact by the executive government".

That is also the practice in other western countries with national sanctions regimes and legislation, such as Canada and Australia.

On the amendment we are discussing, it is important to recognise that the imposition of sanctions is not a punishment but an attempt to change the behaviour of those who are acting in a threatening or unacceptable manner. That is why the provisions provide ways of suspending, amending and revoking sanctions. Iran is an example of where sanctions have been suspended. Under the 2016 nuclear deal, Iran sanctions can be "snapped back" by the EU if there is a breach of the international commitments made by Iran in relation to nuclear development. Noble Lords will be aware that those suspension arrangements were part of a delicate political balancing act, which the UK is working hard with the EU and other partners to preserve.

5.45 pm

Amendments 63 and 64 seek to change the proposed procedures for approving the suspension of regulations. They would allow the Government to suspend regulations by procedures already outlined in the Bill for three 12-month periods. To suspend for more than three 12-month periods would require approval via the draft affirmative procedure. The proposed 12-month period for suspensions would not be suitable in all cases. It would restrict the ability of the Government to use their discretion on how long sanctions should be suspended to encourage improved behaviour. As it stands, the Bill allows the Government to determine the period of suspension, tailored to specific circumstances, including international commitments, such as those under the Iran nuclear deal. A yearly review and triennial vote may force the Government to publicly intervene in a way that may not be conducive to facilitating the improved behaviour that sanctions ultimately aim to achieve.

Amendment 64 would require any suspension to be approved after three years via the draft affirmative procedure. While recognising the importance of parliamentary oversight, the Government disagree with the amendment. As the Bill stands, regulations that suspend sanctions are subject to the negative procedure. Suspending sanctions lifts the prohibitions that impact on designated persons; that is one reason why we do not think that suspension justifies the higher level of scrutiny attached to creating sanction measures in regulations. In addition, the Government will be able to act more nimbly and confidently in international negotiations if the express approval of Parliament is not required to suspend sanctions.

Turning to revocation and the amendment of regulations, I recognise that these decisions merit close scrutiny, based on a careful assessment of whether the sanctions have achieved their political objective. Amendments 65, 67 and 68 seek to subject the revocation of sanctions to the draft affirmative procedure, as well as obliging the Government to submit, alongside any regulation revoking sanctions, a written memorandum setting out the rationale of the original purposes of sanctions, as outlined in Clause 1. While agreeing with the principle of parliamentary scrutiny, I believe that the Bill as drafted provides the appropriate mechanisms.

Turning to UN sanctions, revocation would be an automatic response to a decision of the UN Security Council. Subjecting this to a draft affirmative procedure would introduce unnecessary delay and create doubt over whether we would fulfil our international obligations. In turn, this could complicate the international diplomacy necessary to secure changes of behaviour by those subject to UN sanctions, as I have already indicated with an example.

In the case of UK autonomous sanctions, the regulations could be revoked only by using the "made affirmative" procedure, allowing parliamentary oversight. To subject revocations in UK autonomous regimes to the draft affirmative, rather than "made affirmative", procedure would slow down the process and potentially prevent us from acting in tandem with our allies. Given that revocations have only positive effects on the individuals concerned, we believe that this is an appropriate level of oversight and allows for sufficient flexibility and international co-ordination.

Amendment 72 would remove from the Bill the power to make certain modifications to existing primary and secondary legislation through regulations made under the Sanctions and Anti-Money Laundering Bill. Instead, future amendments to primary legislation would also need to be made through new primary legislation.

I recognise the concern in your Lordships' House about the breadth of the regulation-making powers conferred by the Bill. The issue came up both at Second Reading and in Committee. But I hope that I can reassure noble Lords that the scope of the power in Clause 44(2) is limited: it can be used only to make provisions that are consequential, supplemental or incidental to the sanctions, and cannot be used for any changes to legislation that are independent of those sanctions or are not necessary to enable the sanctions to function. It does not give the Government a free hand, but rather confers on them a tool to make small changes that are necessary to make the main sanctions work.

However, I would like to explain one of the purposes for which this subsection has been included. On our departure from the European Union, all EU regulations, including those that implement sanctions, will be incorporated into UK law through what will become the European Union (Withdrawal) Act. This subsection provides the Government with the power to revoke EU sanctions regulations at the moment when we create our own UK sanctions regulations to take their place. It will, in our mind, provide legal clarity in this area by removing overlapping laws. It will also allow amendments to be made to other Acts of Parliament, but only where this would be needed to ensure that the UK sanctions regulations work properly. Inclusion of this power will help to ensure a smooth transition and avoid the lengthy delays that might be involved in

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handling all of this through primary legislation. There are good precedents for this approach. Just as an example, I refer noble Lords to Section 85 of the Serious Crime Act 2015.

In line with the recommendations of the Delegated Powers and Regulatory Reform Committee, any regulations made which use this targeted power must be made under the draft affirmative procedure, so any proposed changes would not come into effect unless and until both Houses have given their assent. I have spent some time giving a detailed outline of the Government's position and I hope that, with that explanation, noble Lords will be minded not to press their amendments.

Lord Falconer of Thoroton (Lab): I thank the Minister for his detailed explanation. Does the Henry VIII power in Clause 44(2) allow the Government, by regulations, to remove protections that an individual has under other primary legislation in relation to sanctions, for example under the Human Rights Act 1998?

Lord Ahmad of Wimbledon: My understanding is that the regulations would apply only to the sanctions themselves, but I shall clarify that legally as well in answer to the noble and learned Lord and return to the specific issue on Report.

Lord Falconer of Thoroton: Will the Minister write to me, so that we know the Government's position before Report?

Lord Ahmad of Wimbledon: Perhaps I was not clear: that was exactly my intention. I do not want to say something from the Dispatch Box that is not accurate, so I will write to the noble and learned Lord on that particular point.

Baroness Sheehan (LD): I am a little intrepid in saying this as I am not a lawyer or a constitutional expert but this seems to be a Bill that, from a layman's point of view, lets the Government give themselves great powers through the way it designates individuals, connecting persons through descriptions, through definitions of involved people and through clauses that give powers to amend. These include Clause 39, which gives power to amend all of Part 1 so as to authorise additional sanctions, and Clause 44(2), which gives sweeping Henry VIII powers to amend, repeal and revoke amendments and enactments. To me, this seems like Jekyll and Hyde legislation. You think you are getting one thing, yet there is every ability within the proposed Act to change itself into something quite different.

I was quite concerned in last week's debate, when my noble friend Lady Bowles talked about how Acts could be used for unintended purposes. I recall the case of Maya Evans, who read out the names of 97 British soldiers during the remembrance ceremony at the Cenotaph in 2005. Although it was a very innocuous statement that she was making—she was protesting against Britain being taken into the Iraq war; she felt that it was illegal—she was arrested and was the first person in the UK to be convicted under the Serious Organised Crime and Police Act 2005. Also in the same year—I might embarrass the Labour Benches here—Walter Wolfgang was forcibly removed from the Labour Party conference. Again, he wanted to protest about the Iraq war, and shouted out "Nonsense!" and "That's a lie!" during a speech made from the conference platform by Jack Straw. He was ejected and was stopped from re-entering the conference hall by a police officer citing the Terrorism Act.

From my point of view as a lay person, I am fully supportive of the well-informed noble Lords here who are leading the charge to make sure that the Bill does what it says on the tin and does not turn into a Jekyll and Hyde Bill.

Lord Pannick: Whether I am well informed or not, can the Minister confirm that in his response on Amendment 72 he gave a reassurance to the Committee that these powers would be used only when necessary? That was the word he used on more than one occasion. He will remember an earlier debate we had in this Committee on whether that word should be written into an earlier clause. If with the aid of parliamentary draftsmen "necessary" could be written in to confine the use of that power, it would mitigate substantially my concern about Clause 44(2); I speak only for myself. Perhaps the Minister and the Bill team could reflect on that before Report.

Lord Ahmad of Wimbledon: To pick up on that final point, of course we will. I confirm that I used "necessary". As regards the intervention from the noble Baroness, perhaps I did not quite follow her whole argument—various rules were in play—but I got the general principle that she was in support of the powers that are being conferred. As I said right at the beginning, laying it out in quite a lot of detail, I totally accept the point about the Henry VIII powers—the use of secondary legislation rather than primary legislation—which we have debated several times. Certainly, from our perspective as the Government—that is true not only of ourselves but of previous Governments as well—there is a point in principle that we try to strike a balance. Therefore I am listening carefully. On the specific point that the noble Lord made at the end, I will take that back and see how it can be adapted.

I am in reflective mode, as several noble Lords have noted during some of the earlier debates in Committee. However, on this group of amendments, I hope that after the explanation I have given the noble Lord will be minded to withdraw his amendment.

Lord Collins of Highbury: I agree with many noble Lords who have decided to come back to the Minister before he sat down. His response has been disappointing. These are clearly issues of principle that we will return to. I find it amazing that often, when the Minister gives examples of how difficult it would be to do X or Y, they do not appear that difficult. You can give a reason why sanctions need to be revoked. At the end of the day, whatever Crown powers or executive powers there are, the political reality is that these figures work when there is consent—when people buy into them. We are attempting to ensure that the Executive do not act with untrammelled powers and that they have to account for their actions and explain them. If Parliament then gives its support and consent, those actions and powers become more effective. That is what this debate

is about today. We will certainly return to this issue on Report, but in the light of the comments the Minister made to the noble Lord, Lord Pannick, I beg leave to withdraw the amendment.

Amendment 63 withdrawn.

Amendment 64 not moved.

6 pm

Debate on whether Clause 35 should stand part of the Bill.

Baroness Northover: My Lords, I was rather intrigued by the Minister's definition of sanctions as being something little more than a gentle nudge. I found myself thinking about—

Lord Ahmad of Wimbledon: It is certainly not a gentle nudge. What I was alluding to is that the ultimate purpose behind sanctions is that they should not exist for an indefinite period of time. It is about changing behaviour. As I noted in the example that I gave of Iraq, there are times when we could use these to very good effect to ensure, with people's behaviour—be they individuals, corporations or, indeed, countries—that sanctions act as an effective, and deterrent, tool.

Baroness Northover: I am glad to have that further clarification. My eyebrows rather rose at that and I was wondering, speaking of what is benign, what my kids would have made of being sanctioned and having their PlayStations removed. They would not regard that as particularly benign. But, very seriously, it is quite striking how leaders around the world with sanctions on them strive hard to get them lifted, so I am glad to have that clarification.

I propose that Clause 35 does not stand part of the Bill. We have a series of such proposals through the Bill, as the Minister will be aware. We have had a wide-ranging discussion just now. I appreciate the efforts to improve things made by the noble Lord, Lord Collins. However, it still seems to us that this clause remains unacceptable, even if amended in the way that he proposed. That is why we propose that it does not stand part of the Bill.

Just as we wish to ensure that the imposition of sanctions is done in a way which is appropriate, transparent and accountable, so too should be the suspension of sanctions. No one here would wish to see the UK as a harbour for those not wanted elsewhere, but we must not give future Ministers the power to do that either. We feel that these powers are wide and vague, and bearing in mind that the secondary legislation coming down to us will include—as the noble and learned Lord, Lord Judge, pointed out last time—many things with which we would no doubt agree, which are then jeopardised should we take the very unusual action of voting down the SI, we need to read the Bill in that light. For example:

"The period begins when a specified condition is met and lasts for so long as the suspending regulations or a specified provision of those regulations has effect".

That would catch a large number of things. Although the noble Lord, Lord Collins, sought to help the Government regarding the amendment we have just debated, we feel that the Government should think again over the whole clause.

Lord Ahmad of Wimbledon: My Lords, it is important to recognise that the imposition of sanctions is not just a punishment but rather an attempt—as I have articulated in relation to an earlier comment by the noble Baroness—to change the behaviour of those who are acting in a threatening or unacceptable manner.

I state clearly that Clause 35 on suspensions is important. It gives Ministers the ability to provide relief from sanctions to countries, organisations and, yes, individuals where there is evidence of positive steps towards the desired change of behaviour. The ability to suspend sanction measures, rather than fully lifting them, allows Ministers to recognise moves in the right direction while maintaining a credible threat that sanctions can be easily reimposed. We know from past experience that this is an option worth having; thus I believe this clause should stand part of the Bill. I hope the noble Baroness will accept the response I have given, which makes the point that the Bill, at its essence, through Clause 35 provides for the suspension of particular sanctions to ensure that those seeking to improve their behaviour are given an opportunity to prove it. This should be without having the immediate comfort of knowing that their sanction has been not only suspended but lifted altogether. Not having Clause 35 would prevent Ministers from having this very important tool available to impose that kind of suspension.

Clause 35 agreed.

Clauses 36 and 37 agreed.

Clause 38: Revocation and amendment of regulations under section 1

Amendment 65 not moved.

Amendment 66

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

66: Clause 38, page 27, line 4, at end insert—

"( ) Regulations under section 1, which are made by virtue of this section for the purposes of revoking or substantially reducing the effects of sanctions regulations, must be accompanied by the publication of a written memorandum by the appropriate Minister, and such a memorandum must set out—

(a) how the decision to amend or revoke the regulations in question is consistent with the overall foreign policy objectives of the UK government, including any specific regional objectives where appropriate;

(b) the extent to which each initial objective of the regulations in question has been met, including any specific demands or expectations of any change in the behaviour of the target or targets of the sanctions; and

(c) specific provisions for the reinstatement of the initial regulations, in the event that the conditions justifying their revocation or amendment no longer apply."

Lord Collins of Highbury: My Lords, with this amendment I return to the principle of "tools for the job" and how we enable Parliament to scrutinise effectively. In the previous group, the Minister spoke quite effectively about the reasons for certain sanctions being introduced

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and how they sometimes underpin and support much broader foreign policy objectives, and he quoted the Iran situation. I did not think that he found that particularly difficult to do. We know that when sanctions are introduced—I come back to this point—we need political support and commitment for them to be effective. Without proper support, they will not be.

That is why it is important that, when the powers and regulations are introduced, we specify how the sanctions fit into the broader foreign policy objectives and why they are there. I fear that sometimes people jump on the sanctions bandwagon because they cannot think of any other action to achieve particular foreign policy objectives. For example, the struggle for human rights is difficult, and different leverages can be used. I do not necessarily think that sanctions are the first port of call, and I accept that they can be part of a suite of actions.

However, when we introduce sanctions, it is important and incumbent on the Government to set out clearly why they are there and how they fit into their overall foreign policy objectives. Furthermore, when will the sanctions be brought to an end and when will we judge them to have been successful? I have heard in this House on a number of occasions that sanctions have been "successful". That is measured by whether we have stopped certain trade and a certain activity, not by whether they have achieved the foreign policy objectives set for introducing them, and that is what this amendment seeks to do. Once again, I hope that the Minister is in his listening and giving mode. I beg to move.

Baroness Northover: My Lords, once again the noble Lord, Lord Collins, seeks to assist the Government by ensuring that some of the wide-ranging powers sought by Ministers have a little sunlight shone upon them. We support what the noble Lord has said about making the Minister's actions more transparent and accountable, but we worry—the noble Lord, Lord Collins, has in some ways made reference to this—about the broad categorisation of foreign policy objectives in defining when sanctions are appropriate.

We discussed this issue on the first day of Committee and, although I realise that the noble Lord has carried over the aims as stated in the Bill, we feel that "foreign policy objectives" is too wide a concept. Clearly, if our foreign policy objective were, say, trade with India and we decided, for some reason, to put sanctions on Pakistan and, as described in the Bill, all those associated with that country—as, again, we debated on our first day in Committee—a large number of law-abiding citizens could potentially be caught up in that. That may be regarded as far-fetched, but we always have to look for unintended consequences, given that unexpected things happen in politics.

As we have said before, it is all very well the Minister potentially quoting the Human Rights Act or the European convention, given that some members of his party have spoken of repealing the first and withdrawing from the second. It is therefore important that we ensure that legislation is watertight. With that caveat, I commend the noble Lord, Lord Collins, for trying to assist us in making Ministers under this Bill more transparent and accountable.

Lord Ahmad of Wimbledon: My Lords, I thank the noble Lord, Lord Collins, for tabling this amendment. I agree that sanctions are not the first port of call, a point I have made in previous debates in Committee. The amendment specifically deals with the decision to lift sanctions, and it merits close scrutiny based on a careful assessment of whether the sanctions have achieved their political objectives, as the noble Lord said.

The amendment seeks to oblige the Government to issue a written memorandum alongside any regulation revoking sanctions which would set out the rationale in terms of the original purposes of the sanctions as outlined in Clause 1. While I agree with the important principle of parliamentary scrutiny, I believe that the Bill as drafted provides an appropriate level of scrutiny.

Let me elaborate, if I may. In the case of UN sanctions, revocation would be an automatic response to a decision of the UN Security Council. We can assume that the reasons for the lifting of sanctions would be clearly understood, making a report unnecessary. In the case of UK autonomous sanctions, the regulations could only be revoked using the made-affirmative procedure. The Government would also need to explain the rationale for lifting sanctions and would do this when presenting the said regulations. The explanations provided by the Government would cover the areas proposed in the amendment. However, the Government would need to be careful about putting the full details of the UK's strategy in the public domain. I know the noble Lord appreciates that point.

This means that, although we support the principle of transparency, obliging the Government to issue a full written memorandum, as proposed by the noble Lord, would be inappropriate. With that explanation, I hope the noble Lord is minded to withdraw his amendment.

Lord Collins of Highbury: I am not sure whether that is a cup half-full or half-empty sort of response. However, I shall take it away and consider it. I beg leave to withdraw the amendment.

Amendment 66 withdrawn.

Amendments 67 and 68 not moved.

Clause 38 agreed.

Clause 39: Power to amend Part 1 so as to authorise additional sanctions

Debate on whether Clause 39 should stand part of the Bill.

Lord Pannick: My Lords, the noble and learned Lord, Lord Judge, the noble Baroness, Lady Northover, and the noble Lord, Lord Collins, have joined with me in objecting to Clause 39, which would allow the Minister to authorise prohibitions or requirements of kinds additional to those set out in Chapter 1. So the Minister, by regulations, would have power to add to financial, immigration, trade, aircraft and shipping sanctions, and sanctions for the purposes of implementing UN sanctions.

If additional types of sanctions are to be added to Chapter 1 and they are not new types of UN sanctions—which is already covered by Clause 7—surely that should be done by primary legislation so that Parliament has the same opportunity to debate and amend the proposals as it does with the clauses of this Bill. These are vital matters to add new types of sanctions to this legislation.

6.15 pm

If there is in future a need to add to Chapter 1, a short Bill could be brought forward. If the Minister believes the matter is urgent, this House and the other place have procedures that ensure that such a Bill can and would be debated speedily. The consequences of designation are simply too grave to allow Ministers by regulations to add further types of prohibitions to the legislation.

There is also a drafting point to mention on Clause 39. Clause 39(2) says, in its final words, that the powers conferred by Clause 39(2) are,

"not to be taken to confer any power to add to or amend the purposes mentioned in section 1(1) or … section 1(2)".

That is very wise because the Minister should not and cannot have, by regulation, a power to add to the list of purposes—that is to make regulations for the purposes of complying with UN obligations, international obligations, to deal with terrorism, national security, international peace and security or foreign policy objectives. We have debated earlier whether those provisions are too wide in some respects, too narrow in others. It is, however, quite right that Clause 39(2) prevents the Minister by regulations from adding to those purposes. The drafting point is that that is stated only at the end of Clause 39(2), and it should, I think, be made clear that that limitation applies to the whole of Clause 39, in particular Clause 39(1), but that is a minor point for the consideration of the Minister and the Bill team. The other point is much more substantial.

Baroness Northover: My Lords, just as my noble friend Lord McNally and I opposed Clause 35 standing part of the Bill, so we oppose Clause 39 standing part of the Bill. Of course, this is in many ways a more dangerous clause. While, under Clause 35, we might find ourselves not imposing sanctions which other countries—say, within the EU—were imposing, in this case the Government are apparently happy to secure carte blanche powers for imposing sanctions.

As the noble Lord, Lord Pannick, has said,

"an appropriate Minister, may by regulations",

amend this part of the Bill to,

"impose prohibitions or requirements of kinds additional to those for the time being authorised in Chapter 1".

The Constitution Committee states:

"We do not consider it appropriate for Ministers to have powers as broad as those conferred by Clause 39. In particular, we consider it constitutionally inappropriate for Ministers to have the power, by regulations, to create new forms of sanctions".

The Delegated Powers Committee states that,

"we do not consider the powers conferred by Clause 39 to be appropriate".

They explain:

"We do not consider that the FCO's reasons are sufficient to justify the powers conferred by Clause 39, particularly having regard to the potential width of the powers and the very significant effects on individual rights that amendments made under these powers would be capable of having".

They also point out, in relation to UN sanctions, that,

"this power is unnecessary for enabling additional sanctions measures to be imposed for the purposes of complying with UN obligations since Clause 7 already has this effect".

From right across this Chamber and from the Constitution Committee and Delegated Powers Committee comes a clear message, so we join others in opposing that Clause 39 stand part of the Bill.

Lord Falconer of Thoroton: The width of this power seems extraordinary and constitutionally offensive. As I understand the drafting of the Bill, it is open to a Minister to pass regulations which allow him to identify individuals on whom he can impose a sanction or prohibition that he has invented. What is more, the only restriction on him is that it must be for the purposes set out in Clause 2(1). If the Minister honestly believes that the invention of a new sanction or prohibition is justified by "a foreign policy objective" of the Government—for example, gaining support from one country by attacking its nationals in this country—the power given by Clause 39 would entitle them to invent a new prohibition and impose it by regulations. Furthermore, should any primary legislation stand in the way of a Minister inventing such a new prohibition that he or she believes is designed to promote a foreign policy objective, that primary legislation can be amended to get rid of an objection by the very same regulations under Clause 44(2). That a Minister could do by secondary legislation such a thing—for example, restrict somebody's spending their own money, prevent them leaving their home, take away their car or stop certain sorts of bank account being used—without primary legislation strikes me as well beyond what any responsible Government would think should be done by secondary legislation. Can the Minister confirm that my analysis of what could theoretically be done is right, and explain why it is appropriate that that be done by secondary legislation?

Lord Faulks: The noble and learned Lord puts a rather sinister construction on this clause. I do not want to add to my noble friend's discomfort, but I need some persuading that Clause 39 is necessary given the width and nature of the sanctions and the purposes. It was important that the Government resisted the attempt to narrow "a foreign policy objective", which was an amendment that we debated on the previous occasion, but "a foreign policy objective" gives the Government quite a lot of room for manoeuvre having identified an appropriate sanction. While I suspect that Clause 39 was inserted as a "just in case" provision rather than to give Ministers extraordinary power of the sort that has been discovered, it nevertheless remains at least open in theory to a Minister to exercise power in a way I think all noble Lords find difficult to accept.

Lord Falconer of Thoroton: I intervene only to say this: I did not suggest that the motive of the Government was to do this. My experience as a Minister is that you put through legislation and many years later, after emollient assurances given in the House of Lords, those pesky lawyers look at what is possible under the Act.

[Lord Falconer of Thoroton]
What I have described is possible. Let us imagine if those very same pesky lawyers said, "Well, you might have difficulty getting that through with primary legislation because of the extraordinary width of the powers, but actually we've found these rather clever powers in the Sanctions and Anti-Money Laundering Bill which allow you to do it without primary legislation". That is the danger.

Lord Hope of Craighead (CB): My Lords, I do not want to take anything away from the force of the points just made by the various speakers who object to the clause more fundamentally, but I want to pick up the point the noble Lord, Lord Pannick, described as minor: the wording of the clause. If the Government are minded to keep it, I suggest they might like to look at it again. Subsection (1) is very general, and the opening words of subsection (2) state that what follows is:

"Without prejudice to the generality of subsection (1)".

The bit at the end in brackets, one assumes, does not qualify subsection (1). Is it in the right place? Is the proclamation that what follows is:

"Without prejudice to the generality of subsection (1)",

really apposite if you are trying to restrict the scope of the powers as you seek to do in subsection (2)? It is a very interesting interaction of subsections but I suggest that it needs a little more care if the clause is to remain—I say nothing more in support of the point that the clause should not stand part of the Bill.

Lord Collins of Highbury: My Lords, I think this is one area where the Minister will have to be in his giving mood, because there is very strong opinion on it across the Committee. What the noble Lord, Lord Faulks, said is absolutely correct: it is a "just in case" clause. What if this happens? What if that happens? If things happen, there is a process and a procedure and the noble Lord, Lord Pannick, said it quite explicitly: bring in laws to deal with it; bring in a Bill that addresses those specific concerns. If it is an urgent situation that we had not thought of, there are processes and procedures we can adopt.

As my noble and learned friend said, there is an opportunity here for what he calls "pesky lawyers". I am always cautious—whenever I dealt with lawyers in my life I always took the precaution never to ask a question I did not know the answer to. That is the situation here. Because you cannot think of the circumstances, but there may be circumstances, you say, "Let us put it in the Bill". I am sorry, that is not acceptable. There is a consensus across the board on this and it is even a clause on which, as the noble Baroness, Lady Northover, said, the Constitution Committee and the Delegated Powers Committee are as one, as they are not on other clauses. So I fear this is one issue about which the Minister will have to think again.

Lord Ahmad of Wimbledon: My Lords, I thank all noble Lords for their contributions on this clause. I am hearing the message loud and clear, but in doing so I need to pick up on a few points as to the motive and the intent behind the clause. I appreciate the clarification by the noble and learned Lord, Lord Falconer, of the Government's motives. I will not comment on his description of lawyers; it would be entirely inappropriate for me to do so. However, he makes a valid point about the explanation and it is appropriate to explain the Government's intention behind the clause.

The clause will allow the UK to make amendments to the Bill, as noble Lords have mentioned, to allow for the imposition of new and unforeseen sanction measures, a point well made by my noble friend Lord Faulks. The power is confined to new types of sanctions and cannot be used to alter the purposes for which sanctions can be imposed. I should explain what I mean by new types of sanctions. Common types of sanction include asset freezes, travel bans, arms embargos and prohibitions on aviation and maritime transport. These are included in the Bill. However, the international community sometimes finds it necessary to develop and deploy new types of sanctions. Indeed, a recent example is the UN sanctions imposed in respect of North Korea. That resolution requires that UN member states do not grant work permits to North Koreans save where the UN agrees, in advance, on a case-by-case basis. Prior to the UN's putting in place that sanction, such a sanction did not exist. There may be times in the future when a currently unforeseen type of sanction would again be appropriate.

Lord Pannick: I am sorry to interrupt the Minister but if the new type of sanction is to be imposed because the UN has considered it appropriate, it surely falls within Clause 7.

6.30 pm

Lord Ahmad of Wimbledon: I think I mentioned Clause 7 in the preamble, but the noble Lord is correct. I was going on to say that, while Clause 7 would allow the UK to adopt new types of sanction when mandated by the UN, there may be times in the future when the UK needs to act outside the direct auspices of the UN.

Without the power provided by Clause 39, the UK will not be able to deploy these types of sanction without first passing new primary legislation. I have heard that point very clearly from noble Lords. That could significantly hinder our ability to co-ordinate sanctions with allies at times when UN action is not possible for political reasons. I alluded to the circumstances in earlier debates. This would risk the UK becoming the weak link in co-ordinated international responses to international crises of the kind we have seen in the Syrian civil war and Russia's annexation of Crimea.

I also agree that it is important to give Parliament its assent when new powers are bestowed on government. That is why this clause provides that the draft affirmative procedure be used in these circumstances. In proposing that this procedure be followed—I come back to a point I made in earlier debates—the Government have sought to balance the twin demands of ensuring parliamentary scrutiny and ensuring rapid international responses.

That said, I will make two points, first on the substantive issue. I have again indicated the Government's willingness to listen. The noble Baroness, Lady Northover, among others, rightly made the point about the reports that have been produced by both the Constitution Committee and the Delegated Powers and Regulatory

Reform Committee. Indeed, they have made a similar point to that which has been debated in this House and we will be responding to those reports shortly. Therefore, I will take this back and look at the sentiment and the strength of opinion that has been expressed in this House.

On the point made by the noble Lord, Lord Pannick, and the noble and learned Lord, Lord Hope, on the drafting of Clause 39(2), while I am not a lawyer, I was looking specifically at the drafting as the noble Lord spoke. It is extremely important that we look at that again and I will take that back to ensure the drafting reflects the intent behind Clause 39. With that proposal, I hope the noble Lord will be minded to agree to the clause standing part of the Bill.

Clause 39 agreed.

Clause 40: Power to make provision relating to certain appeals

Debate on whether Clause 40 should stand part of the Bill.

Lord Paddick (LD): My Lords, in asking that Clause 40 should not stand part of the Bill, we seek the clarification that I asked for at Second Reading, and failed to receive from the Minister, about Clause 40 and the power to make provision relating to routes to challenging decisions with immigration implications. Noble Lords will know that the Bill gives powers to Ministers to impose sanctions. Among them are immigration sanctions or the power to designate persons as "excluded persons" for the purposes of Section 8B of the Immigration Act 1971. In essence, part of the sanctions package could be either to remove designated persons from the UK or to prevent them entering the UK. The Bill provides a mechanism for those affected to ask for the decision to impose sanctions to be reviewed, initially by a Minister and subsequently by the courts—the Court of Session in Scotland and the High Court in the rest of the UK—which could include the decision to designate an individual an excluded person. This would, in effect, be an appeal against the decision to impose the sanction.

An excluded person could, alternatively or in addition, claim that they have a right to asylum in the UK or that their human rights would be infringed if they were returned to their country of origin or refused entry to the UK. This would, in effect, be an appeal against the consequences of the imposition of the sanction, rather than against the decision to impose the sanction itself. It is important that these two potential routes to challenge being designated an excluded person—either the decision to designate or the consequences of being designated—are dealt with separately and appropriately. My understanding is that that is what Clause 40 allows the Government to do, by regulation.

However, Clause 40 is quite complex and, at the same time, non-specific about what the regulations and their effect might be. The Explanatory Notes to the Bill appear to suggest, in paragraphs 115 and 116, that claims of asylum and human rights will continue to be dealt with by the Home Secretary as the Minister with the knowledge, experience and expertise to decide these matters, not by the Minister imposing the sanctions, and that any appeal against the Home Secretary's decision would be to the immigration and asylum chamber of the First-tier Tribunal, a specialist tribunal with expertise in deciding such claims, not the High Court or Court of Session, where an appeal against the imposition of the sanction would be heard.

In a letter dated 16 November, the Minister stated that it was the Government's,

"intention to provide, at Committee stage, an illustrative draft Statutory Instrument in relation to the powers under clause 40, so that Peers can fully scrutinise how decisions that have immigration implications will be taken and the routes of challenge".

We are in Committee and have come to Clause 40 in the Bill, and no illustrative draft statutory instrument has been made available. Can the Minister tell the Committee how noble Lords are expected to accept Clause 40 in the absence of what he promised in his letter?

Lord Ahmad of Wimbledon: My Lords, perhaps I might intervene in this debate and save the Committee some time. First, they say that sorry seems to be the hardest word but it is not for me. I apologise to the noble Lord, Lord Paddick, since after Second Reading, as he said, I wrote to him and said that the Government intended to bring forward a draft instrument and would put on record during Committee the Government's intended policy in regard to this clause. I regret to say that we have not fulfilled the first part of that intention—I will come to it in a moment—but I hope that, through what I say, I can fulfil the second part of it now.

Let me assure the noble Lord, Lord Paddick, and the Committee more generally that much work has been, and continues to be, done between officials in various departments on refining this important policy area. As the noble Lord acknowledged, the issue is complex and involves not only the specialist tribunal but how this relates to other aspects of the Bill. This has meant that, despite best efforts by officials, the draft statutory instrument was not ready to be published. It was my view and that of the Government that, rather than publish a statutory instrument that is not yet fully ready, Parliament would be better assisted by seeing a more mature version of that instrument. To that end, my officials and others across Whitehall will continue this work apace. We will endeavour to publish a version of the statutory instrument ahead of Report. I would be happy to meet the noble Lord in the interim to discuss this specific issue. I would also like to put on record for the Committee the intention behind this clause and address some of the points that he made.

Clause 40 concerns how appeals against the immigration consequences of UK autonomous sanctions are handled. I would like to give the Committee some background as to the current arrangements before I go on to speak about the clause. Under the current arrangements, UN or EU travel bans are, in the vast majority of cases, imposed on individuals who are outside the UK and have no connection to the UK. The Immigration Act 1971 already makes provision for persons subject to UN travel bans. Clause 40 allows us to ensure that the persons subject to UK autonomous travel bans can benefit from a similar provision.

[Lord Ahmad of Wimbledon]

In the unlikely event that a UK autonomous travel ban were to be imposed on a person in the UK, this would, as a matter of domestic law, have consequences for their immigration status in the UK—a point I know concerned the noble Lord, Lord Paddick. Whereas a person who is outside the UK will be refused entry, those who are in the UK will lose the right to remain here and may be subject to removal. A person affected in this way might argue that any removal from the UK would interfere with their rights under the European Convention on Human Rights, or be contrary to our obligations under the refugee convention. As a result, they may wish to make a human rights or humanitarian protection claim to prevent their removal. These immigration claims are usually decided by the Home Secretary, and a very developed machinery has grown up around the decision-making process to ensure that it is fair and effective and, importantly, complies with our international obligations. Such decisions, once made, can also give rise to a right of appeal before the immigration and asylum chamber of the First-tier Tribunal, a specialist tribunal with expertise in deciding such claims.

I turn to the Bill. Such immigration claims may also be made against the immigration consequences of a UK autonomous travel ban imposed under the Bill. Again, immigration claims are most likely to arise where an individual in the UK would lose their right to remain here. Noble Lords might ask why we need Clause 40, given that this situation can already arise in the context of a UN or EU travel ban. I wish to explain the point here. The Bill establishes a new administrative reassessment process for designations and a court review process in the High Court or, in Scotland, the Court of Session. No such equivalent administrative and court mechanisms are currently applied in domestic law for UN or EU travel bans. The mechanisms in place are different, so we will need to adapt the existing decision-making and appellate structures that I described earlier in order to accommodate the Bill. That is why we need Clause 40.

I turn back to the practicalities. Cases of this kind are likely to be limited in number, but it is vital that we get this right—a point made by the noble Lord himself. The Government consider it important to ensure that such claims are handled appropriately. We want to ensure that domestic sanctions do not unjustifiably interfere with fundamental rights or run contrary to our obligations under the refugee convention. It is also important that the effectiveness of our domestic sanctions regime is not compromised because our domestic legislation no longer enables us to manage effectively such immigration claims as may be made. The Government have therefore considered how these immigration claims should be treated in the context of the new administrative reassessment and court review processes.

Our conclusion is that, as a starting point, we should seek to maintain the status quo. The Home Secretary and the Immigration and Asylum Tribunal should remain the appropriate decision-makers, as they are now. Both the Home Office and the tribunal are vastly experienced in this area, having dealt with 38,681 human rights and asylum claims and appeals in 2016 alone. However, some changes will be necessary in order to ensure that domestic legislation enables us to manage situations where, for example, there would otherwise be the possibility of both the High Court and the tribunal considering the same issues, or the High Court being required to determine a protection claim that the Home Office had not had the opportunity to consider.

To illustrate the point, whereas the tribunal would be best placed to determine an appeal against an immigration decision, determining the lawfulness of a decision to freeze an individual's assets is a decision that would be better suited to the High Court. The clause provides the powers necessary to make these changes, which will ensure that we continue to comply with our international obligations and that the effectiveness of our domestic sanctions regime is not compromised. To provide appropriate scrutiny, regulations made under this power will use the draft affirmative procedure.

I give this very detailed explanation along with, once again, an apology to the noble Lord, Lord Paddick. I believe that at Second Reading when he raised this issue I had momentarily left the Chamber or I was near the Box to clarify something, so I did not fully hear his contribution and read it only later in *Hansard*. As I said, I put on record that we would look to return to this in Committee, which clearly we have not been able to do. I am much minded that the instrument put forward is one that we have looked at extensively and reflects the detail of what I have just submitted to your Lordships' House. I therefore hope that with that somewhat detailed explanation, which I briefly mentioned to the respective Front Benches out of courtesy to your Lordships' House, the noble Lord will be minded to withdraw his amendment, with the assurance that I look forward to working with him specifically on that SI before Report.

Lord Falconer of Thoroton: I am grateful to the Minister for that helpful and detailed explanation. As I understand him, he is saying that regulations can be produced under this provision, which will delineate between the Minister, the High Court and the Upper Tribunal as to who decides what in relation to the variety of legal challenges that are available both in ordinary law relating to asylum and the right to remain and the rights given under this Act.

That is pretty complex. It is very difficult to judge whether this regulation-making provision is appropriate in its width without seeing a draft of what the Government have in mind. It is critical that the draft be made available a significant time before Report. I do not know when Report will take place, but it may be in the middle of January. Therefore, in the light of what the Minister said about the detailed work on this draft instrument, when might we see it? Obviously, a lot of work has been done on it and there is a draft in existence. The issue is legal appropriateness and there is no reason why we should not see the draft now.

6.45 pm

Lord Ahmad of Wimbledon: The noble and learned Lord makes an important point about ensuring appropriate time before Report. He is correct to say that we are looking at Report taking place towards the

middle of January in the new year, and correct to say that we must allow sufficient time to accommodate it. I cannot give him chapter and verse on the exact date but he makes his point well. I also subscribe to his view that it is important to allow noble Lords sufficient time.

Lord Falconer of Thoroton: I am not asking for a specific date, but will it be by the end of the week, or the end of next week? The Minister must give us some assurance that we will have it in time.

Lord Ahmad of Wimbledon: As I said, there are already, as the noble and learned Lord will acknowledge, various issues. We will do this in good order. Perhaps I may take this matter back—because various departments are working on this—and clarify appropriately. I will write to noble Lords on the specific date by the end of the week, which will then provide the detail. I fully acknowledge what the noble and learned Lord said about the importance of allowing effective scrutiny before Report. I say to the noble Lord, Lord Pannick—I am sorry, I meant the noble Lord, Lord Paddick; the noble Lord, Lord Pannick, has left but he clearly left an impression on me—that I look forward to working with him once the draft instrument has been circulated. For good order—I look over to the Box and my private office—once the draft has been published, we will seek to circulate it and lay a copy in the Library, as appropriate.

Lord Collins of Highbury: I, too, welcome the noble Lord's statement that Report will not be until mid-January.

Lord Ahmad of Wimbledon: I think that I am being corrected by my rather forceful Whip on my left. I am sure that this matter will be clarified through the usual channels.

Lord Paddick: My Lords, I very much welcome the support and contribution of the noble and learned Lord, Lord Falconer of Thoroton. I am very grateful to the Minister for explaining that asylum claims, and any claim that somebody's human rights will be infringed, will be dealt with by the most appropriate Minister—the Home Secretary—and through the immigration appeal tribunal route, and not by the provisions in the Bill to appeal against the imposition of the sanction itself. I am grateful for that reassurance; it is the one that I was seeking.

I am grateful, too, for the Minister's apology for missing some deadlines, if I may put it that way. Obviously, I am content to withdraw my opposition to Clause 40 standing part of the Bill.

Clause 40 agreed.

House resumed.

The Earl of Courtown (Con): My Lords, as the passage of business has travelled fairly quickly, I think it only fair to speakers in the next debate if we adjourn for 10 minutes until 7 pm.

6.50 pm

Sitting suspended.

Education: Early Years

Question for Short Debate

7 pm

Asked by ***Lord Storey***

To ask Her Majesty's Government what measures they are taking to provide high-quality early years education in England.

Lord Storey (LD): My Lords, I thank all noble Lords who will speak in this debate. I very much look forward to their contributions and to the Minister's response.

There is no doubt that early years education is one of the best possible investments that any society can make, and that every pound spent well delivers returns that will last a lifetime. A young child who is equipped with the experiences and skills to make the most of their life will not only live a much happier life, he or she will make a much more positive contribution to our society and will be a net contributor to their own life and the community in which they live. A young child whose parents have not had the advantage of good parenting or have grown up in poverty will almost inevitably need support to make sure that their own children realise their potential.

At this point I need to draw a distinction between childcare and education. In coalition, we were proud to push the introduction of free childcare and increase it to 30 hours to enable both parents to get jobs and contribute to the family economy. There are, of course, huge problems for childcare providers in delivering the childcare for the money that the Government are willing to provide, but that is a debate for another day.

Many early years providers strive to provide more than just childcare and begin to educate children naturally in ways that many parents do through conversation, learning simple nursery rhymes, simple counting games and a range of practical activities—that is, learning through play. They also try to ensure that parents who need support are encouraged in good parenting habits. However, even at the earliest ages, children will gain most benefit if their nursery can afford to train, develop and pay staff well. Staffing is the largest single cost for childcare providers and the single largest cost as children move into early years education settings.

There is no sharp distinction between childcare and education. Good childcare also develops the child in all sorts of ways and early years education picks up from where the child is and continues to maximise the child's development socially, emotionally and educationally. But—this is a big "but"—as children develop, they need highly trained staff to enable them to be taken on an educational journey that will equip them to succeed at primary school, secondary school and beyond.

We hear a lot about "narrowing the gap" but high-quality childcare, followed by high-quality early years education, is about not letting the gap widen in the early years and beyond. What we had in England—and, to some extent, still have—is early years provision that, as Andreas Schleicher of the OECD says, is the envy of many other countries. However, the Government

[LORD STOREY]
seem determined to see our provision decline from the outstanding to the mediocre, with funding to local authorities being cut, not to the bone—it is worse than that. By 2020, some authorities will have lost half their revenue income: they will be forced to spend all their funding on statutory services, with the vast majority being taken by adult social care.

One of the earliest casualties of austerity were the libraries, a valuable free resource for parents of young children. Tragically for education, one-third of Sure Start centres have been lost since 2010, with more than 40% of centres closing in London and the north-east, where many of the most vulnerable families live. Young children in Swindon and Solihull, for example, have no designated centre any longer. Vulnerable children across the country will have a much less sure start than their older siblings.

Yesterday, the S*tate of the Nation* report by the Social Mobility Commission reported that there are many areas where less than half of disadvantaged five year-olds reach a good level of all-round development. Only half of local authorities have a clear strategy for improving disadvantaged children's outcomes. Could it be that clear strategies cost money? I am led to understand that *Bold Beginnings*, to be published by Ofsted tomorrow, will reinforce the findings of the commission.

Neil Leitch, chief executive of the Pre-school Learning Alliance, said:

"The Commission is completely right to highlight the importance of the early years in improving social mobility … Worse still, the eligibility criteria for the 30-hour policy excludes the poorest families altogether, while offering financial support to households earning as much as £199,000 a year".

For families where, for whatever reason, both parents are not—or, in the case of one-parent families, the single parent is not—employed, the 30 hours of free childcare is not available. How do the least well-off pay for their children? What has this to do with the needs of the child? Poor children are being penalised on the altar of austerity. Leitch went on to say:

"Add to this the fact that the early years pupil premium is still less than a quarter of what primary schools receive, and it's clear that the Government has its priorities all wrong when it comes to the early years".

High-quality early years education depends on the quality and qualifications of the staff in these settings. We are a long way from having graduate-led settings, for which we on these Benches have consistently argued. Each early years setting needs to be led by staff who have been trained in child development. That will enable them to offer children a rich and varied experience, using a wide range of play activities. The training will also enable staff to identify, at a very early stage, any signs that a young child may be more likely to develop, for example, mental health problems. If this is achieved, the savings to the community and to the personal costs to the child will be immeasurable.

On Monday, Liz Bayram, chief executive of PACEY, said:

"Graduate leadership is strongly associated with narrowing the gap between our most and least disadvantaged children. However, we are hearing increasing reports of Early Years Teacher training courses closing, and a rapid decline in the number of qualified Early Years Teachers, as fewer and fewer students choose the early years sector for their teaching career".

The more we learn about how children develop and grow, the more it reinforces the benefits of investing in the early years. Resources spent on high-quality early years education are repaid in the later years as confident, well-rounded children take full advantage of their education. High-quality early years education is an investment that pays dividends for the rest of that child's life. An investment in every child's future is an investment in all of our futures.

7.08 pm

Lord Parekh (Lab): My Lords, I begin by complimenting the noble Lord, Lord Storey, on securing the debate and introducing it so well.

When we talk about childcare and early years education, we need to bear in mind the context. If one looks at the social situation, the following facts are striking: 10% to 15% of pregnant women suffer from depression and anxiety, a third of the violence against women is committed against pregnant women, 1 million children in our society suffer from attention or conduct disorders, and 50% of our children below the age of three have experienced family breakdown.

In that context, we must ask ourselves what government policy should be aiming at. It is absolutely right to concentrate on childcare facilities. The importance of early years provision and the Government's intervention can hardly be overestimated. Such intervention ensures that the disadvantages that a child brings from home are countered, a level playing field for children, and that no child starts school at a disadvantage. It also makes sure that no child builds up resentment and frustration at society for not giving them the chance to live up to their potential. No less important, it makes the rich people in our society realise that the poor are their responsibility and they should be making sacrifices for them.

The advantages of early-years education are absolutely crucial. In that context, I compliment the Government on their plan to introduce 30 hours a week of free childcare for those who earn less than £100,000. I am also pleased that the Ofsted report tells us that the proportion of good and outstanding nurseries, childminders and preschools has risen, and is now at 91%. The gap between children eligible for free school meals and their peers in reaching a good level of development is also declining, and that is warmly to be welcomed.

While welcoming all this, I want to point to a few important difficulties with the Government's scheme. First, the target—working parents who earn less than £100,000 a year—is a very wide social group. It does not target those who need childcare the most. In other words, it is very important that we should be thinking not about those earning £100,000—lots of people earn £100,000—but people who earn much less, and prioritise them so that their claims are not ignored.

Secondly, the scheme explicitly excludes foster children from the additional 15 hours of childcare. This is discriminating and not terribly rational. Thirdly, the funding for the scheme is inadequate. In several cases,

parents have to put down some money to keep the childcare or preschools going. Around 1,000 nurseries and childminders have gone out of business in the last two years—something that should worry those of us who are concerned about the future of our children.

Teachers involved in childcare schemes, preschools and childminding need proper status, recognition and career patterns so that they know where they are on the career path and how they can go further. There must be some chance for them to improve their qualifications so that they are not stuck in a cul-de-sac or simply seen as preschool teachers. They should be able to come out and join the mainstream after acquiring certain qualifications.

Finally, it is striking, as various reports point out, that the range of local children's services is not integrated, and different branches of local authorities function in different ways, without much co-ordination. There is also insufficient understanding of what constitutes disadvantage. We talk about helping disadvantaged children, but what is disadvantage, how do you measure or quantify it, and how do you deal with it? I have not seen any research in this area or any attempt to highlight the problem. Moreover, there do not seem to be any specific targets to improve the outcomes for the most disadvantaged. In any scheme to improve people's situation, the goal should be that 10% or 20% can achieve a certain level of outcome. Without that kind of vision, one has no means of knowing how well a particular scheme is doing. With these reservations, I welcome the Government's proposals and hope the Minister will answer at least some of these questions today.

7.13 pm

Lord Addington (LD): My Lords, when I decided to put my name down for this debate, I had a series of points that I wanted to make. It does not usually happen, but my noble friend must have been reading the same papers, because he has covered most of my points already. However, one or two things did come across on this scheme.

I was personally rather surprised about the emphasis on term times. Surely if you have a preschool child, having some consistency of approach out of term might be better: 22.8 hours across the entire year might be more helpful to those families.

What really struck me, however, was the same issue that my noble friend raised, but for slightly different reasons: that is, about the graduate-level training of those who are leading these developments. The simple reason is that, if we look at the snappily titled document *Statutory Framework for the Early Years Foundation Stage* and take a quick look at the number of things you are supposed to be aware of when working in this area, it is quite an impressive list: communication and language; physical development; personal, social and emotional development; literacy; mathematics; understanding the world—if you have mastered that in your early years, you are doing very well; and expressive arts and design. That is quite a big ask for somebody with NVQ level 2 training. How will you get the development there without high-quality training for at least the leadership of any institution? How will you develop this?

On more familiar territory for myself, my noble friend once again mentioned things such as mental health. However, with any problem you get, if you get it early, generally speaking you deal with it better or at least put coping strategies in place that allow you to deal with it. One of my personal clichés is that we deal with the most severe problems when it comes to disability better than we deal with the minor or less severe ones, when people are just coping. However, if you can identify them in the early years—which requires good training; a degree level course might be a good start—you may be able to do better. Autism at the more severe end will manifest itself early in life. However, for those who have Asperger's syndrome—the high-functioning, who may well have had major problems with interaction throughout their life—this will develop at any stage when they have others around them. Are we doing something to identify them? The same can be true of dyspraxia, for instance. We can certainly ask, "Do you have co-ordination problems? Are you doing things? How do you develop? How do you move?". We can go on and on here. For once, dyslexia will not manifest itself that early, but people are asking why we do not try to identify it earlier and earlier, especially if we do literacy. If we have people who are well-trained, they will be able to support, make interventions and get strategies in place.

Anybody who deals with mainstream disability comes across this situation. You go and talk to a group of parents—usually the Tiger parents lead this—and they will say, "I said, 'Why isn't my child doing things properly?', I took it to the teacher, and then we found out that there might be something wrong". In early years education, this is an opportunity for the teacher to say to the parent, "By the way, I think something might be wrong". The advantage of that is that, with things like autism in particular, there is often cultural resistance to it. Resistance in certain ethnic groups has been high and is fairly well documented. If we get somebody well-trained to intervene early, you will have less of the cliff edge and things falling over it. I hope that we can look at doing that and develop it over the next few years to make sure that there are people who are trained to spot these conditions early on. If you get your strategies in place, you will lessen the effect.

As regards the structure of the courses, I see that you have to apply online. The help here will be of most benefit to those on lower incomes. I was wondering whether we should do a little test, such as: if you are applying online, can you do it on a fairly bog-standard mobile phone when sitting down and using somebody else's wi-fi, or do you have to have a fairly good computer and good computer skills? If it requires fairly high-level computer skills and a good computer, you are effectively cutting out most of your client group, because they cannot get at it. The Minister may say that there is a helpline, but we know that helplines get blocked up and that often, if people have to pay for the phone call—we have had lots of fun with that over the last few months—will find themselves not taking it up. I hope that the Government and the Minister can assure me today that somebody has been looking into how easy it is to access this help and structure. If you make things difficult, you always miss those who will benefit most from it. I look forward to the Minister's speech.

7.19 pm

Baroness Warwick of Undercliffe (Lab): My Lords, I thank the noble Lord, Lord Storey, for providing us with an opportunity to highlight, once again, the importance of early years education, one of the most important determinants of a child's life chances. What is more important than making sure that all children are given the very best start in life? Indeed, the aim of doing so through improved childcare, early education, health and family support lay at the heart of the Labour Government's creation of Sure Start in 1998.

I say with some sadness that I do not believe that expanding so-called "free" childcare to 30 hours a week for three to four year-olds, as it is currently funded, is the way forward. I say this for two reasons. First, I believe that an early years funding policy which focuses on subsidising childcare for working parents, rather than on child development, risks damaging the quality of early education provision. By failing to target disadvantaged families, whose children stand to gain the most from high-quality early education, I believe that we are also damaging social mobility.

My second objection stems from my knowledge of early years education from the perspective of committed, professional providers in this field. I declare an interest here as my sister is an early years professional, operating two nurseries in deprived areas of Nottingham. I have drawn on her experience when talking about early years education in this House previously, and she shared some thoughts with me before today's debate.

A tremendous amount of research has been done into early years and into how to achieve high-quality provision. However, as a practitioner, my sister has an admirably short checklist of what is needed for its delivery: a well-qualified workforce, a comprehensive, age-appropriate curriculum, efficient management of provision, an effective inspection regime and the right resources.

This is really quite simple, but none of it is possible without adequate funding. Early years funding rates for 2018-19 show that most local authorities will not receive any additional funding next year, and that 14% of local authorities will actually see a reduction in funding. While the Government's operational guidance for 2018-19 confirms that local authorities should take no more than 5% out of the funding that they pass on to providers—they have actually been taking more—funding is still woefully short of what is needed. Early years providers have said repeatedly that they will struggle to deliver high-quality care and education—and sufficient places—with the funding available.

I read with amazement in the *FT* some weeks ago that the children's Minister, Robert Goodwill, seems to think that good-quality provision can be funded at an average hourly cost of £3.72 an hour. That beggars belief. He said that this was based on recent research. Where on earth did he get these completely misleading figures? It is not surprising that many practitioners are concerned about the sustainability of their business and believe that we need to get back to basics—to stop introducing ever more complicated ways of helping families to pay for childcare and education, and to go back to the original idea of one system of funding; that is to say, a realistic fee, paid direct to providers who are accountable to their local authority.

I suspect that many parents are actually frightened of becoming involved in the multifarious schemes, which include: funding two year-olds from deprived families for 15 hours per week; funding all three and four year-olds for 15 hours a week; since September this year, funding some three and four year-olds for 30 hours per week, in families where each parent can earn up to £100,000 per year—yet foster parents are, for some reason, excluded; and the tax-free scheme, which has been beset by problems.

Of all these schemes, the one that has worked the best and seen the greatest take-up is the original funding for three to four year-olds, with a reasonable rate given directly to the provider. As I recall, this was introduced by the then Prime Minister John Major in 1995.

The reasonable rate is the issue. As early years providers have highlighted for months, you cannot run a champagne nursery on lemonade funding. The campaigning group with that name has a very effective video, which explains simply that, if it costs you £5 an hour to deliver a service for which you are getting paid less than £4, and you are not allowed to increase the fee to cover the shortfall, you will decide either not to offer that service or to cut back on your costs, thereby affecting the quality of the service you can provide. A third option, of course, is to go out of business.

PACEY, the Professional Association for Childcare and Early Years, highlights that the "free" childcare entitlement for three and four-year-olds has been seriously underfunded in many areas, for many years. The National Day Nurseries Association has reported that 89% of private, voluntary and independent nurseries make a loss when providing funded places for 15 hours a week. It is not hard to see why. Nurseries are expected to employ graduates; pay wages above the national living wage rates, which increase at least once a year; pay contributions to employees' pensions; pay increased business rates; serve high-quality, nutritious meals to combat the obesity epidemic; provide high-quality resources—and the list goes on. For this, in Nottingham for 2017-18 the Government set a local authority hourly rate for three to four year-olds of £4.92. Just over £4 is passed on to the provider, and there will be no increase in 2018-19. Can the Minister please give us any assurance that the Government will review the current funding rates?

Providers cannot continue to operate under these conditions. If funding rates do not increase in line with rising early years delivery costs, nurseries, pre-schools and childminders will go out of business. An Ofsted report earlier this month highlighted that the number of childminders operating in the early years sector has fallen by 26% since August 2012. What action will the Government take to tackle this decline?

My final point is on the need for a properly qualified workforce in early years—an issue raised by a number of contributors to this debate. In her 2012 review, *Foundations for Quality*, Professor Cathy Nutbrown says that the biggest influence on the quality of early education and care is the workforce. I believe it is crucial that staff working in the early years are highly trained, well managed and well led. They should be offered continuing professional development and enjoy the same status as teaching professionals.

Yet, as the Sutton Trust points out, we have seen the end of financial support for graduate training, the removal of the local authority role in continuing professional development, the lifting of the requirement for Sure Start centres in disadvantaged areas to offer graduate-led early education, and no movement on improving non-graduate qualifications in response to the 2012 Nutbrown review. Can the Minister at least offer any reassurance on the current proposals to remove the requirement for maintained nursery and reception classes to have a qualified teacher?

I hope that noble Lords will forgive me if I sound somewhat frustrated in my remarks today, but I have heard how practitioners feel about the funding of the 30 hours of "free" provision, and their frustration is understandable. We must recognise the true cost of providing high-quality childcare or we will reap other, longer-term costs from failing to provide this care. We need a long-term, sustainable funding settlement for providers that will offer families the affordable, high-quality childcare they need.

7.27 pm

Lord Griffiths of Fforestfach (Con): My Lords, I thank the noble Lord, Lord Storey, for bringing forward this debate. In doing so, I declare an interest as the vice-president of the Foundation Years Trust, which is involved in this area. Unlike other speakers, this is not my special area. However, it is something that I am very interested in and I feel very humble in taking part in this debate. I feel strongly about this issue, but I speak as an amateur—as a parent and a grandparent. Any parent thinking about this subject realises the challenge involved and the fact that we all fail. Incidentally, the name on the annunciator is wrong; I am Lord Griffiths of Fforestfach, not of Burry Port, as it happens.

Every child in this country deserves the best possible start in life. The early years, which I take to be from pregnancy to the first day of school, have a powerful influence on the rest of a person's life. The conclusion of the social mobility report, which has just been published, is that learning and development at this stage matters more than any other area. Children from backgrounds with reduced life chances because of their families being more at risk, living in disadvantaged areas or just being poorer have, compared with their peers, worse development outcomes in the early years in terms of vocabulary, reading, numbers, creativity, speech, confidence-building and so on.

The attainment gap between children from low-income families and their peers is slowly closing, but the calculation in the report I have just mentioned is that it will take 40 years at the present rate to close that gap. That means, given the rate at which technology is changing at present, inequality in our society is bound to increase. The good news is that support and good provision really work. Again I quote from the social mobility report:

"Disadvantaged children in the best areas are twice as likely to reach a good level of development at age five, compared with similar children in the worst areas … Poor performance is not concentrated in any type of area, and similar places perform very differently—likely reflecting the role of local authorities and the importance of parenting".

On the question of parenting, the role of the parents is one of the most important in addressing the early years but also one of the most neglected. All parents want the best for their children. They know more about their children than anyone else. They have responsibility for their children's development and their role is vital in the early years. Research suggests that of the many drivers of early years development, three which are important are the mental health of the mother, the attachment between parents and their children and the home learning environment, including playing and having fun. A nursery can help—I am all in favour of nursery education; all my children went to nurseries—but it cannot do what a parent can. A nursery will never find the time to do it.

Parents are a child's first teachers. In that respect, a study published last year from Cambridge University found that the children who had most fun at home were the ones who talked about it and ended up with good development results. It also found that what parents do is far more significant than who parents are. The fact that they are parents—they may not have degrees or may have left school early—and that they have such an interest in their children is extremely important.

The second thing that hits me about this subject is that all parents need support. Some are very fortunate because they have grandparents, step-parents and relatives. Loving, feeding and protecting a child comes naturally to most people but, by contrast, parenting does not come naturally to some and is learned, perhaps, from the example of their parents, from reading or from watching a video or television. There is a need to support parents universally and right throughout the class system. It is potentially difficult to say that parents need support because it may easily appear that you are preaching at people. It may be professionals teaching amateurs, and the amateurs feeling one down to the professionals. There may be a feeling among those who know they are not succeeding that they are stigmatised because of their background. Support should be a natural conversation. It should build on the strengths of the parents, not their failures, and the most effective support comes from their peer group.

The week before last I visited in Birkenhead three projects with early year carers in a charity founded by Frank Field, the Member of Parliament for Birkenhead. All three were different learning environments, but the way the staff related to the parents and their children because the staff were peers with them was remarkable. They were not coming in as professionals, possibly from a different class—probably from a different class—and looking down on them. What surprised me most of all in this group of carers supporting parents was individual mothers saying to me, "This is the only place we ever go to out of the house except for shopping".

Parenting is extremely important. I am not decrying the need for money and resources, and I go along with what is being said, but this whole area is something we neglect at our peril.

7.35 pm

Lord Watson of Invergowrie (Lab): My Lords, I thank the noble Lord, Lord Storey, for initiating this debate on an important topic. It is a short

[Lord Watson of Invergowrie]
debate, but because of the importance of the topic it is one to which we shall return, I am sure, before long.

The early years, as other noble Lords have said, are a crucial period in a child's development and play a vital role in their chances of success throughout school and into adulthood. If the Government really are serious about social mobility, then that is where they should be focusing—and focusing relentlessly. Improving child development in the early years is vital in ensuring that every child is school-ready, because only that will begin to reduce educational inequality.

All the evidence points to inequality beginning from birth and getting wider as young people move through the education system, from results in school to staying on in education, the qualifications they achieve post 16, the kind of technical courses they take and the universities they attend, if indeed they do. This inequality must be addressed at the roots, in the early years, by offering every child the best start in life to ensure that they are given a fair chance to succeed based on their abilities and their ambitions, and not one that is predetermined, based on geography or household income.

The noble Lord, Lord Storey, said that he wanted to make a distinction between childcare and education. I thoroughly endorse that, and my view is that the first is important, the second essential. Without high-quality early years education being available to all, that will never become a possibility. Although much can be achieved once a child starts school, in many cases that is too late, with the gap in development at the age of four between those from advantaged and disadvantaged backgrounds in some cases already beyond the point where it can be bridged. The latest figures show that 30% of children have fallen behind in their early learning by the age of five, significantly impacting on their chances of success throughout school and in their later lives. That figure is worse for the poorest children, who last year were twice as likely as their classmates to be behind in basic skills at the age of five. If childcare and early years education policy are designed to improve child development at the earliest opportunity, to ensure that all children are school-ready to reduce educational inequality, and to support parents, particularly mothers, in returning to the workplace, the 30-hours offer looks likely to fail on both counts.

The families who most need the economic support—that is, those who are unemployed or on low wages—are not eligible for the additional childcare. Nearly 400,000 three and four year-olds are not eligible because their parents are not in work, and a further 110,000 are not eligible because their parents earn below an arbitrary income threshold set by the Government. This represents a clear promise to thousands of working parents who, it later transpired, would not be given the expanded childcare entitlement.

At 30 hours, even where parents are able to access it, it is not without problems. The first difficulty is in getting a code, but parents are finding that, even when they have that, they cannot then immediately start the childcare because they have to wait until the end of the current three-month period. Once they have started, they have to re-register every three months, both with the nursery and with HMRC. It is a bureaucratic nightmare. I have to ask: why is it so difficult? It surely need not be, and certainly needs to be made more accessible. If it were, there would be greater uptake.

This also impacts on a very worrying fact, referred to by my noble friend Lady Warwick. It has recently emerged that more than 3,000 three and four year-old children in foster care are not eligible for the additional 15 hours of free childcare a week. Two days ago the Minister stated, in reply to questions from my noble friend Lord Beecham, that the Government had no plans to change that policy. Frankly, it beggars belief that such a distinction should be drawn, excluding children who, given their life experience thus far, are surely at least as deserving, if not more so, of the additional childcare as children from established families. To hide behind the default excuse, as the Minister did in his answer, that the policy is being kept "under review" is unacceptable. He needs to tell us why the Government decided to discriminate against foster children and their foster parents and why, having reconsidered that decision, they have now decided to reinforce it. I say to him that the DfE is in a hole on this issue and it should stop digging. It should treat foster children and foster parents with the respect they deserve and do it now, as a matter of urgency.

This issue reinforces the view that the Government's policies have increasingly ignored the role that childcare and early years education can play in child development, and increasingly regarded it simply as an economic policy. Statements made have highlighted improvements in maternal employment rates and parents taking on additional hours, with less focus on benefits to child development.

This loss of focus, coupled with serious underfunding of providers, as my noble friend Lord Parekh said, is making it increasingly difficult for provision to be universally high-quality, with low funding levels making it difficult to attract the staff needed to move towards a graduate-led workforce for the sector. As it stands, childcare policy is failing effectively to serve the goals of improving child development and reducing inequality on the one hand and boosting parental employment rates and incomes on the other. There is no reason why these aims should be mutually exclusive.

In government, Labour created the Sure Start programme, referred to by the noble Lord, Lord Storey. When Labour left office in 2010, there were more than 3,600 children's centres, reaching 2.8 million children and their families. It gave those families the best start in life, providing parenting support, childcare for children and job training for adults as well as healthcare and advice. There are now more than 1,500 fewer designated Sure Start children's centres, with about one closure per week. In 2015, Sam Gyimah MP, then Children's Minister, announced a consultation on children's centres. I asked the noble Lord, Lord Nash, in March this year where that was. The answer was that it was under review. It is apparently still under review. I ask that it now emerge from review and actually take place.

I am concerned about the critical shortage of early years graduates across the country. Earlier this year, the DfE published its early years workforce strategy.

We welcomed the recognition of the positive impact that early years teachers have on children struggling with basic skills and the commitment to look at growing the number of early years teachers, particularly in the most disadvantaged areas. However, the figures are not encouraging. The number of people enrolled in early years initial teacher training fell significantly last year from 2,300 to just 860. Save the Children has identified a shortage of 10,000 trained nursery teachers up and down the country. Urgent action is needed to plug that gap if the impact on children's development that we are all striving for is to be achieved.

An important point about the quality of teaching is that the DfE showed earlier this year that 20,000 nursery workers were being paid below the national minimum wage. Despite flouting the law, those nurseries receive millions of pounds of public money every year through free childcare offers and subsidies that help parents meet their childcare bills. If it is below the national minimum wage, it is poverty wages, and it leaves nursery workers, many of whom are parents themselves, struggling to make ends meet each week. Again, I raised this in March with the Minister's predecessor, the noble Lord, Lord Nash. He said:

"That is an extremely good point. Nurseries are of course legally required to pay the national minimum wage and, just as any other organisation or business, they risk fines or even prosecution if they do not. We will be vigilant in this regard".—[*Official Report*, 23/3/17; col. 264.]

In what way have the Government been vigilant and what action has been taken in terms of enforcement?

The Government are rightly investing in childcare because of the important role it plays in tackling inequalities. It helps parents work, and high-quality childcare helps narrow the gap between disadvantaged children and their peers. It certainly serves social mobility. We want the Government to do more and put more resources into it so that more families can benefit. If the Minister is not able to answer the questions that I have asked today, I hope that he will do so in writing on some of the issues, because they have been raised with me by many people involved in day-to-day provision of early years.

7.44 pm

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, I am pleased to answer this Question for Short Debate. It is widely acknowledged that the first five years of a child's life are critical: they are the foundation years, shaping their development and preparing them for school. The noble Lord, Lord Parekh, is correct in saying that speech and language gaps appear by the age of two and that early difficulties with language can affect pupils' performance throughout primary school, with impacts being felt into adulthood. This Government are determined to close this gap and improve social mobility, extending opportunity to all. I agree with the noble Lords, Lord Storey and Lord Watson, and the noble Baroness, Lady Warwick, that the evidence consistently tells us that early years provision can have a positive and lasting effect on children's outcomes, future learning and life chances. And I agree entirely with my noble friend Lord Griffiths that the role of parents in a child's development is also crucial.

We have already taken a number of steps towards improving the quality of early education and outcomes for children, as well as the affordability of childcare for families. To provide some reassurance to the noble Lord, Lord Storey, and the noble Baroness, Lady Warwick, by 2019-20 we will be spending around £6 billion a year on childcare support, a record amount. Our offer to families includes the 15-hour entitlement for disadvantaged two year-olds, the 15-hour entitlement for three and four year-olds and, more recently, the additional 15 hours for three and four year-olds with working parents. This is on top of the support being provided through tax-free childcare and universal credit. As well as giving children the best possible start in life, these entitlements, particularly 30 hours of childcare, are also reducing the childcare costs for working parents. The noble Lords, Lord Storey and Lord Watson, may know that a lone parent has to earn only around £6,000 a year to be able to access the 30 hours of free childcare.

The noble Lord, Lord Parekh, is correct in saying that Ofsted last week released new data confirming that in 2017, 94% of early years and childcare providers are now rated good or outstanding, the highest proportion ever recorded. This is an increase of 20% since 2012. On outcomes, the noble Lord, Lord Parekh, might be interested to know that the latest results from the early years foundation stage profile assessment, which measures children's development and school-readiness at the end of reception, tell us that children's development is also improving. The number of children achieving a good level of development at the end of reception continues to increase year on year—71% in 2017, up from 52% in 2013—but we are not complacent. We recognise that there are challenges and remain committed to continuing to improve the quality of early education so that children can achieve the best possible outcomes. We are doing this in a number of ways: from support for workforce development to improvements in literacy and language teaching and monitoring the impact of 30 hours of free childcare, as well as ensuring that children with special educational needs and disabilities can access early education provision.

The noble Lord, Lord Addington, and the noble Baroness, Lady Warwick, are concerned about workforce training. The evidence is clear that a high-quality early years workforce can have a major impact on children's outcomes. A well-qualified workforce with the appropriate knowledge, skills and experience is crucial to deliver high-quality early education and childcare. In March 2017 we published the *Early Years Workforce Strategy*, which outlines the Government's plans to help employers attract, retain and develop early years staff to deliver high-quality provision. We are working closely with employers and training providers to strengthen level 2 qualifications and ensure that they better support practitioners' progression to level 3 and beyond. We will be consulting on the proposed criteria for the new level 2 qualifications shortly. A new level 3 apprenticeship standard, designed to support the effective development of early years practitioners, is also near completion.

We continue to support graduates into the sector through our funding of the early years initial teacher training programme, including bursaries and employer incentives. I am also pleased to announce that we have

[Lord Agnew of Oulton]
recently established a new working group of early years stakeholders to consider how we can improve gender diversity in the sector. This group includes practitioners, training providers, unions, academics and employers. We believe that a diverse early years workforce that reflects wider society will help to enhance children's experiences.

Research shows that five year-old children who struggle with language are six times less likely to reach the expected standard in English at age 11 than children who have good language skills at that age. At the Conservative Party conference in September, we announced a number of actions to tackle this astonishing finding. We will provide more funding to help schools strengthen the development of language and literacy in the early years, with a particular focus on the reception year. This includes establishing a £12 million network of English hubs in the northern powerhouse to spread effective teaching practice, with a core focus on early language and literacy as their first priority.

In September this year we also announced that we would take steps to improve the early years foundation stage profile, including reviewing what is assessed at the end of reception. We will be working closely with schools and early years experts as we implement these changes. It is important that we get this right, so changes will not be rolled out nationally until the 2020-21 academic year. We have also put in place measures to ensure children with special educational needs and disabilities have access to high-quality education. The new disability access fund is worth £615 per year per eligible child, paid to the provider. We have required all local authorities to introduce inclusion funds to support children with special educational needs.

Turning to the concern of the noble Baroness, Lady Warwick, our total hourly average funding rate for two year-olds has increased from £5.09 to £5.39 from April 2017. All local authorities have seen increases in their rates for two year-olds. We are also investing in the early years pupil premium to support better outcomes for three and four year-olds. This is worth over £300 per year per eligible child.

The department's *Review of Childcare Costs* took into account future cost pressures facing the sector, including the national living wage. Our average rates to authorities compare favourably with recently published research into the hourly cost of childcare by Frontier Economics, as part of a study of early education and development.

We are committed to evaluating the impact of 30 hours' free childcare. The evaluation of the early delivery areas published in July and August this year did not find any impact of 30 hours on the universal 15-hour offer. Building on this, the department is in the process of commissioning an evaluation study to assess the implementation and impact of the policy in the first two terms of national rollout.

The noble Lord, Lord Storey, and the noble Baroness, Lady Warwick, raised the issue of Sure Start centre closures. It is up to local authorities to decide the best solutions for their area. They are best placed to understand local needs and how to meet them. Where councils decide to close a children's centre, they must demonstrate that children and families, particularly in the most disadvantaged areas, will not be adversely affected and that they are still meeting the duty to have sufficient children's centres to meet local demand.

The noble Lord, Lord Addington, raised issues around children with special educational needs. We are doing several things in this area that he may be aware of. The first is the introduction of the new phonics screening check for children in year 1, which should pick up those children struggling with early literacy. We are funding the special dyslexia trust to raise awareness and support for parents and schools, and are working with the National Association for Special Educational Needs and other experts in the sector to ensure that schools have access to the Inclusion Development Programme training materials on dyslexia and other common forms of special educational needs.

Several noble Lords, including the noble Lords, Lord Parekh and Lord Watson, raised concerns over foster children accessing childcare. Children in foster care are already entitled to the universal 15 hours of free childcare. Carers also receive funding and support for the care of their foster children, including a national minimum allowance and favourable treatment in the tax and benefits system. We are in the first term of the 30 hours' free childcare offer and will continue to keep the policy under review to see how it is working for families, including children in foster care.

Lord Watson of Invergowrie: The Minister has basically repeated the Answer to my noble friend Lord Beecham's Written Question that was given this week. The basic question is: why should there be any difference at all? Foster children are allowed the 15 hours but not the 30 hours; ordinary children who were allowed the 15 hours have moved on to 30 hours. Why is there a difference?

Lord Agnew of Oulton: My Lords, it might be useful to write to the noble Lord, Lord Watson, to set out our thinking. At the moment I do not have the detailed information to hand, but I will do that.

In closing, I thank noble Lords again for their contributions to this important debate today. Many important points have been raised and I will write to address any of those that I have not had time to respond to fully. The Government are very clear that the early years are a critical time which influences outcomes for children and their families. We have achieved a huge amount, but there is still a lot more to do, particularly to close the gap between disadvantaged children and their peers. We remain committed to continuing to improve the quality of early years education to make sure that every child improves their life chances and has real opportunities to realise their potential.

House adjourned at 7.56 pm.

Grand Committee

Wednesday 29 November 2017

3.45 pm

The Deputy Chairman of Committees (Lord Rogan) (UUP): My Lords, if there is a Division in the House, the Committee will adjourn for 10 minutes.

Scotland Act 1998 (Insolvency Functions) Order 2017

Considered in Grand Committee

3.45 pm

Moved by ***Lord Duncan of Springbank***

That the Grand Committee do consider the Scotland Act 1998 (Insolvency Functions) Order 2017.

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Duncan of Springbank) (Con): My Lords, this order is one of a number of measures which are intended to update and modernise corporate insolvency in Scotland with particular regard to insolvency rules for the winding up of companies. This follows the Insolvency (England and Wales) Rules 2016, which modernised the process relating to company insolvency in England and Wales.

The law on corporate insolvency in Scotland and the respective legislative competences of the UK and Scottish Parliaments and Governments is complex. That is particularly the case with regard to winding up. For example, in relation to business associations, the general legal effect of winding up is reserved but the process of winding up is excepted from this reservation. Consequently, in practice, it is not always clear whether a winding-up matter is covered by reserved or devolved legislation.

To address this, and in order to facilitate the efficient, effective and user-friendly modernisation of, in particular, company insolvency rules for Scotland, both the UK and Scottish Governments agreed that we should legislate to remove the need for a complicated exercise of assessing which rules relate to a reserved matter. Accordingly, both Governments agreed to the preparation of a combined order under Section 63 and Section 108 of the Scotland Act 1998.

Section 63 of the 1998 Act enables an order to provide for any functions that are exercisable by a Minister of the Crown in or as regards Scotland to be exercisable by the Scottish Ministers concurrently with the Minister of the Crown. Section 108 of the 1998 Act enables an order to provide for any functions that are exercisable by a member of the Scottish Government to be exercisable by a Minister of the Crown concurrently with a member of the Scottish Government.

The order will therefore allow for the mutual conferring of functions between Scottish Ministers and a Minister of the Crown, so that both have the power to bring forward as appropriate winding-up rules or regulations for companies, incorporated friendly societies, and limited liability partnerships in Scotland irrespective of whether these rules or regulations relate to reserved matters under Schedule 5 to the Scotland Act 1998, or matters that are not reserved.

This approach will enable each Administration to make provision on winding-up matters without any doubt being cast on the scope of the relevant enabling powers. It will also ensure that the rules on the winding up of companies in Scotland will be contained in one instrument rather than split between two.

I hope that your Lordships share our view that this is a sensible step which will modernise the approach to corporate insolvency in Scotland. Furthermore, it demonstrates the benefits of two Governments working together to make the devolution settlement work for people and industry in Scotland. I beg to move.

Lord McAvoy (Lab): My Lords, I thank the Minister for his explanation of the order, the first of many instruments to be debated today. I put on record my pleasure at operating under the chairmanship of the noble Lord, Lord Rogan. It is the first time I have operated under his chairmanship, and I hope he is kind and pleasant with me.

As we have heard, the order relates to corporate insolvency rules in Scotland and the complexities that arise due to winding up being a mixed area of competence. The Minister will no doubt have in mind the fact that the future may hold many more discussions about mixed areas of competence as we move forward with our exit out of the European Union. Fortunately, today's order is intended to make an existing process simpler and has received general support. I place on record our support for it.

As the Minister explained, the order would confer mutual functions on Scottish Ministers and a Minister of the Crown so that both have the power to bring forward winding-up rules and regulations for Scotland in relation to companies, incorporated friendly societies and limited liability partnerships. We accept the arguments that this will alleviate an otherwise complex assessment of which matters are reserved in this specific area and assist in the modernisation of these rules as regards Scotland by ensuring the provisions are held in one single order rather than split across multiple instruments. We are content to support the order.

As I understand it, the provisions are made with an assurance that a Minister of the Crown will be able to exercise these functions only with the agreement of a member of the Scottish Government. I may be a doubting Thomas, but I am sure that occasionally a dispute may arise in the future and a challenge to the agreement. Has a procedure been envisaged for what happens if a conflict arises and the relevant Ministers find themselves in disagreement over the use of these powers? I am sure that we are all alert to the dangers not of disagreements, but of complex arrangements being misused and misquoted in Scotland as a tactic against the Westminster Parliament. Will the Minister answer that point?

Lord Bruce of Bennachie (LD): May I clarify that the intention is that either the Minister of the Crown or a Scottish Minister may act, but they have to agree with each other? If so, what will be the process by

[Lord Bruce of Bennachie]
which they consult? There may be circumstances where the action has to be fairly urgent. Clearly, one does not want to use a consultation process which causes delay. Does one simply have to notify the other or do they have to give consent formally either way?

Lord Foulkes of Cumnock (Lab): My Lords, I share the delight of my noble friend on the Front Bench that the noble Lord, Lord Rogan, is presiding over our proceedings today. The last time that I mentioned the Chair in a Grand Committee I was told that I was not supposed to do that, but I am delighted that I did. I agree completely with the question raised by my noble friend on the Front Bench and amplified by the Liberal Democrats.

I will make a few more points. First, I am increasingly worried about the number of important matters that are being dealt with through statutory instruments. This one is perhaps okay. In fact, I think it is, as my noble friend on the Front Bench said, and he is supporting it. I go along with that. However, I suspect that as we move into the new year, we will get hundreds if not thousands more statutory instruments, many in areas that might more properly be dealt with by primary legislation. It is very important that we on this side of the House—and indeed all sides—keep an eye on the Government to make sure that some important matters which should more properly be dealt with by primary legislation on the Floor of the House are not slipped through on statutory instruments, particularly in Grand Committee.

I welcome the Minister to the Front Bench—I should have done so right at the very start. I have not had the opportunity to appear opposite him before. I know of his work in the European Parliament, which he carried out with distinction. No doubt, like me, he would have preferred that European Parliament to go on and on into the foreseeable future, which it may well do, if my noble friends the Liberal Democrats have their way. I am right behind them on that.

However, I am worried about one aspect of this order in relation to limited liability partnerships. The Minister understandably mentioned nothing about the controversy of limited liability partnerships, particularly in relation to Scotland. He will know that there has been a lot of publicity and concern expressed about the way in which limited liability partnerships are being used for tax evasion, tax avoidance and money laundering. These limited liability partnerships can be set up quickly and cheaply. I think they cost £35. As a result, corporation tax and capital gains tax are being avoided by people who set up these limited liability partnerships. Very often, there is no need for the partnership to be in writing; it can just be a verbal agreement between people, which is very unsatisfactory. There has been great controversy, not just in Scotland but in other places too. A lot of controversy has arisen in Jersey in relation to them. More recently, the suggestion that people with self-employed status could be treated as employees by a limited liability partnership has caused some genuine concern.

I know that this is not directly covered by the winding-up procedures. However, as my noble friend rightly pinpointed, there could be a difference of opinion between Holyrood and Whitehall about whether a limited liability partnership should be wound up. It may be that Westminster, in its wisdom, will want such a partnership to be wound up because it had been involved in some kind of activities and it would be more appropriate for it to be wound up, but Holyrood might not. In that case, I endorse the questions asked by my noble friends in relation to this. I hope the Minister will amplify in his answer what might happen specifically in relation to limited liability partnerships.

Baroness Donaghy (Lab): I, too, congratulate the noble Lord, Lord Rogan, on being in the chair, and I also congratulate the Minister. I read his moving maiden speech and welcome him to the Front Bench.

I am worrying away at the same point that four other noble Lords have raised. It is the phrase,

"by the Scottish Ministers and a Minister of the Crown".

It may be because of my former ACAS chair hat, but I look for trouble—for how to sort it out before it happens, and for codes of practice. My questions are about what might seem a narrow point, but it is an extremely important one. Would this relationship be mutual? Would they both have to agree? That question has already been asked. Does one have precedence over the other? I think that has already been asked. Is there an intention to think about something like a code of practice for any eventuality, such as when they do not agree? If they do not agree, how will the delays that take place affect not only the companies but the workers involved in the lack of future of those companies? It is extremely important that, in any inbuilt possible conflict, we should consider the people who are going to be at the bottom end of it and might be detrimentally affected.

Lord Duncan of Springbank: My Lords, I thank noble Lords for those helpful questions. I, too, add my welcome to the noble Lord, Lord Rogan. We are the two new boys on the block and it is a pleasure to be under the noble Lord's astute guidance. I also welcome the support from all sides for this approach. It has a number of important implications for how the two Governments work together, and I hope it will serve as a template for ongoing challenges in the near future, although one might argue that the waters will get choppier as we move forward.

The Minister of the Crown and the Scottish Government Ministers must reach agreement. Without agreement, there will be no progress. This therefore puts a great responsibility on both to recognise the point raised by the noble Baroness, Lady Donaghy, about what would happen if they do not do so. It places on their shoulders a very strong burden because they need to recognise that where there is no consent, there is no movement forward.

The noble Lord, Lord Bruce, asked whether it is just a question of notification. No, in actual fact, it is consent—both Ministers must consent to the process. It is not enough just to inform, which is why agreement must rest at the heart of it, which is important.

I thank the noble Lord, Lord Foulkes, for his kind words, which were very generous. He is right that there will almost certainly be many more SIs in the months to come. I cannot comment on that yet, but I do not

doubt that he will keep an eye on the Government, and I think that that eye will be attached to very strong interventions whenever we stray from what he believes to be the correct approach. I am looking forward—I imagine—to those interventions in the months to come.

Tax evasion and limited liability partnerships are not covered within the wider ambit of the order, which is specifically about winding up. I too share the concerns that many of these areas can of course be done almost on a verbal basis and therefore move very swiftly, but in terms of the aspects of this particular issue, it is the winding up only. I hope it gives some confidence that in both instances it is about the consent of both parties, recognising each's responsibility and duty in this regard, and moving forward on the basis of a consensus. I hope this will be a way of addressing that, but I recognise that that does not cover the wider issues raised, which are not within the scope of this particular approach.

The points of the noble Baroness, Lady Donaghy, were well made. I recognise that workers will suffer if the two Ministers in question cannot reach agreement. That is why I repeat that careful consideration must therefore be given to the implications of failure to reach that agreement. In most instances, I hope it will not be controversial, and there will be a strong recognition that these things must move forward swiftly. On that basis, I hope that I have the support of your Lordships this afternoon.

Motion agreed.

Criminal Justice (Scotland) Act 2016 (Consequential Provisions) Order 2017

Considered in Grand Committee

4.02 pm

Moved by ***Lord Duncan of Springbank***

That the Grand Committee do consider the Criminal Justice (Scotland) Act 2016 (Consequential Provisions) Order 2017.

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Duncan of Springbank) (Con): My Lords, the draft order laid before the House is made under Section 104 of the Scotland Act 1998, which allows for necessary or expedient provision in consequence of an Act of the Scottish Parliament. The order is being made to ensure that the policy set out in the Criminal Justice (Scotland) Act 2016 can be fully implemented. It was passed by the Scottish Parliament on 8 December 2015.

The 2016 Act contains a number of provisions which have been developed from the recommendations of Lord Carloway's review of the Scottish criminal law and practice, which reported in November 2011. This review followed a UK Supreme Court decision in the case of Cadder that gave suspects a right to legal advice before questioning by the police in Scotland. In this context, the review aimed to modernise and enhance the efficiency of the Scottish criminal justice system, and its recommendations have led to a number of the provisions in the 2016 Act.

These include reforms of arrest and custody laws designed to provide flexibility for police in conducting investigations while ensuring fairness for suspects. It will also build on 2010 reforms to allow suspects access to a lawyer whether or not they are to be interviewed by the police. In addition, the Act specifically states that the police have a duty not to deprive people of their liberty unnecessarily. As a consequence of some of the measures introduced by the Act, it is necessary either to amend the law elsewhere in the United Kingdom or to make provision in relation to Scotland where the reforms apply to reserved matters.

Making such amendments is not within the competence of the Scottish Parliament, so it is necessary for this order to be laid before the United Kingdom Parliament. It is made under Section 104 of the Scotland Act 1998, which allows the UK Government to make legislative changes which are necessary or expedient in consequence of an Act of the Scottish Parliament.

The order makes provision about arrests effected both in Scotland and outside Scotland in connection with crimes committed in Scotland and the investigation of Scots law crimes and extradition matters in Scotland. Provisions in Schedule 1 will ensure that cross-border enforcement and assistance continues to work effectively. Where a Scottish warrant is executed in England, Wales or Northern Ireland, provisions in the 2016 Act on arrest procedure and rights of suspects will apply.

Schedule 2 covers the effects of the 2016 Act on "reserved forces", namely the Ministry of Defence Police, the British Transport Police and the Civil Nuclear Constabulary. Schedule 3 relates to the impact of the 2016 Act on immigration, HMRC officers, designated customs officers and the National Crime Agency. Schedule 4 covers the application of the 2016 Act on persons subject to service law. Schedule 5 makes provision regarding a person arrested in connection with extradition proceedings.

Reserved forces exercising the powers and privileges of a police constable in Scotland will also be bound by a stop-and-search code of practice issued under Section 73 of the 2016 Act. The order amends the 2016 Act to ensure that the UK Government and reserved bodies subject to the terms of the code are fully consulted when any amendments to the code are being considered. The order also refers to a code of practice that will apply to investigative bodies reporting criminal offences in Scotland to the Crown Office and Procurator Fiscal Service.

This is a particularly wide-ranging and complex order that has required close working between the UK and Scottish Governments, Ministers and officials. As such, it shows how Scotland's two Governments can co-operate effectively to make the devolution settlement work. I beg to move.

Lord McAvoy (Lab): My Lords, I again thank the Minister for his very full explanation of the order. As we have heard, it provides legislative changes in consequence of Parts 1 and 2 of the Criminal Justice (Scotland) Act 2016 as passed by the Scottish Parliament. Again, we are content to support the order.

As has been stated, the Act follows, some years later, a review of criminal law and practice in Scotland undertaken by Lord Carloway, and has been subject to

[Lord McAvoy]
detailed scrutiny by Members of the Scottish Parliament. Provisions include changes to police powers, rights of suspects while in police custody, criminal procedure and provisions regarding powers of stop and search. These are wholly within the devolved competence of the Scottish Parliament.

The order is made under Section 104 of the Scotland Act 1998 to make consequential legislative changes regarding arrests effected in Scotland and outside Scotland in connection with crimes committed in Scotland, police custody in Scotland, the investigation of Scottish law crimes and extradition matters in Scotland. I ask the Minister: where these provisions affect officers outside Police Scotland, including police officers across UK forces outside Scotland, immigration and customs officials, NCA officers, the Civil Nuclear Constabulary and other forces covered by the order, has any assessment been made of any additional training or resource needs that might arise from these provisions? If so, who would be responsible for funding any such additional needs identified? I look forward to the Minister's reply.

Lord Bruce of Bennachie (LD): My Lords, I also thank the Minister for his introduction and explanation. I will explore one or two aspects of this because, as he said himself, it is complex. It is a mixture of devolved and reserved matters.

I will first look at reserved matters relating to human rights, because we have clearly had some controversies in Scottish policing over the last few years. The Liberal Democrats oppose the creation of a Scottish national police force. We believe our criticisms and concerns have been somewhat borne out, certainly in the early part, by the way the national force conducted itself and the fact it appeared to be under somewhat more direct political control than many of us would regard as appropriate and would be the case for police forces in England.

In particular, we saw a massive increase in the use of stop and search by the police in Scotland. In 2013-14, there were 450,173 "consensual" searches. The meaning of "consent" is rather subjective in that context. There were 192,470 statutory searches. Not surprisingly, this created a great deal of public reaction. The Scottish Government responded to that; I give them credit for that, but they needed to because it was a very strong reaction. Consequently, the figures the following year, at least from 1 April to 30 September, saw consensual searches drop to 888 from 450,000 and the statutory searches from 192,470 to 20,665. Consensual searches are now banned altogether, so that is a step in the right direction. I want to check with the Minister, where part of the reaction was not just that public concern but human rights implications that would fall on the UK Government, does this combination of Acts by the Scottish Parliament and this statutory instrument maybe avoid the possibility of that particular question of human rights being addressed again?

The other area is the issue of cross-border policing generally. The Minister mentioned the MoD police, civil nuclear police and British Transport Police. The Scottish Government have taken over the responsibility of the British Transport Police north of the border. Many of us felt that that was a retrograde step too. I am a passionate home ruler, a passionate believer in devolution and supporter of the Scottish Parliament, but I believe that we should also recognise that, as long as we are part of the United Kingdom—which the people of Scotland want us to be—devolution should be to enhance and bring Government closer, but not to undermine the advantages of collective working across the United Kingdom. It seems to me that there will be circumstances where the transport police could be inhibited in their role in cross-border policing. Can the Minister give some clarification as to whether this instrument will affect that positively, negatively or not at all?

I do not have the capacity to go through the whole SI in detail, but there seem to be a number of issues that are really quite important, including to clarify how the devolved and reserved powers can work constructively together—which is why we are not opposing the instrument—but some clarification is nevertheless necessary of what that really means. There also needs to be an understanding, or perhaps appreciation, that the Scottish Government have learned a little bit about their excessive zeal in creating a national police force, which has led to quite considerable friction. I mention again the appearance of mounted police at highland league football matches and routinely arming police officers in rural villages. Things such as that are well within the devolved capacity of the Scottish Government but bring human rights issues into question, so they are not of some indifference to the United Kingdom Government, who have to answer if there are questions of human rights compromises by a devolved Government or Administration.

Having said that, and supporting the passage of the instrument, I would nevertheless appreciate it if the Minister could answer those questions.

Lord Foulkes of Cumnock (Lab): My Lords, I want to raise two points. The first, briefly, is an important one on European arrest warrants and whether there is any implication when—if—we go out of the European Union. Will cross-border activity by police using European arrest warrants be affected?

I have a major objection, however, following up what my noble friend has said. I warn that I am going to cause real trouble on the next instrument. I am sorry that I have not alerted my noble friend and colleague on the Front Bench, but I am not going to support it. I will vote against it. I am not going to agree that it should go forward because of what we have just heard about the British Transport Police—and I feel even more strongly about it. It is a major mistake. We and the Government should recognise now that we have all made a major mistake in agreeing that the responsibility for the British Transport Police should be devolved to Holyrood.

I am in favour of devolution. I campaigned for it and, unlike my noble friend on the Front Bench, I have been a long-standing supporter of devolution. But the way in which it is being dealt with by the Government in relation to the British Transport Police is, quite frankly, dangerous, reckless and ought to be stopped. Ruth Davidson—who I understand is the most important Conservative in the whole United Kingdom—has been attacking this and has said that it should be stopped.

4.15 pm

The British Transport Police is working perfectly now, dealing with policing on the railways north and south of the border. It is working very well and it should stay that way. The transport unions want it to stay that way. The chief constable of the British Transport Police wants it to stay that way. Yet the Scottish Government are going to incorporate the British Transport Police in Scotland into Police Scotland. Police Scotland is already a total debacle. The chief constable is on gardening leave. Officers have been suspended. The chairman of the Scottish Police Authority has had to resign. Fortunately, a good new chair is taking over, with effect from tomorrow. Nevertheless, in spite of Susan Deacon taking over, it is wrong for the British Transport Police to be incorporated into Police Scotland. It is wrong in terms of policing. It is wrong in every way.

The Government should think again. They should withdraw this statutory instrument and go back to the Scottish Government and say that they have come up against intractable objects—I do not mind being called an intractable object—and are having a change of mind in relation to devolving the British Transport Police. It is never too late to change your mind—I have done it before: I have made mistakes and admitted them, and changed my mind—if you think something is wrong and it is going to be positively harmful. It will be harmful to policing, north and south of the border. It is not just a Scottish issue because it will affect criminals in Scotland coming down to England and criminals in England coming up to Scotland on the railways, and the British Transport Police will not be able to deal with that.

I know that it is difficult for a junior Minister, particularly a new junior Minister, to go back and say to a Secretary of State—although I know David Mundell well and I know he will understand this—that he has had trouble dealing with this statutory instrument and the Government must think again. I hope that there will be some way to get the Scottish Government to think again. For far too long, we have just accepted that what they say is right because they are the Scottish Government. We have a very distinguished former Presiding Officer of the Scottish Parliament with us here today—no one has done a better job in the chair in the Scottish Parliament than my noble friend Lord Steel—but even he will admit that sometimes the Scottish Parliament, and particularly in this case the Scottish Government, get it wrong and it is now time to think again. If we do not do that, what is the point of coming here? What is the point of looking at these things? What is the point of having a legislature for the whole United Kingdom—which thankfully still has responsibility in Scotland—if we do not sometimes stand up and say, "Enough is enough"? I think we should do so on this issue.

Baroness Donaghy (Lab): My Lords, my point is much narrower. I would like clarification on Schedule 1. A constable of the Police Service of Scotland can arrest someone in England, Wales or Northern Ireland without a warrant in connection with a Scottish crime in certain circumstances. A constable of a police force in England, Wales or Northern Ireland can arrest a person in Scotland—it does not mention a warrant—in certain circumstances. Is there a difference? One says without a warrant; one does not mention it. What are the implications? What are the circumstances that are mentioned there? Later on it talks about deserters and refers to certain limited circumstances. I can understand that; obviously, that is a much more complicated issue. But it would be extremely useful to have some clarification about what that cross-border responsibility would be.

Lord Duncan of Springbank: I was hoping that there would be another question to give me a minute or two longer. In the absence of that additional question, I will try to answer the questions that I can. First, I welcome the support from the noble Lord, Lord McAvoy, and other noble Lords and recognise the dissent from the noble Lord, Lord Foulkes. I will come back to that point.

In answer to the question from the noble Lord, Lord McAvoy, about the training and the costs of training, the reserved forces operating in Scotland have been trained through existing budgets. Police Scotland has assisted in this by carrying out training courses for those reserved bodies operating in Scotland. It has also continued supporting partner agencies to adjust to the Act. So there should be no additional costs. However, the noble Lord is quite right to raise the question. We need to make sure that we keep an eye on this. Offering training once and believing that that is all is not enough. We need to make sure this is ongoing training and that it is delivering. It is important that we make sure that we are auditing the outcome and output of the training.

In response to the noble Lord, Lord Bruce, who has asked some serious questions about human rights, noble Lords will recall that the Cadder case originated from a human rights issue. That was the reason why the Government were very keen to move forward.

On stop and search, noble Lords will be aware that this is an operational matter, which limits my ability to comment specifically. However, I note again that where there are issues such as this, they can and should be addressed directly through organisations in Scotland. I note that the noble Lord, Lord Foulkes, welcomed, Susan Deacon, the new chair of the oversight body. I believe that that appointment will be a useful addition to the overall oversight matter. These issues need to be addressed directly through that point. If violations of human rights occur, they can be raised and escalated through the different strata. In the first instance, it would be a matter for the Scottish Government to address.

I will come back in a moment to the more complicated question on the British Transport Police. However, in answer to the first question from the noble Lord, Lord Foulkes, the European arrest warrant is still a subject for negotiation, so we do not yet have clarity on exactly what that will mean. If noble Lords will forgive me, I will postpone answering that question until I have an answer to it. That is probably the sensible thing to do.

The noble Lord has made a passionate point about the British Transport Police. I think not a single person on these Benches does not share his concern about some of the issues which seem to be unfolding, not for the sake of better policing or for better serving the people, but rather for a narrower, more factional agenda.

[Lord Duncan of Springbank]
I think we all have a certain degree of unease about that particular aspect. The important thing for me to note at this point is that the Smith commission recommended by consensus that powers over this would be devolved back to the Scottish Parliament and to the Scottish Government. In this instance, the Scottish Government are operating within their competence to do so. I share some of the noble Lord's unease and I am sure that this will not be the end of the matter.

Lord Foulkes of Cumnock: On the Smith commission, with no disrespect to the noble Lord, Lord Smith, for whom I have great respect, or to the other members of the commission, it is possible they did not get everything right. They were rushed. They had to do things very quickly and were under a lot of pressure from the SNP in particular. At the end, John Swinney, having signed up and agreed to the Smith commission, said at the press conference that he did not accept the recommendations —an astonishing situation. If they can do that, we have the right to think again as well.

I may be wrong on procedure, but I think that if we do not agree this today, it goes to the House at a later date. That will give the Minister time to think and to consult. In that case, he might be able to consult not only David Mundell and Ruth Davidson but—can I go higher?—even Theresa May about this, because there is genuine concern. I have expressed it strongly, but it is expressed even more strongly by some leading Conservatives as well as other people in my own party. I hope we can have a pause in this statutory instrument. I do not think it would delay it unduly. It would give the Minister time to go back and say, "Look, I as a Minister faced this furore". Although they have not got to their feet, all the people round the Committee Room were nodding when I was making this point. The Minister has made the point himself and substantially agreed with me. This would give the Minister time to go back and perhaps find a way to get the matter reconsidered.

Lord Duncan of Springbank: I will, I hope, be guided on points of procedure regarding the noble Lord's exact question. However, I know that whatever we agree here today, the order must then move to the Floor of the House, at which point there will, I imagine, be an opportunity for this point to be made in the Chamber and for a Division to be called on the point.

The Deputy Chairman of Committees (Lord Rogan) (UUP): I think that is the case, yes.

Lord Duncan of Springbank: That might be the opportunity for that pause. I appreciate some of the points which the noble Lord is making, but he will need to find support in the House. I am not sure whether I can comment on that at the moment, but I recognise the passion with which he makes the point, which is that issues are now unfolding. I stress that this matter was devolved to the Scottish Parliament and the Scottish Government; I do not believe that we can now revisit it in the fashion which the noble Lord would like, if I am being frank. I hope that that gives some answer to that.

I have one more answer to give to the noble Baroness, Lady Donaghy. She will be pleased to know that I will write to her, because she asked quite a technical question which requires a technical response. If she will allow me, I will write to her in due course with that information, and will happily share that with everyone else in the Room.

Lord Tunnicliffe (Lab): Perhaps I can help the Minister. I believe that whatever happens today, provided that my noble friend indicates to the Government Whips that he intends to debate the order on the Floor of the House when it is called, they will seek to make time so that there can be a proper debate.

Lord Duncan of Springbank: Helpfully, apparently that is a matter for the usual channels, and I am not one of them, so I hope that that will be resolved in due course and that the noble Lord, Lord Foulkes, will find his satisfaction through that.

Lord McAvoy: I thank the Minister for giving way before he sits down. The Smith commission proposals were supported. There was a lively discussion and the situation of the British Transport Police was brought up, but it has been devolved. I wonder whether, not to alleviate the concerns of my noble friend Lord Foulkes but to address them, it would be procedurally possible for the Minister to undertake to raise this specific debate with his counterparts in the Scottish Parliament's Government.

Lord Duncan of Springbank: That is a very good point indeed. I believe that I will be able to raise this very point both behind the scenes and with my counterparts north of the border, and then it will be discussed more fully in due course.

Lord Foulkes of Cumnock: I am grateful for the assurances of the Minister and, even more, of my noble friends, both of whom are part of the usual channels in one way or another. I feel no less strongly about it, but I understand the procedure that should be followed.

Lord Duncan of Springbank: I am very happy for that. Again, I will do all I can to take this forward in the manner in which we have discussed over the past few moments.

Motion agreed.

Scotland Act 1998 (Specification of Devolved Tax) (Wild Fisheries) Order 2017

Considered in Grand Committee

4.30 pm

Moved by ***Lord Duncan of Springbank***

That the Grand Committee do consider the Scotland Act 1998 (Specification of Devolved Tax) (Wild Fisheries) Order 2017.

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Duncan of Springbank) (Con): My Lords, the reason for making this order, laid before the House on 14 September 2017, is to grant the Scottish Government a limited and specific power to raise a levy on wild freshwater fisheries for the purposes of the management, conservation and sustainable development of those fisheries. The order relates to reforms being undertaken by Scottish Ministers to support the management and conservation of wild fisheries in Scotland.

The Scottish Government commissioned an independent review of wild fisheries in Scotland in 2014. One of its conclusions was that the Scottish Government should have the power to adopt appropriate management tools, including the flexibility to change the way in which income is raised for fisheries management, currently done through a fisheries assessment levy applied to salmon fisheries at a local level. Consequently, the order will give Scottish Ministers the power to make regulations imposing a levy on the owners, occupiers or users of wild fisheries, or owners or occupiers of the right to fish in wild fisheries.

The Scottish Government intend to use this power by introducing related provisions to their Wild Fisheries (Scotland) Bill that will provide Scottish Ministers with the power to set, collect and retain fishery assessment levies in circumstances where they do not approve the fishery management plan developed at a local level. The levies in question are considered by Her Majesty's Treasury to be taxes and are, therefore, outside the legislative competence of the Scottish Parliament.

In order to introduce a Bill into the Scottish Parliament with provisions on tax, the Scottish Government require an amendment to be made to Part 4A of the Scotland Act 1998. An Order in Council, under Section 80B of the 1998 Act, is the mechanism through which Her Majesty may amend Part 4A so as to specify an additional devolved tax.

We have agreed to devolve this power on the basis that it will be applied only to a levy in respect of the conservation and management of freshwater fisheries. This will not have a significant impact on businesses in other parts of the UK, but we consider that this measure will support the UK Government's ability to meet their international conservation commitments. I beg to move.

Lord McAvoy (Lab): My Lords, again, I thank the Minister for his full explanation of the order. As we have heard, it would provide legislative competence for the Scottish Parliament to bring forward provisions on specific taxes relating to wild fisheries in Scotland.

The order will amend Part 4A of the Scotland Act 1998 to provide that taxes on specified persons to fund expenditure on the conservation of freshwater fish and their habitats, and the management or regulation of wild fisheries, are to be devolved taxes. The Scottish Government commissioned an independent review of wild fisheries in 2014 to consider how this magnificent Scottish resource can be protected and managed sustainably into the future.

The order will allow for an intended wild fisheries Bill to be brought before the Scottish Parliament to include powers for the Scottish Government to raise levies on the owners, occupiers or users of wild fisheries if they deem it necessary in the future. These provisions have been approved by HM Treasury, the Department for Environment, Food and Rural Affairs, and members of the cross-party Environment, Climate Change and Land Reform Committee in the Scottish Parliament. We are content to support the order so that these issues can be scrutinised fully in the Scottish Parliament.

I ask the Minister: what consultation are his Government undertaking with Scottish Ministers to ensure that the package of reforms undertaken on these natural resources in Scotland either do not materially affect or are beneficial to wider conservation and natural planning efforts across the whole of the UK? We hope that the Scottish Government will work with members of all parties in Scotland to ensure a sustainable future for these natural resources and for communities right across Scotland.

Lord Steel of Aikwood (LD): My Lords, I suppose I should begin, like everybody else, by sucking up to the Deputy Chairman and the Minister and saying how pleasant it is to be here with them. I do not remember this ever happening in this Room before, but the House of Lords exists to be pleasant and I am delighted to join in welcoming them here. In fact, a few moments ago the noble Lord, Lord Foulkes, made a quite gratuitous and kindly reference to me, no doubt anticipating that I might give him support if there were a vote. In fact, I would not have done, but nevertheless the atmosphere of pleasantry is something I am happy to continue.

I have a purely personal interest in this matter, in that I fish occasionally on the Tweed and more regularly on a loch in the Scottish Borders, which I will return to in a moment. I think the Minister will agree that this order is somewhat unusual in that it is predicated on a Scottish Parliament Bill that we have not yet seen. That makes it a little difficult to understand but none the less, in principle, we will support it. That is presumably why the Sewel convention does not apply in this case, because it is bestowing more powers on the Scottish Parliament under the Scotland Act. Like the noble Lord, Lord McAvoy, I would like to hear a little more about the consultation that the Minister has had with colleagues in the Scottish Government about how this is going to operate.

I have two questions about the order. The first relates to the amendment of Chapter 7 of the Scotland Act, on page 2 of the order. It states:

> "This subsection applies to taxes on the … occupiers ... of the right to fish in wild fisheries".

I operate a syndicate on a loch in the Scottish Borders. One of the members of the syndicate is the former sheriff, who will certainly be breathing down my neck if we do not get this right. Does that mean that when I pay, as I do, a handsome sum to His Grace the Duke of Buccleuch for the right to fish on his loch, that makes me an occupier of the right to fish in the waters? In other words, am I, in supporting this order, liable to find myself subject to taxation in future?

My second question is one that I anticipate my noble friend Lord Beith is about to ask. Fisheries in Scotland are governed under legislation that was passed way back in the 1950s. In the case of the Tweed,

[Lord Steel of Aikwood]
Scottish legislation covers the south bank; in other words, people operating in England are subject to Scots law in this peculiar circumstance. I wonder whether this order applies to them as well.

Lord Beith (LD): My Lords, my noble friend did not realise quite how far the provision he has just cited extends. Legislation, particularly the Scotland Act 1998 (River Tweed) Order 2006, embraces the whole of the Tweed district, which includes all the tributaries of the Tweed and tributaries of the rivers which are tributaries of the Tweed, whether they are in England or Scotland. Of course, many of them are in England, such as the Till, for example. The Tweed river system has always been managed as a single system, which makes a great deal of sense. It would be odd to do it otherwise.

However, there are some problems inherent in this, as there were in the 2006 order. The Minister said that the Bill will not affect other parts of the United Kingdom—I hope I am not quoting him wrongly. If that is the case, it will be an interesting reversion to the previous way of legislating in this area. My initial assumption was that this order might affect all the tributaries of the Tweed. The basic question is: can somebody have a fine or levy placed upon them by the Scottish Government when they are not only resident in England but the activity to which the levy relates is wholly in England? Can someone who is the owner or occupier of a fishing right on, say, the Till, be required to pay a levy by the Scottish Government?

There may be a perfectly good case for them being required to pay that levy, but if there is, that surely should be a decision on which the United Kingdom Parliament—the only Parliament which represents England—should continue to have a say in future. It seems constitutionally repugnant for the Scottish Parliament to be able to pass laws or impose levies in England, just as it would be repugnant now under devolution to do the reverse in this area. That is what I would like clarification on as I think something of a wrong turning was taken in the 2006 order, and I do not want to see it repeated in subsequent orders, such as the one we are considering today.

Lord Foulkes of Cumnock (Lab): My Lords, the Minister will be pleased to hear I have nothing to say on this subject.

The Earl of Cork and Orrery (CB): I thank the Minister for his cogent explanation. I declare an interest as the spouse of the part-owner of a west coast river.

There is great concern among those involved with district salmon fishery boards on the west coast of Scotland that this clarification of the law is intended to cover a deeper purpose. We currently pay what used to be called fishery rates, or sporting rates. That money is returned to us in the form of support for the district salmon fishery boards. In general terms this has been a very satisfactory arrangement and has allowed the employment of marine biologists to assist riparian management and so on. The concern is that this measure in effect allows the Government to separate the two strands and use that money as part of the general tax pool, and then return what they wish to the district salmon fishery boards, which will thereby over time suffer attrition that may well be a downward trend. Will the Minister therefore give an assurance that all money raised by this measure will be returned to the district salmon fishery boards or their equivalent?

Lord Duncan of Springbank: I thought the last order was complicated. I will try to do justice to the questions. I welcome the support of the noble Lord, Lord McAvoy, and others. The noble Lord rightly asked what consultation has been undertaken. There has been significant collaboration between the UK and Scottish Governments over the impetus behind this approach. Noble Lords are right to note that there is no Bill as yet, but the argument underpinning this approach is that in due course there will be. This is in anticipation of that. We have international obligations on behalf of the salmon in a river, which the UK Government are taking very seriously. The recognition here is that the administration of that will rest with the Scottish Government in this instance. We will continue to ensure the outcome of that management is carefully considered so that we can move forward.

The noble Lord, Lord Steel, also asked about consultation. I hope my response answers his question. He asked whether he will be paying the tax, or whether the Duke of Buccleuch is the individual. Helpfully, I have the answer to that, I believe, on two pieces of paper. No, the Scottish Government do not intend to change the existing process to collect the salmon levy locally. The Scottish Government have ruled out the introduction of other taxes. However, these powers will future-proof wild fisheries management, ensuring that Scottish Ministers have the levers at their disposal should new evidence or circumstances merit the introduction of new taxes on the users, such as through a rod licence. The answer is no at the moment, but if a rod licence comes in it will be yes. I hope the noble Lord is okay so far.

The noble Lord, Lord Beith, asked quite a detailed and important question. I remember many years ago when I was a geography student that one of the big challenges was to try to determine exactly where tributaries were because it depends on the season, the rain and so on. Scottish legislation will be subject to the rules of legislative competence in Section 29(2)(a) of the Scotland Act, so English fisheries cannot be taxed. I think that answers his question quite clearly.

Lord Beith: Yes.

Lord Duncan of Springbank: That is very helpful. I thank my team very much; that was exactly the answer I was looking for in that instance. Good.

The noble Earl, Lord Cork and Orrery, asked an important question as well. The answer to where the money will be spent is that the salmon levies will be utilised in the district in which they are raised. I hope that gives some comfort to him in that regard.

I think those are the answers to the questions noble Lords posed. I hope that that is satisfactory.

Motion agreed.

Drug Dealing Telecommunications Restriction Orders Regulations 2017

Considered in Grand Committee

4.46 pm

Moved by ***Baroness Williams of Trafford***

That the Grand Committee do consider the Drug Dealing Telecommunications Restriction Orders Regulations 2017.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, these regulations were laid before Parliament on 12 October. The drug dealing telecommunications restriction orders—DDTRO—respond to an operational requirement of the police and the National Crime Agency to support them in tackling the issue of "county lines" drug dealing and its related violence and criminal exploitation.

As noble Lords probably know, "county lines" is the police term for urban gangs supplying drugs to suburban areas and market and coastal towns, using dedicated anonymous mobile phone lines. We are particularly concerned about this form of drug dealing because of the high-harm nature of this activity. County lines gangs target and exploit children and vulnerable adults, who are then at high risk of extreme physical and sexual violence, gang recriminations and trafficking. In the National Crime Agency's latest threat assessment of county lines, three-quarters of police forces in England and Wales reported exploitation of vulnerable people in relation to county lines, including children as young as 12.

The mobile phone line is central to county lines activity, with some prominent lines making in excess of £5,000 per day. However, the phone number has limited personal data associated with it and the handset is typically located well away from street-level drug-dealing activity. Such factors make it hard for the police to gain possession of the handset and to pursue criminal prosecutions against an individual for the activity on the line. Where it is possible to do so, and where there is sufficient evidence, the police will pursue prosecution. However, where prosecution is not possible, the police and the NCA have been clear that closing down the phone lines will seriously disrupt county lines drug dealing and the associated violence and exploitation.

With that background in mind, I turn to the details of the regulations before us. The DDTRO Regulations are made pursuant to Section 80A of the Serious Crime Act 2015, which sets out the power to make regulations which enable courts in England and Wales, Scotland and Northern Ireland to issue DDTROs. In essence, the regulations provide the civil courts with the power to make a drug dealing telecommunications restriction order, and set out the process and procedure for doing so.

The applicant for a DDTRO—that is, the police or the NCA—will have to satisfy a court that on the balance of probabilities the device has been used, is likely to have been used, or is likely to be used in connection with drug-dealing offences. The court will also have to have reasonable grounds to believe that the order would prevent or restrict the use of a communication device in connection with drug-dealing offences.

It is important that the initial DDTRO application hearing is conducted in private and without notice to ensure that the phone owner does not know that their line will be closed. If forewarned, the phone owner is likely to take action to negate the order by changing phone numbers in advance. The regulations also provide a number of safeguards to ensure swift resolution if a phone owner is impacted in error. This includes the ability for the applicant authority to disapply the order of its own volition, as well as the right of an affected person to appeal an order at a public hearing.

I hope noble Lords will approve these regulations. They will give the police a vital tool in their efforts to tackle county lines drug dealing and protect vulnerable individuals from being exploited by county lines gangs. I therefore commend these regulations to the Committee.

Lord Paddick (LD): My Lords, I thank the Minister for her explanation. I have some specific questions about these orders and a general comment about the Government's approach to illegal drugs and related issues. We support these measures but we have wider concerns.

As the Minister has explained, these regulations allow law enforcement agencies to make an application to a court to disconnect mobile communication devices, such as mobile phones, where there are reasonable grounds to believe that an order would prevent or restrict their use in connection with drug dealing. These orders can be made without notice to the people affected, in private and at the request of the applicant, without any details being disclosed to anyone. I can understand the need to protect covert human intelligence sources who may be involved in supplying information to the enforcement agencies and I also understand what the Minister has said—that if people were told in advance, it might enable them to change their telephone numbers in advance—but surely this is going to be only a marginal benefit, as it will soon become apparent to the drug dealer that their phone has been disconnected. Unless I do not understand the issue fully, it would not take very long not only for an alternative number to be secured but for the suppliers and clients to be notified of what the new number is. What is the real advantage of keeping the whole process secret—other than protecting sources—set against the benefits of having, as far as possible, an open justice system? Can the Minister explain how these measures present any more than a minor irritation to the drug dealers? In her explanation, she talked about these measures seriously disrupting drug dealers, but surely it would be very quick and easy to re-establish their lines of communication.

Moving on to wider issues, these measures are symptomatic of the Government's approach to illegal drugs—tinkering around the edges in the vain hope of appearing to be doing something. But the inescapable fact is that there is an insatiable demand for illegal drugs, from young people who smoke small amounts of cannabis to the rich and famous who use cocaine. The fact that these drugs are illegal is no longer a consideration for millions of recreational drug users

[Lord Paddick]
in the UK. As with most forms of prohibition—as we have learnt from history—stemming demand is clearly ineffective and, as a result, the law is being brought into disrepute. Addiction to illegal drugs, on the other hand, should be treated as a health issue and not a criminal justice issue. It is the sufferer's addiction that is the issue and not the drugs that they are addicted to.

As with any insatiable demand, there will clearly be a supply. The only effective way to deal with illegal drug supply is to take out the whole distribution network from source to street. During the period of the "peace dividend", between peace in Northern Ireland and the rise of Islamist terrorism and the far right, the police and the security services were able to mount a limited number of operations that did just that—take out importers, distributors and street dealers. The combination of the diversion of the security services back to their core function of anti-terrorism and the reduction in police resources means such operations are no longer possible.

There was a story in the *Times* this week on this very issue of county lines, which reported:

"Thousands of children and teenagers are being used by criminal gangs as drug runners ... The National Crime Agency ... believes that the 'county lines' drug trade, in which urban gangs move Class A drugs and cash between inner-city hubs and out-of-town locations, is out of control".

I spoke a few weeks ago in Parliament to some young people whose lived experience is that drug dealing, with all its inherent risks and dangers, presents the best way to make money as far as they are concerned, whether to support a reasonable lifestyle or to put food on the table for their families. Prison was seen by them as a place where they can meet with their friends. As one young woman recently released from Holloway prison explained, it was somewhere where she had "the best time", to quote her exactly. She added, admitting the irony, that when her local police station was the base for a safer neighbourhood team and she saw uniformed officers on a regular basis she felt safer, but not anymore.

In a society where discrimination against the young, and black and minority ethnic people, persists in the job market, where young people's lives are blighted by criminal records acquired at a young age, and which, from young people's perspective, gives them little or nothing and no hope of making a decent living by legitimate means in the future, they believe drug dealing to be a legitimate option. All this creates a parallel society where young people feel they have to arm themselves with knives and guns to make themselves feel safe, whether they are engaged in drug dealing or not, resulting in record numbers of young people dying on the streets from knife crime and of people dying on our streets from taking illegal drugs because there is no control of the strength or composition of the drugs they are taking. What is the Government's response to this alarming picture? It is to cut off the phones of drug dealers, if and only if they find out what numbers the dealers are using—something that can be rectified by drug dealers within hours.

There is a crisis in this country enveloping increasing numbers of young people. Of course we should make life difficult for drug dealers and these measures may have a marginal impact, but a major rethink about the legalisation and regulation of drugs, the treatment of addiction, the incarceration and criminalisation of young people, providing opportunities for young people to earn decent money legitimately, and the decimation of community policing, is desperately needed.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank the noble Baroness, Lady Williams of Trafford, for her explanation of the regulations before the Grand Committee. I am fully supportive of them as far as they go and I welcome the action being taken here, although more could be done.

I have spent a few Fridays and Saturdays with the Metropolitan Police over the last few months, looking at a variety of the operations it undertakes and how it has to work in some very challenging circumstances to keep us safe. This whole issue of drug gangs crossing county lines was the subject of a briefing I received recently. I remember visiting one particular unit that explained how a number of young people from their area had been apprehended in a coastal town with drugs and cash. They had gone from their London base and they were dealing stuff there. It is absolutely right that this exploits some very young, vulnerable people. It potentially drags young people into a life of crime. There are other risks for these young people of being groomed and sexually abused, and of being subject to other forms of violence. It is a very depressing thing to see.

I also went on a raid of a property being used as a drugs den. Across the table there were about a dozen mobile phones. If you are a drug dealer apparently you have loads of phones, which is why we have these orders. That highlighted to me the importance of these phones to the operations.

This is a serious issue and the orders have my support but my problem is that the phones can be bought with minimal information. You can just wander into a high street store or supermarket and do not need to provide anything and you can get a mobile phone and off you go. If you are a drug dealer I suppose you buy loads of these phones. I think you can also buy the mobile phone credit with minimal information. There are lots of circumstances where if you want to do things in this country you have to provide ID—to buy goods, to buy services, to get access to credit. This week I went to the post office because a parcel had arrived, we were not there and a little card was put through the door. To get the parcel, which was for my wife, I had to produce the card, our council tax bill and both our passports—just to get a parcel that was legitimately ours. But apparently someone can go to the high street and buy a mobile phone with no indication of who they are—and go off and set an operation up.

5 pm

That is part of the problem. Why are we allowing people to walk into shops and buy phones with little or no verification of who they are? We all accept that a proportion of these phones that are bought without any information being given will be used for criminal activity. As the noble Lord, Lord Paddick, said, the orders will disrupt some activity for some period of

time but I suggest that people will be off down to the same shop where they bought the previous phone to buy a new phone pretty sharpish, and they will be off again—with, I suspect, some amazing speed—to do their drug dealing with phones. This is a really serious problem and people have to be stopped. As I said, I support the regulations as far as they go. I do not know where the problem is—is it that the Government do not want to go any further? Is it that the retailers will not co-operate? Is it the mobile phone companies? Who is stopping us going that bit further? I would be interested if the Minister could tell us that.

The regulations are fine as far as they go but much more ought to be done. These are really serious issues. Lives are ruined by drug dealing but also by the criminal records that people get. There is a risk of violence, abuse and death. It is a horrific situation. I agree with the general points made by the noble Lord, Lord Paddick, regarding drug use, including that it is a real health issue. All these issues—drugs, knives, mental health—are now at epidemic proportions. The pressure that people are under was quite clear in my time with the Metropolitan Police over the past few months. In each London borough, on most shifts quite small numbers of people are trying to keep things under control.

I was also shocked to learn—maybe I am naive—that it is not illegal in this country to buy cannabis seeds. Apparently you can go out and buy them, and the lamps and the other equipment, on the high street. I never knew this. I was told by the police which high street shops sell them. It is a ridiculous situation. The Government should deal with that straight away. Is it not ridiculous? Anyway, I will leave it there and look forward to the Minister's response to the points I have raised.

Baroness Williams of Trafford: My Lords, I thank both noble Lords for the points that they raised. The noble Lord, Lord Paddick, made a series of very good points about this issue, including about the perhaps marginal benefit of disconnecting the phone. I guess that assumes that the phone is used by one person to make one call but in fact it is not. It is often used by hundreds of drug users to facilitate thousands of deals every single day. Therefore, giving no notice of the intention to close down the mobile phone stops the criminals from posting to the users the fact that the phone is going to be closed down. So that is one benefit of it.

Both noble Lords suggested that this is just one very small step. It is something that the NCA and the Government have been concerned about. It is one step. It is not the whole solution. The noble Lord, Lord Paddick, talked about the general support that users need with rehabilitation and perhaps with mental health problems. The other issues around guns and gangs often go together with drugs. He is right that there is often a multiagency approach to just one of the problems that these young people face. As I said to, I think, the noble Lord, Lord Kennedy, before the debate, often these young people are in care, so they are very vulnerable. These are the people who are being used for the county lines activity. It absolutely needs sorting but noble Lords are right that this is not the full answer to what is quite a complex problem.

The noble Lord, Lord Paddick, talked about the police cuts. As I have explained on many occasions, the police budget has been protected over the last few years. The NCA shows that police forces across the country are very engaged in tackling county lines. They are not linking any problems with budgetary issues to being able to tackle these problems.

I understand that new CPS guidance has been issued, as well as awareness guidance on health and social care problems. I do not think the police or the Government want to criminalise a young person at 16 for drug use. They want to rehabilitate that person, as the noble Lord says. Access to jobs and a life away from drugs, guns and gangs is much more preferable to a life dealing with drugs, albeit such a life can be quite lucrative.

I think the noble Lord, Lord Kennedy, asked why the NCA cannot launch criminal proceedings against the phone line. The ownership of the phone line is concealed and often anonymous. The noble Lord makes the point about identification, because we have to provide identification for everything, but someone can simply go into a mobile phone shop and buy a mobile phone. I will take that point away with me. The noble Lord also made a point on verification, and I do not disagree. He also asked whether there was an unwillingness of mobile phone operators to engage with this. I think there was that element, because the Government would not have legislated if mobile phone operators had co-operated on this. I think that that answers the noble Lord's questions.

Lord Kennedy of Southwark: I thank the Minister for those replies. I am pleased that the Minister has confirmed that some of the companies involved may not be as keen as we hoped they would be. It is a bizarre situation that someone can go off down the road and buy a mobile phone. This may not be the only solution, but if you bought a phone and the line was attached to you and you had to provide your passport and credit card, and even if in the end you were not a drug dealer but the phone was used for a drug deal, someone could go back and say: "Hang on—you bought this phone six months ago and now it has been used in these operations. What have you got to say about that?". The fact that it is all anonymous makes things very difficult for everybody concerned.

I think it is the companies—either the shops or mobile phone operators—who are not keen to co-operate. We have seen in other Bills, such as the Data Protection Bill, other issues from companies that are not keen to co-operate with the Government and law enforcement agencies. Perhaps we should look further at that, because it seems ridiculous to me. The noble Lord, Lord Paddick, will know better than I that these are really serious matters. People's lives can be totally destroyed. A company certainly has no right not to co-operate with the Government. The Government should insist on this. As I said, you cannot get your parcel from the Post Office without producing your council tax bill or your passport, but you can go off and buy a mobile phone and become a drug dealer. It is ridiculous.

I also mentioned the point about cannabis seeds. Cannabis seeds and all the equipment can be bought in this country quite legally. You cannot run a cannabis

[Lord Kennedy of Southwark]
farm, but you can buy seeds on a number of high streets, which is absolutely ridiculous. I found that out only a few weeks ago when I was out with the police on the beat. They said, "That shop down the road, you can buy all the stuff, and there's nothing illegal in doing that". If that is the case—and I have no reason to doubt the officers—that should also be looked at, because it is a ridiculous situation.

Baroness Williams of Trafford: I forgot to mention that point. If the noble Lord would let me know the name of the shop, we can take that on.

Motion agreed.

Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2017

Considered in Grand Committee

5.10 pm

Moved by ***Lord Young of Cookham***

That the Grand Committee do consider the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2017.

Lord Young of Cookham (Con): My Lords, the draft order, for which the approval of the Committee is being sought, has been laid under the Government Resources and Accounts Act 2000. This allows the Treasury by order to provide for the accounts of a body to be audited by the Comptroller and Auditor General. The body must exercise public functions or must be entirely or substantially funded by the Government. It is intended to give the C&AG responsibility for auditing the accounts of a number of public sector bodies and companies. The draft order also removes from auditing, by the C&AG, 61 public bodies and companies because they have ceased operation and are, therefore, no longer subject to public sector audit.

The main provision in the draft order is to give the C&AG responsibility for auditing both Ebbsfleet Development Corporation and the Housing Ombudsman. These are central government bodies and should be audited by the C&AG. The Ebbsfleet Development Corporation is a new body set up by the Ebbsfleet Development Corporation (Area and Constitution) Order 2015. Currently, the accounts and statement of accounts of the Ebbsfleet Development Corporation are audited by the C&AG by agreement, which means that he is not the statutory auditor. This order appoints the C&AG as statutory auditor for Ebbsfleet Development Corporation accounts.

The Housing Ombudsman was incorporated by the Housing Ombudsman (Corporation Sole) Order 2013. Under the Housing Ombudsman scheme, the ombudsman prepares annual accounts in accordance with an accounts direction approved by HM Treasury. These accounts were audited by the C&AG, but the scheme gave no authority to lay the accounts in Parliament. This order corrects that anomaly and will ensure that the Housing Ombudsman's annual accounts can be laid before Parliament. This meets the statutory requirement of the C&AG reporting to Parliament by laying certified accounts of government departments and other public sector bodies.

This draft order also makes provision for six public bodies constituted as companies to be audited by the C&AG. These are: BPDTS Ltd, the College of Policing, English Sports Development Trust Ltd, the Oil and Gas Authority, Phone-paid Services Authority Ltd and Revenue and Customs Digital Technology Services Ltd. Section 482 of the Companies Act 2006 disapplies the auditing requirements in that Act where a non-profit-making company is subject to have a public audit by the C&AG under the Government Resources and Accounts Act 2000. For this exemption to apply, the non-profit-making company must be included in an order under Section 25(6) of the Government Resources and Accounts Act 2000. There are further conditions applicable to this exemption. These are that: the company is non-profit-making; if the company is a parent or subsidiary undertaking, all undertakings in the group are non-profit-making; and the balance sheet contains a statement that the company is entitled to exemption under Section 482 of the Companies Act 2006. As currently constituted these six companies will meet these requirements, provided they include an appropriate statement in their balance sheets.

Finally, this draft order amends primary and secondary legislation to remove 61 public bodies and companies from the scope of audit by the C&AG because they have ceased operations. The primary and secondary legislation being amended for these purposes is: the Industrial Organisation and Development Act 1947; the Offender Management Act 2007; the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Orders 2003, 2005, 2008 and 2012.

In conclusion, the proposals in the draft order confirm the Government's commitment to achieve consistency in the public audit arrangements for public bodies and provide a net gain for both Parliament and the public. I commend the draft order to the Committee.

5.15 pm

Lord Jones (Lab): My Lords, I thank the Minister for his exposition. I shall be very brief. Ebbsfleet Development Corporation figures largely in the draft order. Can he say in some detail what it is, what it does, who leads it and what is its budget?

Lord Tunnicliffe (Lab): My Lords, I am sorry to be a bit picky, but I hope that the Minister has not moved the order; I hope that what he has in fact moved is that the Grand Committee do consider the order. The order itself, whatever his Treasury-produced paper says, will be taken on the Floor of the House after consideration by the Committee. I note the Minister nodding in agreement. I hope that his authors will get that little bit right in future.

I thank the Minister for introducing the order to the Committee this afternoon. The order provides for certain public bodies to be audited by the Comptroller and Auditor-General. In addition, the scope of audit is removed from the Comptroller and Auditor-General for a number of public bodies and companies that are no longer in operation, no longer exist or no longer

meet the criteria for public sector audit. It is on the whole concept of criteria that I wish to ask one or two questions.

First, does the primary legislation that established these bodies have Henry VIII clauses that allow the changes to be made by delegated legislation? Secondly, with reference to those bodies being omitted from the scope of National Audit Office audit, why are they being omitted and against what criteria? Will the Minister outline the criteria to the Committee? Thirdly, why are the specific eight bodies being added, under what criteria are they being added and why are the Government adding them at this specific moment? Lastly, what other bodies are either waiting to or likely to be added to the list of bodies to be audited by the National Audit Office? Is there a question about the quality of the bodies waiting to be added?

Although I understand that the order is largely procedural, I would welcome a response from the Minister on those questions to give greater clarity to those who are affected by the order about why they are affected. In very simple terms, the Minister gave us an overall view that it was to add consistency, but I should have thought that that consistency must be against a general view of what should or should not be audited by the National Audit Office.

Lord Young of Cookham: My Lords, I am grateful to both noble Lords who have spoken in the debate and will try to respond as best I can.

In answer to the last point made by the noble Lord, Lord Tunnicliffe—he asked: what is the big picture?—the big picture goes back to the year 2000 and Lord Sharman's report, which recommended that all public bodies should have as a statutory auditor the C&AG. Since then, most new bodies that have been set up have had the C&AG as their auditor, and most existing bodies have been swept up and are now caught by the C&AG. One or two have slipped through the net, which is why we need the order to capture them. That is the basic principle—that the C&AG should be the statutory auditor of all public bodies in the interests of transparency and other broad goals.

The noble Lord, Lord Jones, asked about the Ebbsfleet Development Corporation and, in particular, I think, who reads its report and what the whole development corporation costs. I would like to write to him as I do not have those figures at my fingertips. The responsibility for the development corporations rests with the Department for Communities and Local Government, and I will contact it to pass on the noble Lord's concerns and make sure that he gets the information that he has rightly asked for. The Ebbsfleet Development Corporation is delivering 15,000 homes and creating a 21st-century garden city in north Kent, taking advantage of HS1.

Turning to the questions asked by the noble Lord, Lord Tunnicliffe, I think I have explained the broad context of audit and accountability and where central government believes responsibilities should rest. The first statutory instruments under Section 25(6) of the Government Resources and Accounts Act 2000 made the C&AG the auditor of certain non-departmental public bodies. The C&AG was also given greater powers of access to documents held by persons in receipt of grants from, or in relation to contracts with, bodies audited by the C&AG. Under the Companies Act 2006, the C&AG was given power to audit companies and specific provision was made for the auditing of non-profit-making companies. This order continues the long-standing approach of implementing Lord Sharman's recommendations, which I mentioned at the beginning, and which have been adopted by different Governments.

I shall address the specific points raised by the noble Lord, Lord Tunnicliffe. On whether the primary legislation that established these bodies has Henry VIII clauses that allow these changes to be made by delegated legislation, for the bodies included in the scope of C&AG audit by this order, I can advise that no such provisions are available. For the bodies that are removed from that scope, the order amends provisions previously made by earlier GRAA orders and there are no other legislative provisions which would enable all the necessary changes to be made.

Regarding the bodies that are being omitted from the scope of the NAO audit, as I said in my opening remarks, these 61 bodies have ceased operation and there is therefore nothing left to audit and they are being removed. They are listed in one of the schedules to the order. Regarding the addition of the eight bodies, again, in my opening remarks I tried to outline the criteria. To address the noble Lord's question on why this is presented now, the Treasury originally laid the order in March 2017. However, debates were not possible as a result of the election and so the order was re-laid in September, in slightly amended form, with the Commons debate scheduled for 12 December, and was presented to the Lords today. Lastly, the noble Lord raised a question on future GRAA orders. The Treasury has informed me that no further affirmative orders are planned, which I think is good news for both of us. The last affirmative GRAA order was in 2012.

We support the policy that all public bodies should be subject to C&AG audit to increase parliamentary accountability. We are now implementing that policy, bringing full accountability to Parliament for public bodies and other central government bodies that are consolidated within a department's accounts. The draft order before us today is an important step to realising that ambition.

Lord Tunnicliffe: Will the Minister forgive my unreasonable curiosity and tell me what GRAA stands for?

Lord Young of Cookham: Government Resources and Accounts—Act. I got three out of four off the cuff. That was a very fast ball the noble Lord bowled me right at the end, and I got three out of four.

Motion agreed.

Community Drivers' Hours Offences (Enforcement) Regulations 2017

Considered in Grand Committee

5.24 pm

Moved by ***Baroness Chisholm of Owlpen***

That the Grand Committee do consider the Community Drivers' Hours Offences (Enforcement) Regulations 2017.

Baroness Chisholm of Owlpen (Con): My Lords, these regulations are being made in order to enhance the enforcement agencies' powers in respect of the drivers' hours rules. For the benefit of your Lordships who may not be aware I shall make a few introductory remarks about those rules.

The drivers' hours rules are central to keeping our roads safe. They set maximum driving times and minimum break and rest times for most commercial drivers of both lorries and coaches. For example, the rules mean that after four and a half hours driving, a driver must take a 45-minute break. Daily driving time is normally limited to nine hours.

The consequences of drivers working when fatigued can, of course, be catastrophic, so although we can be pleased to note that road accidents involving coaches and lorries have been reducing over time, we must not be complacent. The rules are enforced by the Driver and Vehicle Standards Agency and the police at targeted roadside checks and also by visiting operators' premises. Most breaches of the rules are swiftly identified and efficiently dealt with by means of fixed financial penalties. More serious breaches are referred to the traffic commissioners or lead to prosecution.

These regulations extend the use of fixed financial penalties so that they are available for certain drivers' hours offences committed within 28 days of a drivers' hours compliance check. At present, this fixed-penalty approach can be taken only for current offences—those that are being committed at the time of the check. But the tachograph, the device which is used to check compliance with the rules, has a historical memory. These "on-the-record" or "historical" drivers' hours offences can be sanctioned at present, but only through court prosecution. This is time consuming and costly, as your Lordships can imagine, both for the enforcement agencies and for the operator and driver involved.

It creates a particular difficulty in respect of non-UK drivers, which is perhaps where the biggest consequence of this change will be. Although they may be issued with court summons, regrettably they do not generally respond to them. It is costly and may be impracticable to arrest them and hold them in police custody. The regulations will enable the enforcement agencies to issue fixed financial penalties for infringements of the drivers' hours rules by non-UK and UK drivers committed in the 28 days preceding a compliance check. The regulations will also bring the UK into line with several other European countries, including France and Germany, which already issue on-the-spot penalties for historical drivers' hours offences. In addition, it will save the enforcement agencies time and money by giving them the option of taking fewer cases to court.

The new powers will not be used indiscriminately. The DVSA intends to carefully consider all relevant circumstances and the gravity of the offence before taking any action and will exercise its discretion when dealing with minor infringements. My department undertook a formal consultation on these changes. They received broad support from respondents, including trade associations. I beg to move.

Baroness Randerson (LD): My Lords, these regulations relate to on-the-spot fines for historical road traffic offences—that is, offences committed within 28 days prior to the driver being stopped. Drivers' hours legislation is an important aspect of road safety standards in this country, as well as, of course, an important aspect of the welfare of the drivers concerned. These regulations apply to the so-called historical offences committed outside the UK in other EU member states and some third-party countries.

A very high percentage of freight traffic on our roads is driven by foreign drivers. Many of them are actually EU citizens resident in this country and working for UK companies here and abroad, but many of them are foreign drivers who have simply come to the UK to deliver and collect goods. Therefore, the future co-ordination and harmonisation with the rest of the EU is vital to our road safety in future—unless of course we are going to hermetically seal our borders, as some Brexit supporters seem keen to do.

I particularly want to ask the Minister about Northern Ireland, because on the island of Ireland, drivers cross all the time from one side of the border to the other. They do not even notice that they have crossed that border in many cases. It happens much more frequently and much less formally than in the rest of the UK because that border is invisible. There has been a great deal of discussion about future customs checks, but clearly the harmonisation of drivers' hours is also vital. Therefore, do the Government intend to keep in step with EU rules on this, now and in future—deal or no deal? It is not just a case of whether the Government intend to accept the EU rules as they currently stand. The Government need to commit to keeping the EU rules as they are amended and changed over time, which happens fairly regularly. Unless Britain is entirely in step with the EU, now and in perpetuity, there will be huge problems for drivers in Ireland. In effect, a border will be created.

5.30 pm

Of course, in the UK as a whole, as well as in Ireland, there will be an adverse impact on working conditions for drivers, and very significantly on road safety, if the Government do not maintain the standards on this and keep in step. It would be curious at the least if, by abandoning these rules and the cross-border co-operation they intrinsically involve, we allowed drivers on to our roads while ignoring the hours they had driven before they entered the UK. I invite the Minister to reassure us that the Government intend to keep absolutely in step with these rules, now and in future. It is not a case of wishing to get even better than the rest of the EU. The important thing is that we have the same rules so that drivers understand and can follow those rules as they go from one part of Ireland to another—from the EU into the UK.

Lord Jones (Lab): My Lords, I thank the Minister for her very clear explanation. Listening to the remarks of the noble Baroness who has just taken her seat, I was reminded of the high reputation she had in the Welsh Assembly as a Minister.

The helpful Explanatory Note refers to,

"rules about periods of driving, rests and breaks for drivers of specified vehicles undertaking international carriage of goods and passengers".

Road safety requires these rules, that is for sure. I note the reference to "international carriage of goods". My question is: are the Government doing enough to collect the fines from drivers who have being doing things wrongly on our roads but who then go back to Europe? Often they do not pay up. If you talk to magistrates, they will say that that is the case. Have the Government any statistics on the fines not paid by drivers from overseas?

Lord Rosser (Lab): I, too, thank the Minister for explaining the purpose and content of the SI. We certainly support its objectives. I have some points to raise about the Explanatory Note and Explanatory Memorandum. I would be more than happy to have a written reply if the Minister is not in a position to respond to some or all of them now.

At least one or two of the points are probably driven as much by ignorance on my part as anything else. Can I clarify to whom the order applies? Is it only to,

"drivers of specified vehicles undertaking international carriage of goods and passengers",

as referred to in the first paragraph of the Explanatory Note at the end of the draft statutory instrument, or does the order apply to,

"drivers engaged in the carriage of goods and passengers by road"

as referred to in paragraph 4.1 of the Explanatory Memorandum—apparently without any stipulation that it applies only to the international carriage of goods and passengers?

What is the position of drivers of vehicles undertaking national as opposed to international carriage of goods and passengers? Are they covered by similar requirements about periods of driving rests and breaks and can they already be issued with a fixed penalty notice for an offence suspected of being committed within 28 days prior to detection, or only one committed at the time they are detected?

I ask that point to clarify whether the order does or does not mean that we are treating drivers of vehicles involved in international carriage of goods and passengers differently from those involved in national carriage of goods and passengers in this country in respect of fixed penalty notices referred to in the order.

The Explanatory Memorandum refers in paragraph 2.1 to "on-the-spot" penalties being,

"available to enforcement officers when taking action in respect of both UK and non-UK drivers when they detect an infringement of certain Community drivers' hours rules out of GB".

In that context, I also raise a point that has just been raised by my noble friend Lord Jones: if a non-UK driver does not pay their fixed penalty notice on the spot for an offence suspected to have been committed within 28 days prior to detection, what does present evidence available indicate is the likelihood of that fine being paid in whole, and what are the costs of securing payment of such outstanding fines?

The Explanatory Memorandum does not give any indication of the likely number of cases that will no longer be coming to court, although it does refer to court proceedings being "costly and relatively cumbersome". How many cases will no longer be coming to court that currently do so, as a result of the order, and at what saving? Likewise, how many more offences is it considered will be pursued through fixed penalty notices now enabled under this order which would not have been pursued through court proceedings due to their being "costly and relatively cumbersome"?

Paragraph 8.2 of the Explanatory Memorandum refers to the assurances being sought by two trade associations. One of them appears to be that,

"enforcement officers would focus on serious offences and not penalise all minor offences".

My comment relates to all the issues on which assurances were being sought, as referred to in paragraph 8.2. I would like to know what way forward was agreed to in follow-up meetings. All that is said in paragraph 8.2 is that:

"These concerns were addressed and a way forward agreed in follow-up meetings".

What was the way forward agreed and what are the assurances that have been given in relation to the issues raised by the two trade associations and set out in paragraph 8.2? I also ask the question that was raised by the noble Baroness, Lady Randerson—in considerably more detail than I intend to do, since I do not wish to repeat points that she has made. I, too, would like to know, since the order apparently does not apply to Northern Ireland, what is—and what will be—the position in Northern Ireland in relation to the issues addressed by this order and, indeed, to the rather wider issues referred to by the noble Baroness, Lady Randerson, in her comments?

As I said at the beginning, I am more than happy if the Minister wishes to send a written response to the questions that I have raised.

Baroness Chisholm of Owlpen: I thank noble Lords for all their questions—at least I think I thank them. Various points were made about Ireland. Obviously, goods will be able to travel easily in Europe after we leave the EU; that is our intention. Businesses and consumers across Europe would expect both sides in negotiations to work to this end and there is no good reason why suitable arrangements cannot be negotiated.

The noble Lord, Lord Rosser, mentioned Northern Ireland and its rules and regulations. They are devolved and Northern Ireland has its own rules on tachographs. On what will happen post Brexit, we will continue to work with the industry to ensure that the interests of the road haulage sector are properly reflected in the negotiations during our withdrawal from the EU.

As for how many more penalties are expected to be issued, based on last year's figures it is estimated that fixed penalties for drivers' hours and tachograph offences could increase from around 10,000 to at least 14,000 per annum. Of course, on-the-spot checks and fines mean that we are saving quite a lot in court procedures, which are very time-consuming and much more expensive. An official record is not kept on how many non-UK offenders are given a warning or are fined but, since December 2013, the DVSA has recorded giving 273 warnings. However, as the recording of verbal warnings is not mandatory, the figure is likely to be a lot higher. As I said in my opening speech, enforcement officers will be sensitive as to how they give these fines and will listen to what the drivers have to say and to

[Baroness Chisholm of Owlpen]
their explanations for what they are doing. If the fine is not paid on the spot, enforcement officers can immobilise the vehicle until payment is made.

I think that I have answered all the questions, so all I need to say is that the new powers will make a big difference to how we collect these fines. The drivers' hours rules are at the heart of the regulatory regime governing the use of heavy commercial vehicles. They are in place to prevent drivers driving when tired and putting themselves and other road users at risk. It is important that our enforcement of them is as good as it can be, both to deter wrongdoing in the first place and to take action efficiently and effectively when it does arise.

I add that, following consultations, as I said, the main trade associations, which included the Road Haulage Association, the Freight Transport Association, the Confederation of Passenger Transport and the main trade unions, Unite and the United Road Transport Union, all supported this change. Their only criticism of the Government on this issue could have been the amount of time that it would take to change the law, but they did not even raise that as they are very keen that we should go ahead and get this this done.

These regulations are important measures for enhancing the enforcement of the drivers' hours rules. They will mean that more offenders can be dealt with at the roadside rather than through time-consuming prosecutions. In doing so, they will help to keep our roads safe, which is the most important thing. I commend these regulations to the Committee.

Lord Rosser: Do the regulations apply only to the international carriage of goods or do they apply to national carriage of goods, that is, within this country? Does it have to be goods that are coming from abroad into this country? Also, on paragraph 8.2, I am not aware of the way forward to address the assurances sought by the two trade associations. There are a number of issues set out in paragraph 8.2 on which they sought assurances, but I am still not clear on the nature of the assurances given. I would like to know that either now or in writing.

Baroness Chisholm of Owlpen: On the noble Lord's first question, it applies to both. On the second, the DVSA has assured the industry that its enforcement officers will ensure that offences will be recorded against the operator responsible for the driver on the date of offending and attribute the OCRS scores to the appropriate record.

Lord Rosser: What assurance was given when they wanted,

"assurances … that enforcement officers would focus on serious offences and not penalise all minor offences"?

On the face of it, that is allowing someone to get away with something. What is the definition of a minor offence that has been agreed in the assurance that has been given, or the way forward that has been agreed?

Baroness Chisholm of Owlpen: I love all the inspiration that is coming from over my right shoulder. The DVSO will be issuing fixed penalties for offences at the threshold that would normally go to prosecution. That is the whole point: it is to save prosecution. This is normally when examiners detect at least four less serious historical offences or one serious offence. So it is a build-up, really. Where normally they would say, "Right, we need to send you to court", instead they will impose on-the-spot fines.

Motion agreed.

Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No. 2) Regulations 2017

Considered in Grand Committee

5.48 pm

Moved by ***Baroness Buscombe***

That the Grand Committee do consider the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No. 2) Regulations 2017.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con): My Lords, these regulations were laid before the House on 10 July 2017. They will reduce confusion for pension scheme members and burdens for industry. They enact the conclusions of a call for evidence in 2015 concerning how a scheme determines whether or not a member is required to take financial advice prior to transferring their pension savings. Plainly put, the regulations simplify how trustees and scheme managers value members' pensions in order to determine whether the requirement to take advice applies. There is no change in the actual value of the pensions themselves.

To better understand the provisions, it is helpful to first detail the wider context in which they operate. The provisions form part of a wider package of changes that as a whole simplify, but also expand, the protections available for members with potentially valuable guarantees attached to their pensions. Since they were introduced in April 2015, the pension freedoms have given individuals aged 55 and over greater choice in how and when they access their pension savings. Members who save into pension arrangements that provide potentially valuable guarantees can generally also exercise these new freedoms, where necessary by first transferring to a defined contribution scheme or converting to defined contribution savings.

The regulations debated here apply to these pension arrangements—"safeguarded benefits", as they are known—which include typical defined benefit schemes, but more importantly for the purpose of this debate, safeguarded flexible benefits. I should explain these terms. Safeguarded flexible benefits are flexible in that there is a pot, which is cash-based, meaning that the pension freedoms apply, but they are also safeguarded because they include a promise in relation to the secure income they may provide in retirement. Normally, but not exclusively, safeguarded flexible benefits are personal pension contracts that include the option to take an annuity at a guaranteed rate. These are commonly referred to as a guaranteed annuity rate—GAR.

Because of the valuable guarantees offered by safeguarded benefits, legislation introduced an advice requirement alongside the pension freedoms. This requires trustees and scheme managers to check that members with safeguarded benefits valued as greater than £30,000 have taken financial advice before transferring or otherwise flexibly accessing those benefits. It is this legislative requirement—specifically, how pensions are valued for the purpose of determining whether or not it applies—that I am proposing to amend today.

The Government have become aware that the methodology prescribed in regulations for valuing members' benefits against the £30,000 threshold has resulted in firms offering GARs having to provide two values for the member's pension: the transfer value, which an individual will actually receive, and the actuarially calculated, but ultimately notional, value against which the £30,000 advice threshold is tested. Providers and consumer groups reported members with safeguarded flexible benefits experiencing confusion over why they were receiving two valuations. This means that there is always a potential risk that members may choose to take advice and access their pension, having wrongly believed that they would be entitled to the higher actuarially calculated value, when they would receive only the lower transfer value. The regulations debated here will, if approved, amend existing provisions so that trustees and scheme managers are required to treat the value of safeguarded benefits as equal to the transfer value of those benefits when determining whether or not the £30,000 threshold is met.

Trustees of typical defined benefit schemes will continue to use the same methodology, subject to limited exceptions to which I will come later. Meanwhile, those offering safeguarded flexible benefits, such as guaranteed annuity rates, produce only one valuation: the transfer value of the member's benefits. For most schemes, this will be the cash value of the member's pot. This single figure is easily explained and avoids confusion for members. It is also widely used within other communications and is already produced by firms. The instrument also contains transitional provisions to accommodate the changeover from one valuation methodology to another so that members are not disadvantaged.

Finally, the regulations make an amendment to the valuation methodology that removes an inconsistency in the treatment of defined benefit pension scheme savers. Specifically, it is for members of those defined benefit schemes which use higher cash equivalents than those required by legislation. We are working with actuaries to understand and manage the impacts of this measure, in order to understand and monitor its effects. We will be able to amend this requirement should it not function as intended.

Although the purpose and focus of this debate is, of course, the affirmative instrument to which I have just referred, it is worth explaining that the measures set out in these regulations form part of a package of regulatory changes. The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations 2017 introduce a new requirement for trustees and scheme managers to send tailored communications informing all members with safeguarded flexible benefits of the availability of potentially valuable guarantees at precisely the point they are most engaged—that is, when they are considering whether to flexibly access and, therefore, potentially surrender those benefits. Although not within the scope of today's debate, because they have already been made and laid by the negative procedure, on 6 July 2017, these requirements form an important partner to the regulations debated here by improving member protection through targeted and simplified communications.

I will explain the combined effect of these measures on members with a range of values of safeguarded flexible benefits such as GARs. First, there are those members who have pension pots with a transfer value of over £30,000, for whom the advice requirement still applies, only now they will also receive an indication of the guarantee's value before they commit to incurring the expense of seeking and taking financial advice. Members who decide not to proceed with their original request to transfer, convert or take a lump sum payment will have therefore saved themselves, on average, £900. For those who still wish to proceed and access their savings, that option is of course still available. Members will receive a more detailed analysis of the implications of doing this, as they will have to pay for financial advice.

Secondly, there is a group of members who were previously required to look for financial advice but, under the new valuation methodology, would now not be required to attempt to find advice. These are typically members with pots in the range of £15,000 to £30,000. I have used the terms "look for" and "attempt to find" advisedly, because I contend that these members are better served by a combination of the new valuation method and risk warnings this package of regulations introduces. Under the current regime, many of these members are both deprived of any opportunity to appreciate their benefits and denied the ability to exercise an informed choice, because they cannot find a willing financial adviser to perform a transfer analysis for a pension pot with a transfer value of £15,000.

Replacing the requirement for members to take financial advice with a personalised risk warning therefore maintains protection while simplifying the process. It does this by removing an additional layer of cost for members, confusion about the money they stand to access from their pension savings through the use of two valuations, and consequent frustration. The combined package of regulations ensures that even members with small pots—typically below £15,000—are notified of the presence of potentially valuable guarantees in their pension scheme. These members would not have been required to take financial advice under the current regime, but they will now be sent a personalised risk warning before they transfer, convert or otherwise flexibly access their pension pot.

In conclusion, the Government are committed to the principle that those pension savers wishing to exercise choice over when and how they access their pension savings should be able and supported to do so. However, it is equally important to protect members through simplifying how they are told about their pension, while at the same time avoiding unnecessary burdens by removing needless complexity for members and industry alike.

[Baroness Buscombe]

These regulations form part of a package of changes which ensure both that more members receive timely and suitable information about their safeguarded flexible pension benefits and that industry can use a simpler method for valuing benefits for the purpose of the advice requirement. Taken together, these changes demonstrate that the Government have listened carefully to both stakeholders and consumer groups. They show that we are now meeting our commitment, made as part of our consultation exercises, not only to monitor the pension freedoms but to reform existing measures where needed. I therefore commend these regulations to the Committee.

6 pm

Lord Jones (Lab): My Lords, I thank the Minister for her measured exposition. I note that in the Explanatory Note the word "survivor" crops up. Does she have to hand a legal definition of "survivor"?

Baroness Drake (Lab): My Lords, I refer to my interests as set out in the register, in particular that I am a trustee of two occupational pension schemes. The regulations have the effect of removing some individuals—currently estimated at 2,360 per annum—from the need to get regulated advice before accessing those pension pots with a safeguarded flexible benefit, such as a guaranteed annuity rate. This is a consequence of changing the valuation process to determine whether such benefits meet the greater than £30,000 trigger for requiring the individual to take regulated advice.

The term "safeguarded flexible benefits"—the subject matter of these regulations—can feel imprecise, however many times one reads the background paperwork. I appreciate that there are problems with getting data from both contract- and trust-based schemes, but it is not always clear which benefits are included and which are not. I acknowledge that schemes may well need to seek legal opinion to get that clarity so they are sure about how they are applying these regulations to their own schemes.

I thank the DWP officials who quite late into yesterday evening were still answering my various questions. I take this opportunity to ask the Minister two questions about which safeguarded flexible benefits are included. In occupational schemes where members have a right under the scheme rules to convert their AVC saving into scheme defined-benefit benefits, does that provision come under these regulations? Is it possible to give greater clarity on which guaranteed annuity rates in occupational schemes would not be considered money purchase benefits?

Moving on to the risk warning process, I recognise that these regulations sit alongside a new requirement for schemes to send members with safeguarded flexible benefits a tailored risk warning about the guarantees their benefits offer before they proceed to transfer, convert or flexibly access them. Such risk warnings are welcome, but I have a series of linked questions for the Minister on the process around those risk warnings. First, why can the risk warning not be issued immediately following receipt of a member request to transfer, convert or directly access their flexible benefits and before commencing to process the member request? If the warning is received as late as 14 days before any live request completes, evidence suggests that by then individuals are well set on a course of action, inertia takes over and risk warnings are less effective. Some schemes run a system where there are warnings in place: the first thing is the warning, before the full process is triggered.

Secondly, will the risk warning be sent to any other potential beneficiary of the benefits, such as parties involved in a pensions sharing order or, as my noble friend said, possibly survivors? This is a duplicate question, in that sense. Why is the warning restricted to signposting the member to free and impartial guidance? Is this not exactly the type of case where a person should be given almost a default access to the guidance service in line with the recent amendment agreed to the Financial Guidance and Claims Bill? Just a written reference to signposting can often get lost in the detail of the information sent to members, and we are talking about safeguarded benefits.

Lord McKenzie of Luton (Lab): My Lords, I thank the Minister for the introduction and explanation of the regulations. As ever, I am delighted to have the expertise of my noble friend Lady Drake alongside me on these occasions.

The regulations derive, as we have heard, from Section 48 of Pension Schemes Act 2015 and are an integral part of the pension freedoms introduced with effect from April 2015. They focus on the requirements on trustees or managers of a pension scheme in Great Britain to ensure that appropriate independent advice has been received before safeguarded benefits can be converted, one way or another, to flexible benefits.

These regulations, as we have heard, sit alongside other regulations, of the negative variety, which concern requirements for schemes to provide risk warnings where members have the benefit of a GAR—guaranteed annuity rate—which they might otherwise be in danger of relinquishing. Together with the transitional provisions for the advice requirements, these are described in the Explanatory Memorandum as a package and we comment on them on that basis.

The requirement to get regulated advice currently operates when an individual's safeguarded benefits are valued at more than £30,000. It is suggested that the detail of this requires amendment because the basis of calculation is unduly complicated in some circumstances and can lead to situations where the calculation of the advice threshold exceeds £30,000 but the pension pot size is different. Having two different valuations is said to be confusing, and we understand that point.

The impact assessment explains that these complications exist because the valuation regulations currently applied were previously used only by occupational DB schemes and that the circumstances in which they now have to be applied do not generally have standardised processes in place to value GAR benefits in terms of the current value of the future income they offer. As we have heard, the solution offered by these regulations is to adopt the transfer value of the pot in the calculations determining whether the £30,000 threshold for getting regulated advice is reached.

On an ongoing basis, this will save individuals with safeguarded flexible benefits some £11 million per year in advice fees. As we have heard, it will remove some 12,000 people per year from the need to get advice before they access pension pots, although they will be brought within the risk warning arrangements. This seems to be taking matters in the wrong direction. Changing the basis of calculation might be administratively or arithmetically convenient, but what assessment have the Government undertaken of the appropriateness of removing so many people from the benefit of advice?

It is accepted that individuals will no longer have to meet the cost of advice, but they will not be getting the benefit of that advice either. Of course, fewer requirements for regulated advice means fewer fees paid by individuals, but will the Minister remind us about the circumstances in which individuals can access their pension pot to pay for advice, the limits and the tax treatment? Do the Government have any information about the extent to which this is used?

The Explanatory Memorandum makes reference to the potential for inconsistent treatment of members regarding when advice is required when schemes can exercise more generous transfers. Will the Minister tell us how this issue is to be dealt with? We support the concept of risk warnings and the principle of informing members of their safeguarded flexible benefits. This should be the responsibility of ceding schemes and should happen before proceeding to transfer, convert or flexibly access scheme benefits. It should apply to survivors with safeguarded benefits.

We agree that those already required to take advice should be included in the risk warnings. We support there being no de minimis exemption on the basis of pot size. On timing, which my noble friend raised, it is proposed that the risk warning should be sent at least 14 days before any live request completes. Why can the warning not be sent, as my noble friend asked, as soon as a member request to transfer or access the flexible benefits is received?

The Government's response to the consultation on these matters has confirmed the approach to the content of the risk warning and the inclusion of two comparable pension illustrations tailored to the member's age, pot size and contribution rate and with details of guarantees available.

Paragraph 44 states that the Government are not convinced of the need to explain the difference between personalised tax warnings and the statutory money purchase illustrations. Will the Minister expand on the rationale for this position?

Can the Minister also confirm that she is confident that there should be no confusion arising from obligations in respect of retirement wake-up packs and personalised risk warnings? The written element of the risk warning is, according to the impact assessment, to include the signposting to free and impartial guidance—Pension Wise currently or SFGB, or whatever it is going to be called, in due course. As my noble friend has said, this is about the weakest indication of support, bearing in mind that many would previously have had to take advice. As my noble friend proposes, is this not the type of situation now potentially covered by amendments to the Financial Guidance and Claims Bill where individuals can be defaulted to the guidance service with an obligation to demonstrate that they have received guidance before proceeding?

We will not oppose these regulations, although in some respects we consider them a missed opportunity. However, they illustrate the complexity of aspects of our pensions system and the importance of ensuring that individuals are fully supported to understand the value of their pension entitlements.

Baroness Buscombe: I thank all noble Lords and the noble Baroness, Lady Drake, for taking part in the debate. I will do my level best to respond to the questions as fully as I am able. The noble Lord, Lord Jones, first asked about the legal term "survivor". "Survivor" in the regulations means a person who has survived the member and has a right to future benefits or is entitled to benefits under the scheme in respect of that member. The noble Baroness, Lady Drake, and the noble Lord, Lord Jones, referred to survivors. I want to make clear that these regulations apply to both members and survivors. Where an individual inherits a member's subsisting rights in respect of safeguarded benefits and those benefits exceed the advice threshold of £30,000 the survivor is also required to take financial advice. Survivors who inherit a member's safeguarded flexible benefits will also receive a personalised risk warning should they decide to transfer, convert or flexibly access their inherited pension rights. The risk warning is sent to whoever is making a decision about their pension saving at the point they are most engaged in that decision.

In response to the question from the noble Baroness, Lady Drake, about what is included in the definition of safeguarded flexible benefits, the simplest description of a safeguarded flexible benefit is a cash pot with some form of promise or guarantee that the member can convert their pot into a pension income at a predetermined rate. We have framed the definition in fairly general terms, rather than specifically to the types of pension arrangements it covers, such as guaranteed annuity rates, in order to limit the scope for omissions or avoidance. Those uncertain whether the regulations apply should seek appropriate legal expertise and advice.

I turn to the question of what GARs in occupational schemes are not money purchase. GARs that are included in the rules of the pension scheme irrespective of whether this was reflected in the terms of a contract between the trustee and a third party, such as an insurer, are not money purchase. In this situation, the scheme would be liable to fund benefits over and above what the scheme assets—including the contract—can provide. So the benefits are technically non-money purchase and are, therefore, safeguarded benefits.

The noble Baroness also asked about members who are told about their guarantees too late. The question was, why not require schemes to tell members about their guarantees earlier on? The regulations laid alongside these regulations will require trustees and scheme managers to send members information about their valuable guarantees at precisely the point that the member is most engaged in considering what to do with their pension savings. This, we believe, makes them more effective at increasing awareness of guarantees among

[Baroness Buscombe]
members than forcing schemes to send regular information long before members' retirement, when they may not be actively considering a decision.

6.15 pm

Reference was made by the noble Baroness, Lady Drake, and the noble Lord, Lord McKenzie, to the single financial guidance body Bill, which references signposting and regulations with regard to giving advice and also, in this instance, the availability of free and impartial guidance. Noble Lords will be aware that existing regulations and rules require trustees and providers to signpost members to the availability of free and impartial guidance. They do this as part of what we call wake-up packs, which they are required to send when they communicate with members about their retirement options and, where applicable, via retirement risk warnings.

In addition, the regulations that accompany the regulations that are the subject of the debate will require schemes, when they issue personalised risk warnings, to signpost members to the service that delivers that free and impartial guidance. Presently, that is Pension Wise, but in future it will be the single financial guidance body. Both the Pensions Advisory Service and Money Advice Service also provide free information and guidance on GARs, for example, guidance on what to look for when deciding whether to take up a guaranteed annuity rate and comparing the income available from a GAR with the income available from shopping around through the Money Advice Service annuity tool to calculate and compare annuities. These services will continue to be provided by the new single financial guidance body. We are currently working on the fine detail of the amendments to what is now Clause 5(2) of the Financial Guidance and Claims Bill.

We believe that these regulations, by providing an additional nudge to free sources of guidance, are compatible with the amendment laid by the noble Lord, Lord Sharkey, during our debates. We will of course review and make consequential amendments, where necessary, to all regulations that currently refer to pensions guidance to ensure that they continue to operate correctly when the new arrangements under the Financial Guidance and Claims Bill come into effect. I ought to add that there is of course no guarantee that this amendment will pass through another place. We cannot be firm about any of this until the Bill receives Royal Assent.

Lord McKenzie of Luton: Just on that point, is it the Government's position that they would support those amendments as currently carried and included in the Bill?

Baroness Buscombe: I thank the noble Lord for the question. Yes, the Government will accept the amendment in the other place but of course we cannot speak for other Members in the other place, who may think differently. Certainly, the expectation is that the amendment will see Royal Assent.

There was a suggestion that our legislation is reducing protection for members of defined benefit schemes, but these regulations have no impact on the vast majority of such schemes or their members. They will still be subject to the same requirement for regulated financial advice where their benefits exceed the same threshold, and the same valuations will continue to apply. In the small proportion of schemes that choose to offer more generous transfer values than are required by law, members whose defined benefit pensions are worth in the region of £20,000 to £30,000 are being treated more fairly. They will not be forced to take advice when members with the same rights in other defined benefit schemes are not. These members can of course opt to take advice and will be able to seek guidance, which can signal the option of advice before transferring.

There was a question about whether we were reducing member protection and making it easier for savers to surrender their guarantees. We remain committed to the principle of the advice safeguard. That is why the threshold to whom it is applied remains the same—those with safeguarded benefits with a value of over £30,000—and with the introduction of these regulations, for the majority of members with safeguarded benefits there will be no change in how their pension is valued and calculated for the purpose of the advice requirement.

However, where a pot is cash-based but has a safeguarded element, such as the option of a guaranteed annuity rate, these regulations deliver simplification and clarity. Trustees and scheme managers now have to produce only one valuation of the member's pot. A single figure is easily explained and avoids confusing members because it makes it clearer what the members may receive if they proceed to transfer, convert or otherwise flexibly access their savings. At the same time, parallel regulations introduce new protections that are timely—sent at the point members are making a decision—and increase the total number of members informed that their pots contain guarantees.

The noble Lord, Lord McKenzie, asked about the work that has been done on assessing the impact of the regulations. The Department for Work and Pensions estimates that there will be approximately 12,400 individuals per year who no longer need to try to find advice. The noble Lord said that he felt that these regulations were a missed opportunity. I reconfirm, as I said at the outset of this brief debate, that it is very important to take on board the fact that the Department for Work and Pensions is continually reviewing and assessing the impact of regulations, following the protection freedoms. If it is found that more needs to be done, changed or amended, we will certainly do that through secondary legislation.

The regulations debated here today simplify how trustees and scheme managers value members' pensions when determining whether the requirement to take advice applies. Pension schemes with members who hold safeguarded flexible benefits—mainly but not exclusively personal pension contracts that include the option of an annuity at a guaranteed rate—can use the transfer value of the member's pot, instead of undertaking a complex actuarial calculation.

Representatives of consumers and industry have both sought and supported the simplification of the current valuation method that these regulations deliver, and both groups will benefit from its implementation. Consumers with safeguarded flexible benefits will be

less confused when they inquire about transferring or accessing their pot because they will receive only one valuation, and the difficulties for industry when valuing these guarantees will be removed.

Finally, these regulations form part of a package of measures. If approved, they will come into force alongside a new requirement to send all members tailored communications, ensuring that all members are told about their valuable benefits in a more timely and accessible manner. There will also no longer be a cohort of individuals who are required to seek financial advice, but are often unable to locate an adviser willing to advise on their pension savings. I hope I have set out for the Committee the need for these regulations and have responded to the matters raised. I commend these draft regulations to the Committee.

Motion agreed.

Selection of the President of Welsh Tribunals Regulations 2017

Considered in Grand Committee

6.23 pm

Moved by ***Lord Keen of Elie***

That the Grand Committee do consider the Selection of the President of Welsh Tribunals Regulations 2017.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): By way of background, there are seven devolved tribunals that are the responsibility of the Welsh Government: the Mental Health Review Tribunal for Wales, the Special Educational Needs Tribunal for Wales, the Agricultural Land Tribunal for Wales, the Adjudication Panel for Wales, the Residential Property Tribunal Wales, the Welsh Language Tribunal, and a tribunal covering the registered school inspectors appeals panels and the registered nursery education inspectors appeals panels.

There are 41 judges currently appointed to those tribunals. Each tribunal has its own judicial lead but these judges have limited access to senior judicial leadership within Wales, which is inconsistent with other judicial officeholders in England and Wales. Sir Wyn Williams, a retired High Court judge, has been undertaking an informal leadership role, but he does not have any statutory powers.

To address this, Part 3 of the Wales Act 2017 created a new post: the President of Welsh Tribunals. The president has responsibility for making arrangements about the training, guidance and welfare of Welsh tribunal members, as well as for representing their views to Welsh Ministers and other Members of the National Assembly for Wales. The president will also be able to give practice directions and will be responsible for deploying tribunal members between the different Welsh tribunals, as well as between the UK-wide tribunals and the Welsh tribunals.

The president will also be responsible for establishing and communicating the judicial strategic direction for the Welsh tribunals. He or she will provide leadership and build effective relationships with the judicial leads of the Welsh tribunals, as well as with the Welsh Government's Welsh Tribunals Unit, the Lord Chief Justice, the Judicial College, and Ministers and officials in the Welsh Government, relating to policy issues affecting the Welsh tribunals.

Paragraph 2 of Schedule 5 to the Wales Act 2017 provides two routes for the appointment of the President of Welsh Tribunals. The first is by agreement between the Lord Chief Justice, the Lord Chancellor and the Welsh Ministers with regard to a person who is, or has been, a judge of the Court of Appeal or the High Court. The second route, in default, is following selection by the Judicial Appointments Commission.

If agreement cannot be reached between the Lord Chief Justice, the Lord Chancellor and the Welsh Ministers on the appointment, paragraph 2 of Schedule 5 to the Wales Act 2017 requires the Lord Chief Justice to make a request to the Judicial Appointments Commission for a person to be selected for appointment to the office of President of Welsh Tribunals.

Elements of the procedure for appointment by the Judicial Appointments Commission are set out in the Act itself. These include that the Judicial Appointments Commission must appoint a selection panel which must include at least two members who are non-legally qualified, at least two judicial members and at least two members of the Judicial Appointments Commission.

The Lord Chancellor is also required to make additional provision about the process to be applied. That is what these regulations do. In particular, they specify that the selection panel should consist of five members and make further provision about the appointment of people to that panel, including that the chairperson of the panel is to be a person designated by the Lord Chief Justice who holds, or has held, office as a judge of the Supreme Court, a Lord Justice of Appeal or a puisne judge of the High Court.

The regulations also make further provision relating to consultation during the process and to the reporting of the panel's selection to the Lord Chief Justice and the Lord Chief Justice's options when deciding on that selection. In order to be consistent with the relevant primary legislation and the nature of the new office, the appointment process closely reflects that which applies to the selection of the Senior President of Tribunals.

The Wales Act 2017 established the role of the President of Welsh Tribunals and the requirements for the appointment of a judicial officeholder to that office. These regulations allow that appointment to be made. I therefore commend the regulations to your Lordships and beg to move.

Lord Thomas of Gresford (LD): My Lords, I very much welcome these regulations, although I hope that the machinery that they set up will not be used, because of course the alternative way is by agreement between the Lord Chancellor, the Lord Chief Justice and Welsh Ministers.

At a time when the independence of the judiciary has been under attack, when we have heard expressions in the press such as, "Enemies of the people", and when the press has questioned the impartiality of

[Lord Thomas of Gresford]
judges in many ways and the degree to which they are in touch, it is very important that the independence of the judiciary in Wales should be emphasised. In most of these tribunals, one of the parties concerned will almost certainly be the Welsh Government or local government, and it is very necessary that the administrative tribunal should be seen to be impartial.

I am very pleased that my old friend Sir Wyn Williams has been acting in an informal capacity as President of Welsh Tribunals—we used to meet on many a rugby field in our youth. Hopefully, he will continue in that role, and maybe he will be a candidate for president. I could not imagine the independence of the judiciary being in better hands to give leadership and direction. So many of the 41 judges who are sitting on these tribunals are lay persons without necessarily any lengthy experience in the law, so it is important that they should be properly trained and properly led. I am sure that that has been done under Sir Wyn Williams and that it will continue under these regulations.

6.30 pm

Lord Wigley (PC): My Lords, I will be very brief as I do not have a tenth of the background that the noble Lord, Lord Thomas, has with regard to legal operations in Wales. But I can from my own knowledge, and by reputation, endorse the comments the noble Lord made about Sir Wyn Williams.

I have one specific question, relating to the Welsh language. As noble Lords will be aware, and as I am sure the Minister has been made well aware, the Welsh language has full official status in Wales now, as it has since the legislation six or seven years ago. From 1967 onwards, it had equal validity, and the 1993 Act gave it equal status with English. That being so, operations of the law in courts and tribunals may take place in Welsh. That is the normal state of affairs in Wales. Proceedings may or may not take place in Welsh, but the choice is there and it is equal handed—as the noble Baroness in the Chair well knows.

In the specifications that have been put down, at Regulation 3(13) there is a list of the characteristics that are "desirable" for the members of the selection panel, including that members should be,

"both men and women … drawn from a range of different racial groups"—

—both fair enough—and have,

"an understanding of the administration of justice in Wales and Welsh devolution arrangements".

That too is fine. But why is there no paragraph there about having at least some knowledge of the Welsh language, particularly as that will arise from time to time in the work that is being undertaken? I do not object to the instrument in itself, but that should have been covered, unless there is some explanation of which I am not aware.

Baroness Donaghy (Lab): My Lords, I have a very brief, possibly technical question, which is probably because I am not legally qualified or an expert in this matter. Paragraph 3.2 of the Explanatory Memorandum says that,

"the territorial application of this instrument includes Scotland and Northern Ireland".

Further down, under "Extent and territorial application", it says:

"The territorial application … is the whole of the United Kingdom".

I was curious why those two provisions were there and whether it is a standard phrase that appears in all these things. It just seemed a little odd.

Lord Beecham (Lab): My Lords, I of course defer to the experience of the two noble Lords from Wales, who clearly have a greater insight into the position than either the Minister—with due respect—or I could have. Of course, I join them in welcoming the instrument. However, according to the Explanatory Note, the consultation process was very limited, as it was apparently confined to officials of the Welsh Government and the Lord Chief Justice. Was there any consideration with the professions in Wales about this? Presumably many members of the legal profession would have an interest in the matter.

On the concern about diversity, I wonder whether the noble and learned Lord is in a position to say—if not, perhaps he could subsequently advise me—what is the present composition of tribunal membership and chairs of the tribunals in terms of gender and ethnicity. Clearly there is an implicit aspiration at paragraph 12.2 of the Explanatory Memorandum to promote diversity. I would be interested to know what the starting point is. Although the question of developing a baseline against which progress can be measured is apparently still incorrect, it would be helpful to see where we are starting from, if not today by a note to those Members present.

This is clearly a welcome step forward. One hopes that it will work well and in particular that the diversity issue will be addressed properly and in a timely way. I join other noble Lords in welcoming the regulations and trust that their impact will be beneficial.

Lord Keen of Elie: I am obliged to noble Lords and to the noble Baroness for their contributions. I begin with the point raised by the noble Lord, Lord Thomas of Gresford. I entirely agree with his observations about the importance of maintaining the independence of the judiciary and, equally, of defending the judiciary from inappropriate attack. There is an important distinction to be made between what can be regarded as justified criticism and what is tantamount to abuse. We have to underline that distinction if we are properly to defend the judiciary. Of that there can be no doubt.

On the question of whether these powers should be used, I again entirely agree with the noble Lord. This is the alternative mechanism to be employed, but it is contemplated that it will be employed only in circumstances where there is a breakdown in agreement between various parties. It is not something that is contemplated, but because the Act makes provision for this alternative mechanism it is only appropriate that we should have regulations in place so that, if necessary, it can be employed.

On the matter of who will be the president of the Welsh tribunals and his role so far as defence of tribunal members is concerned, remembering that some

of those tribunal members are lay members, it is doubly important there is somebody there who can advise and defend their interests. One of the responsibilities of the President of Welsh Tribunals will be not only the training and guidance of members of the tribunals, but consideration of their welfare. That again is important.

On the point raised by the noble Lord, Lord Wigley, on the Welsh language, of course we recognise the importance of the Welsh language in the context of proceedings in Wales, but we have to remember that we are making an appointment to the judiciary of England and Wales. While the proceedings of those tribunals may take place in Welsh as distinct from English, it is not considered appropriate that we should extend the criteria for the appointment of this post to include the Welsh language itself.

Lord Wigley: I hear what the noble and learned Lord says. There are numerous bodies that have responsibilities that go beyond the borders of Wales where the status of the Welsh language is recognised. I would not have been surprised if there had been no provision at all for equality here on the basis that other legislation covers it, but if we are writing the equality of men and women and racial equality into this, surely it is not unreasonable to write the language in because some of the work will be undertaken in Wales, if not all of it.

Lord Keen of Elie: With respect to the noble Lord's observations, language is not an equality issue in that context in the same way as the other criteria he alluded to. It is a matter of context. Of course it is important we recognise that the use of English and Welsh have equal demands on any tribunal process in Wales, but that is quite distinct from how you go about the appointment criteria.

Lord Wigley: I am sorry; I do not want to labour this unduly. The language question has, to a large extent, been put to rest in Wales over recent decades after there was a lot of strong feeling about it on the basis that there was recognition of language being an equality criterion. I do not know whether it is technically so in the legal framework here but, surely in terms of the spirit of what is being done here, it should be accommodated.

Lord Keen of Elie: With respect, there is no issue about whether an individual applicant would be prejudiced whether he spoke only Welsh or only English or both. That is why I say, in this context, it does not arise for the purposes of this schedule. If an applicant came forward who did not speak English but spoke only Welsh, there would be no issue about that applying to the suitability of his appointment.

Lord Wigley: May I help the Minister? I do not want to see issues like this boiling up to become another bullet in a language war, as it were. It is the sort of thing that we need a harmonious approach towards. Equality is regarded as being relevant in a language context, as in other contexts, and therefore, if it is necessary to write it into the terms as they are here, I cannot see why they are not broad enough to encapsulate language, but I have made my point.

Lord Keen of Elie: If I can make one short addition, it is that these regulations are concerned with the technical operation of judicial appointments and therefore, again, our view is that the question does not arise in this context.

I turn to territorial application. My understanding is that technically, in the context of tribunal appointments, we are looking across the UK and not just at England and Wales, which is why the regulation extends as it does. There are circumstances in which tribunal membership can move between the various jurisdictions.

On the consultation process and diversity in particular, diversity is of course taken extremely seriously. I believe that we have some figures with regard to tribunal membership. I am not sure that I have figures with regard to the chairmanship of tribunals. As regards male and female membership, about 40% of tribunal members are female. In the senior courts, the figures are of course different but, for tribunals, the figure is as high as it is anywhere. As far as BAME in tribunals is concerned, the number is about 10%. Interestingly, perhaps, we even have a figure for those who are of a non-barrister background. I am not quite sure what a non-barrister background amounts to, but 66% of tribunal judges come from a non-barrister background. On whether that is regarded as a good thing or a bad thing, I will not comment. If the noble Lord, Lord Beecham, wishes to have figures about the chairmanship of tribunals, and their gender mix, I can undertake to write to him, if those figures are available. I do not know if they are; I know that the overall figures are there, as I have just mentioned. That, I hope, addresses the points that noble Lords have raised.

Motion agreed.

Committee adjourned at 6.43 pm.